

**§ 987.339 Assessment rate.**

On and after October 1, 2003, an assessment rate of \$0.75 per hundredweight is established for California dates.

Dated: July 23, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 991**

[Docket No. AO-F&V-991-A3; FV03-991-01]

**Hops Produced in Washington, Oregon, Idaho and California; Hearing on Proposed Marketing Agreement and Order No. 991**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of Public Hearing on Proposed Marketing Agreement and Order.

**SUMMARY:** Notice is hereby given of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover hops grown in Washington, Oregon, Idaho and California. The proposal was submitted by the Hop Marketing Order Proponent Committee (committee), a group of industry members who support a marketing order for hops. The proposed order would authorize volume control measures in the form of producer allotments to regulate the marketing of alpha acid in hops in the production area. Alpha acid is a bittering agent used in brewing that is the primary marketable component of hops. The proposed order would also allow for reserve pooling of excess production of alpha acid and would provide for production research, marketing research and development projects to promote the marketing, distribution and consumption or efficient production of hops. The program would be financed by assessments on hop handlers and would be administered by a committee of growers nominated by the industry and appointed by the Department of Agriculture (USDA).

**DATES:** The hearing will be held on August 14 and 15 in The Dalles, Oregon, on August 16 and 18 in Hood River, Oregon and continue, if necessary, on August 19, 20, 21 and 22 in Hood River,

Oregon. The hearing will begin each day at 8:30 a.m. and end at 5 p.m.

**ADDRESSES:** The hearing locations are: August 14 and 15, 2003, Shilo Inn, 3223 Bret Clodfelter Way, The Dalles, Oregon 97058; August 16 and 18 (and August 19 through 22, if necessary) Best Western Hood River Inn, 1108 East Marina Way, Hood River, Oregon 97031.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204; telephone (503) 326-2724 or Fax (503) 326-7440; or Kathleen M. Finn, 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 this proceeding 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.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If issued, the proposed agreement and order would 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 the Secretary 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. 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

This proposal is the result of more than two years of efforts undertaken by the committee. The committee was established as a result of renewed industry interest in a Federal marketing order. According to the committee, meetings for discussion of a hop marketing order involved all segments of the industry with varying views on establishment of an order and included growers, handlers, dealers and end users. In addition, meetings were held in each area of the production area to provide opportunities for all hop growers and other interested parties to provide input.

According to the committee, the hop industry is suffering from a chronic oversupply situation that is depressing prices to below economically viable levels. Technological advances have increased the efficiency of both the production of alpha acid from hops and the utilization of the alpha acid in brewing. Consequently, less hop acreage is needed to adequately supply the market and excess alpha inventories have resulted. Industry reductions in acreage have not kept pace with the declining demand for alpha acid. The proponent group contends that the proposed marketing order program would bring stability to the U.S. hop industry by balancing supplies with market needs, which would enhance producer returns.

There have been three previous marketing orders for hops. The most recent was for hop growers in the Northwest which was in effect from July 1966 to December 1985. The principal feature of that order was a producer allotment form of volume control. There was considerable controversy involved in the order during the 1980's, which included concerns over the grower base used in calculating the volume regulations. The base was limited to

industry production levels prior to establishment of the order and effectively restricted new growers from entering the industry. USDA terminated the order in 1985. According to the proponent committee, this proposal is different from the previous order as provisions have been included that allow for new base allotments in each year of expanding demand to both existing and new growers.

The proposal submitted by the committee has not received approval by USDA.

To assist in its review of the proposal, USDA issued a press release seeking comments from interested parties on the proposed order. Over 75 comments were received expressing a variety of views. There were no specific additional proposals or modifications to the committee's proposals submitted.

USDA was concerned that the methodology for establishing initial base quantities set forth in the proposal was inconsistent with the statutory requirement that the salable quantity be allocated equitably among all growers. USDA issued a press release requesting alternatives to the proposal before proceeding to hearing. The proponents submitted a modification to their proposal addressing USDA concerns. An alternative to the establishment of initial base quantities, as well as other alternatives to the proposal, were submitted by Lenseigne Farms, Inc. The alternatives submitted are being included in this notice. Eight other comments were received during the period for receiving alternatives. However, these comments did not set forth alternatives.

After reviewing the modified proposed program and all comments and alternatives received from the public, USDA has determined that the proposed marketing agreement and order potentially meets the objectives of the Act and has scheduled a public hearing.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and all of its provisions, as well as any appropriate modifications or alternatives.

The public hearing is held for the purpose of:

(a) Receiving evidence about the economic and marketing conditions that relate to the proposed order and to appropriate modifications thereof;

(b) Determining whether the handling of hops produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

(c) Determining whether there is a need for a marketing order for hops;

(d) Determining the economic impact of the proposed order on the industry in the proposed production area and on the public affected by such program; and

(e) Determining whether the proposed order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex-parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. USDA modified the committee's proposed § 991.78(b) to be consistent with the authority of the Act. The Act specifies that the Secretary shall terminate any marketing order when termination is favored by a majority of the producers, provided they have produced more than 50 percent of the volume of the commodity. There is no authority under the Act to modify these criteria. Therefore, the proposed section has been changed to be consistent with the Act. USDA has also added three provisions to the committee's proposal that are common to and relate to marketing agreements now operating. These provisions are necessary to effectuate the provisions of the marketing agreement, if ratified. These sections are identified with an asterisk (\*).

#### List of Subjects in Proposed 7 CFR Part 991

Hops, Marketing agreements, Reporting and recordkeeping requirements.

#### Proposal Number 1

The marketing agreement and order proposed by the Hop Marketing Order Proponent Committee would add a new part 991 to read as follows:

## PART 991—HOPS PRODUCED IN WASHINGTON, OREGON, IDAHO AND CALIFORNIA

### Subpart—Order Regulating Handling

#### Definitions

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991.03	Person
991.04	Hops and Hop Products
991.05	Production Area
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991.07	Handler
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Authority: 7 U.S.C. 601-674.

**Subpart—Order Regulating Handling****Definitions****§ 991.01 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

**§ 991.02 Act.**

*Act* means Public Act No. 10, 73rd Congress, as amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*; 48 Stat. 31, as amended).

**§ 991.03 Person.**

*Person* means an individual, partnership, corporation, association, or any other business unit.

**§ 991.04 Hops and Hop Products.**

(a) *Hops* means and includes all kinds and varieties of *Humulus lupulus* or *Humulus americanus* grown and harvested in the United States, whether loose, packaged or baled and all pellets, powder, oils, extracts and/or lupulin derived therefrom.

(b) Alpha Acid hops are those varieties that are primarily used for their bittering value. Aroma hops are those varieties primarily used for their aroma characteristics.

**§ 991.05 Production Area.**

*Production area* means all States with commercial production of hops and shall be divided into the following districts:

- (a) District 1—Washington
- (b) District 2—Oregon
- (c) District 3—Idaho and California

**§ 991.06 Producer.**

*Producer* is synonymous with *grower* and means any person engaged in a proprietary capacity in the commercial production of hops. Any producer with multiple legal entities under his/her control (e.g. common Board of directors, common ownership, common banking, etc. \* \* \*), shall be, for voting purposes only, included under the primary entity and shall be entitled to one vote.

**§ 991.07 Handler.**

*Handler* means any person who handles hops.

**§ 991.08 Handle.**

*Handle* means to prepare hops for market, acquire hops from a producer, use hops commercially of one's own production, sell, transport or ship (except as a common or contract carrier

of hops owned by another) or otherwise place hops into the current of commerce within the production area or from the area to points outside thereof, except that:

(a) The preparation for market of hops by producers, not dealers or users of the product, or;

(b) The sale, transportation or shipment of such hops by a producer to a handler of record within the production area, and;

(c) The transfer of excess hops by the producer to another producer to enable that producer to fill a deficiency in an annual allotment, shall not be construed as handling.

**§ 991.09 Marketing Year.**

*Marketing year* means the 12 months from August 1 to the following July 31, inclusive.

**§ 991.10 Crop.**

*Crop* means hops produced by a producer during the marketing year.

**§ 991.11 Salable Quantity.**

*Salable Quantity* means the total quantity of hops that handlers may purchase from, or handle on behalf of, producers during the marketing year.

**§ 991.12 Annual Allotment.**

*Annual Allotment* means that portion of the Salable Quantity prorated to a producer.

**§ 991.13 New Producer.**

The term *New Producer* means a person who has not grown hops prior to 2003. The term *New Producer* specifically excludes any person who has previously been granted Hop Commission grower number or an allotment base in any capacity, either as an individual, or as an owner, officer or operator of any business entity.

**Administrative Committee****§ 991.15 Establishment and Membership.**

(a) A Hop Administrative Committee consisting of eight members, each of whom shall have an alternate, is hereby established to administer the terms and provisions of this part. Five of the members and their alternates shall be producers in District 1, Two members and their alternates shall be producers in District 2; and One member and his/her alternate shall be producers in District 3. An additional member and his/her alternate shall represent the public and shall be an ex-officio member of the Committee without a vote.

(b) Representation on the Committee shall be by independent producers as follows:

(1) Position 1 for District 1, Sub District 1 shall be all that portion of the State of Washington lying north of the south line of Township 12 N.

(2) Position 2 for District 1, Sub District 2 shall be all that portion of the State of Washington lying south of the south line of Township 12 N. and west of the east line of Range 20 E.

(3) Position 3 for District 1, Sub District 3 shall be all areas of the state of Washington not included in Sub District 1 or Sub District 2.

(4) Position 4 is an at large position and shall be all of District 1.

(5) Position 5 is an at large position and shall be all of District 1.

(6) Position 6 shall be all of District 2.

(7) Position 7 shall be all of District 2.

(8) Position 8 shall be all of District 3.

(c) The committee may change sub-district boundaries in District 1 to reflect significant changes in numbers of producers.

(d) Each Committee shall select officers consisting of a Chairman, Vice Chairman, Secretary and Treasurer and these officers shall constitute the Executive Sub Committee.

**§ 991.16 Eligibility.**

Each member and alternate of the Committee shall be, at the time of his/her selection and during his/her term of office, a producer or an officer or employee of a producer, in the district or sub district for which selected: *Provided*, That these requirements shall not apply to the public member and the alternate public member.

**§ 991.17 Term of Office.**

The term of office of each member and alternate member of the Committee shall be for a period of 3 years: *Provided*, that the members initially selected for Positions 1, 2 and 5 shall serve for terms ending on December 31, 2006, and the members initially selected for Positions 3, 7 and 8 shall serve for terms ending on December 31, 2007, and the members initially selected for Positions 4 and 6 shall serve for terms ending on December 31, 2008. Committee members shall serve in such capacity and for the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. No member shall serve more than two consecutive terms as member and no alternate shall serve more than two consecutive terms as alternate.

**§ 991.18 Nominations.**

(a) Nominations for producer members of the Committee and their

alternates shall be made at nomination meetings of producers in each District or Sub-District. Such meetings shall be held at such times (on or before November 1 of each year) and places as the Committee shall designate. One nominee shall be elected for each position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than December 1 of each year.

(b) Only producers, including duly authorized officers or employees of producers present and eligible to serve as producer members of the Committee, shall participate in the nomination. If a producer produces hops in more than one district, the producer shall select the district in which that producer will participate and notify the Committee of the choice.

(c) Should the Committee find it impractical to hold nomination meetings, nominations may be submitted to the Secretary based on the results of balloting by mail. Ballots to be used may contain the names of candidates and a blank space for write-in candidates for each position, together with voting instructions. The eligible person receiving the highest number of votes for a member or alternate position shall be the nominee for that position.

(d) The producer members of the Committee shall nominate the ex-officio public member and alternate public member at the first meeting following the selection of members for a new term of office.

(e) Initial members. As soon as practicable following the effective date of this part, the Secretary shall hold, or cause to be held, nomination meetings of producers in each district to nominate the initial members of the Committee.

(f) The Committee shall issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

#### § 991.19 Selection.

Committee members shall be selected by the Secretary from nominees submitted by the Committee or from among other eligible persons. Each person so selected shall qualify by filing a written acceptance with the Secretary prior to assuming the duties of the position.

#### § 991.20 Alternate members.

An alternate for a member shall act in the place of such member:

- (a) In the member's absence,
- (b) In the event of the member's death, removal, resignation, or disqualification, until a successor for the member's

unexpired term has been selected and has qualified, or

- (c) When requested and designated by the member.

#### § 991.21 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Committee, a successor to fill the unexpired term shall be nominated and appointed in the manner specified in §§ 991.18 and 991.19. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 991.15.

#### § 991.22 Powers.

The Committee shall have the following powers:

- (a) To administer this part in accordance with its terms and provisions;
- (b) To make rules and regulations to effectuate the terms and provisions of this part;
- (c) To receive, investigate, and report to the Secretary complaints of violations of this part; and
- (d) To recommend to the Secretary amendments to this part.

#### § 991.23 Duties.

The Committee shall have, among others, the following duties;

- (a) To select from among its membership such officers and adopt such rules or bylaws for the conduct of its meetings as it deems necessary;
- (b) To appoint such employees as it may deem necessary, and to determine the compensation and to define the duties of each employee;
- (c) To appoint such subcommittees and consultants as it may deem necessary;
- (d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the Committee and to make copies of each such statement available to producers and handlers for examination at the office of the Committee;

- (f) To cause the books of the Committee to be audited by a certified public accountant at such times as the Committee may deem necessary, or as

the Secretary may request, to submit copies of each audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(g) To act as intermediary between the Secretary and any producer or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to hops and hop products;

(i) To submit to the Secretary such available information as may be requested or that the Committee may deem desirable and pertinent;

(j) To notify producers and handlers of all meetings of the Committee to consider recommendations for regulations and of all regulatory actions taken affecting producers and handlers;

(k) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to its members;

(l) To investigate compliance and use means available to prevent violations of the provisions of this part;

(m) To redefine, with the approval of the Secretary, the districts into which the production area is divided and to reapportion the representation of any district on the Committee: *Provided*, That such changes shall reflect, insofar as practical, shifts in hop production within the production area and numbers of producers; and

(n) To establish such rules and regulations as are necessary or incidental to administration of this part, as are consistent with its provisions, and as would tend to accomplish the purposes of this part and the act.

#### § 991.24 Committee Expenses and Compensation.

Members and Alternates of the Committee shall serve without compensation but shall receive such allowances for necessary expenses incurred in connection with their duties as may be approved by the Committee.

#### § 991.25 Procedure.

(a) At an assembled meeting, all votes shall be cast in person and seven members of the Committee shall constitute a quorum. Decisions of the Committee shall require the concurring vote of at least six members. If both a Committee member and appropriate alternate are unable to attend a Committee meeting, the Committee may designate any other alternate from the same district who is present at the meeting to serve in the member's place.

(b) The Committee may vote by mail, telephone, or other means of communication: *Provided*, That each

proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes and no dissenting votes shall be required for approval of a Committee action by such method.

#### **§ 991.26 Research and Development Projects.**

The Committee may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution and consumption or efficient production of hops. The expense of such projects shall be paid from funds collected pursuant to § 991.31.

#### **Expenses and Assessments**

##### **§ 991.30 Expenses.**

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it for such purposes as the Secretary may, pursuant to this part, determine to be appropriate, and for the maintenance and functioning of the Committee during each marketing year. The Committee shall submit to the Secretary a budget for each marketing year, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such year.

##### **§ 991.31 Assessments.**

(a) Requirements for payment. Each person who first handles hops shall pay to the Committee, upon demand, that handler's prorata share of the expenses authorized by the Secretary for each marketing year. Each handler's prorata share for each variety of hops sold shall be the rate of assessment fixed by the Secretary times the number of pounds of that variety of hops sold, times the alpha acid factor for that variety of hops which the handler handles as the first handler thereof. The payment of assessments for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to this part, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Rate of assessment. The Secretary shall fix the rate of assessment to be paid by each handler. In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the Committee may accept advance assessments and may also borrow

money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the marketing year.

(c) Assessments not paid within a time prescribed by the Committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Committee: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(d) Excess funds. At the end of a marketing year, funds in excess of the year's expenses may be placed in an operating reserve not to exceed approximately one marketing year's operational expenses or such lower limits as the Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Committee for expenses authorized pursuant to § 991.30. Funds in excess of those placed in the operating reserve shall be refunded to handlers: *Provided*, That any sum paid by a first handler in excess of that handler's prorata share of the expenses during any marketing year may be applied by the Committee at the end of such marketing year to any outstanding obligations due the Committee from such person. Each handler's share of such excess funds shall be the amount of assessments paid in excess of that handler's prorata share.

(e) Disposition of funds upon termination of order. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable, such funds will be returned prorata to the first handler from whom such funds were collected.

(f) The Committee may establish rules and regulations necessary and incidental to the administration of this section.

#### **Volume Limitations**

##### **§ 991.50 Marketing Policy.**

(a) The Committee shall meet on or before November 15 of each year to adopt a marketing policy for the ensuing marketing year or years. As soon as is practical following the meeting or meetings, the Committee shall submit to the Secretary recommendations for volume regulations deemed necessary to meet market requirements and establish orderly marketing conditions. Additional reports shall be submitted to

the Secretary if the Committee, subsequently adopts a new or revised policy because of changes in the demand and supply situation with respect to Alpha Acid.

(b) In determining such marketing policy, Committee consideration *shall include* but not be limited to:

(1) The estimated quantity of salable Alpha Acid held by producers and handlers;

(2) The estimated demand for Alpha Acid;

(3) Prospective production of Alpha Acid;

(4) Total of allotment bases for the current marketing year and the estimated total of allotment bases for the ensuing marketing year;

(5) The quantity of reserve Alpha Acid in storage;

(6) Producer prices of Alpha Acid;

(c) Notice of the marketing policy recommendations for a marketing year and any later changes shall be announced publicly by the Committee, and be submitted promptly to the Secretary and all producers and handlers. The Committee shall publicly announce its marketing policy or revision thereof and notice and contents thereof shall be submitted to producers and handlers by bulletins or through appropriate media.

(d) As soon as practical following the effective date of this part and the organization of the Committee, the Committee may adopt a marketing policy.

##### **§ 991.51 Recommendations for Volume Regulation.**

(a) If the Committee's marketing policy considerations indicate a need for limiting the quantity of Alpha Acid, the Committee shall recommend to the Secretary a salable quantity and allotment percentage for the ensuing marketing year. Such recommendations shall be made prior to November 15, or such other date as the Committee may establish.

(b) At any time during the marketing year for which the Secretary, pursuant to § 991.52(a), has established a salable quantity and an allotment percentage, the Committee may recommend to the Secretary that such quantity be increased with an appropriate increase in the allotment percentage. Each such recommendation, together with the Committee's reason for such recommendation, shall be submitted promptly to the Secretary.

(c) As soon as practical following the effective date of this part and the organization of the Committee, the Committee may recommend a salable quantity.

**§ 991.52 Issuance of Volume Regulation.**

(a) Whenever the Secretary finds, on the basis of the Committee's recommendation or other information, that limiting the total quantity of Alpha Acid of any crop that handlers may purchase from producers during a marketing year, would tend to effectuate the declared policy of the act, the Secretary shall establish the salable quantity for that crop. The salable quantity shall be prorated among producers by applying an allotment percentage to each producer's allotment base. The allotment percentage shall be established by dividing the salable quantity by the total of all producers' allotment bases.

(b) When an allotment percentage is established for any marketing year, no handler shall purchase from producers any Alpha Acid during such year unless:

(1) It is, at the time of handling, within the unused portion of a producer's annual allotment, and

(2) Such handler notifies the Committee of the handling in such manner as the Committee may prescribe.

(c) An Alpha Acid Factor shall be established for the ensuing marketing year for each variety of hops and shall be equal to the most recent three year average of the Alpha Acid for each variety. If there is not a 3 year average for a variety the Committee shall determine the Alpha Acid Factor for that variety until a three year average is available. The Alpha Acid Factor for each variety shall be determined in accordance with rules and regulations established by the Committee. The Alpha Acid Factor shall be established no later than November 15 of each year. A producer may forward sell any variety of hops in an amount equal to that variety's production times the Alpha Acid Factor for that variety for the year for which the Alpha Acid Factor has been established, or the producer may sell any combination of varieties, provided that, in any case, the total quantity sold is within the producer's salable quantity for that year.

**§ 991.53 Allotment Base.**

(a) The Representative Base Period shall be the marketing years 1997, 1998, 1999, 2000, 2001 and 2002; *Provided* that, a producer must have produced hops in the 2001 and/or 2002 crop year to be eligible to apply for initial allotment base.

(b) Initial Issuance: Each eligible producer desiring an allotment base for hops shall register with the Committee and furnish to it, on forms provided by the Committee, the following:

(1) The Actual Production (in number of pounds) of each variety of hops produced during the highest production year of the Representative Base Period and the name of the handler(s) each variety of hops was sold to during that year.

(2) The Alpha Acid Percentage for each variety of hops with an Alpha Acid percentage of 10% or more produced during the year selected pursuant to § 991.53(b)(1).

(3) The County and State where the production of each variety of hops occurred during the year selected pursuant to § 991.53(b)(1).

(4) As verification for the information submitted to the Committee, the producer shall also submit a copy of the appropriate state certification documents, or, if such documentation is unavailable, a copy of the handler ultra violet spectral analysis documentation relative to the submissions pursuant to this section.

(5) The Executive Sub Committee shall act as a Hardship Committee for establishment of initial allotment base. Any producer has the right to petition the Hardship Committee for special consideration for their initial allotment base, provided that, such petition is in writing, and that it is based solely on hardships brought about by acts of God. The Hardship Committee may elect to defer their decision to the Administrative Committee.

(6) The Committee shall not be required to accept applications for initial allotment base after one year from the effective date of this part.

(7) A producer who has changed or changes identity from an individual producer to a partnership or corporate producer, or from a partnership to a corporate or individual producer, or from a corporate to a partnership or individual producer, may for the purpose of establishing the initial and subsequent allotment base, register with the Committee as one and the same person.

(c) The Initial Allotment Base shall be established by the Committee for each registered producer based on the information submitted by the producer pursuant to 991.53(b), as follows:

(1) For each variety over 10% Alpha Acid Percentage, that "Variety Alpha Acid Base" contribution to the total Alpha Acid Allotment Base shall be determined by multiplying the Actual Production by the Actual Alpha Acid Percentage of that variety for the chosen year.

(2) For each variety equal to or less than 10% Alpha Acid Percentage, that "Variety Alpha Acid Base" contribution to the total Alpha Acid Allotment Base

shall be determined by multiplying the Actual Production of that variety for the chosen year by a flat rate of 10%. The sum of all of the "Variety Alpha Acid Bases" as calculated above shall be the producer's "Initial Allotment Base."

(d) Adjustment to allotment base. Periodically, but at least once every five years, the Committee shall review and may adjust each producer's allotment base to recognize changes and trends in production and demand. Any such adjustment shall be made in accordance with a formula prescribed by the Committee with the approval of the Secretary.

(e) Additional allotment base. (1) The Committee annually shall make additional allotment bases available in the amount of no more than 1 percent of the total allotment base. Fifty percent of these additional allotment bases shall be made available for new producers and 50 percent made available for existing producers; *Provided that*, in any year in which the current salable percentage is equal to or less than the previous year's salable percentage, the Committee shall not be required to make additional base available for the ensuing marketing year.

(2) Any person may apply for an additional allotment base by filing an application with the Committee on or before December 1 of the marketing year preceding the marketing year for which the additional allotment bases will be made available.

(3) The Committee shall, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment bases.

In establishing such rules, the Committee shall take into account, among other things, the minimum economic enterprise requirements for hop production, the applicant's ability to produce hops, the area where the hops will be produced and other economic and marketing factors.

(f) Bona Fide Effort Requirement: The right of each producer receiving an allotment base, or any legal successor in interest, to retain all or part of an allotment base, shall be dependent on continuance to make a bona fide effort to produce the annual allotment referable thereto and failing to do so, such allotment base shall be reduced by an amount equivalent to such unproduced portions; *Provided*, that a producer's reserve pool shall be included in the bona fide effort requirement. The Committee shall develop the bona fide effort requirement.

(g) Notwithstanding the foregoing, any person or entity who has entered the

hop industry as a *New Producer* for the 2003 crop year, shall be entitled to an allotment base as a matter of right. Such allotment base shall be calculated in the same manner as with any other producer; *Provided:* However that the *New Producer's* representative base period and initial allotment base shall be limited exclusively to the 2003 crop year, and any such allotment shall be determined by the *New Producer's* actual production in 2003.

**§ 991.54 Issuance of Annual Allotments.**

(a) Whenever the Secretary establishes a salable quantity and allotment percentage that may be marketed during a marketing year, the Committee shall issue an annual allotment to each producer holding an allotment base. Each producer's annual allotment shall be determined by multiplying the producer's allotment base by the allotment percentage.

(b) On or before February 1, the Committee shall furnish each registered holder of an allotment base a form for the producer to apply for an annual allotment for the ensuing marketing year. The Committee, shall establish rules and regulations prescribing the information to be submitted on this form. The Committee shall notify each producer of the producer's annual allotment within 10 days after the Secretary establishes the salable quantity and allotment percentage.

(c) Through 2003, a handler may acquire Alpha Acid of a producer's own production to fulfill a written contract entered into by these two persons prior to January 31, 2002. The terms of this contract shall require the producer to deliver to that handler a specified quantity of Alpha Acid from that producer's production at a specific price from a specified acreage and produced prior to 2003. The quantity of Alpha Acid acquired by the handler pursuant to that contract during the 2003-04 or 2004-05 marketing year may exceed the producer's annual allotment for the applicable marketing year, but shall be charged against the producer's annual allotment for that year.

**§ 991.55 Identification.**

(a) Each producer shall, under supervision of the Committee, identify each variety of Alpha Acid by October 15 of each year.

(b) Identification shall include the name of the producer, the variety of hops, the net weight, the lot number and such other information as may be required by the Committee.

(c) No handler shall handle as salable Alpha Acid that has not been identified as provided in this section, and no

person shall alter or remove any identification.

**§ 991.56 Excess Hops and Hop Products.**

Alpha Acid that is in excess of an individual producer's annual allotment at the conclusion of his/her harvest shall be identified as excess Alpha Acid and shall be disposed of as follows:

(a) Before November 30, or such date as the Committee may establish, a producer, following notification of the Committee, may transfer excess alpha acid to another producer to enable that producer to fill a deficiency in that producer's annual allotment, or

(b) On December 1, or such other date as the Committee, with the approval of the Secretary, may establish, excess Alpha Acid shall be identified as Reserve Pool Alpha Acid.

(c) No handler shall handle Reserve Pool Alpha Acid.

(d) The Committee may establish such rules and regulations as it deems necessary for the administration of the Reserve Pool.

**§ 991.57 Reserve pool requirements.**

(a) General. The Committee shall pool Reserve Pool Alpha Acid in a manner to accurately account for its receipt, storage, and disposition. The Committee shall designate a Committee employee as Reserve Pool Manager. Administration of the provisions in this section shall be in accordance with such rules and regulation as the Committee may prescribe.

(b) Disposition. (1) When, in any marketing year, a producer has produced less than the annual allotment of Alpha Acid, the producer may, upon notification of the Committee, fill the deficiency with Alpha Acid from the producer's Reserve Pool.

(2) Under supervision of the Committee, a producer may exchange salable alpha acid for the same quantity of reserve alpha acid from own production so long as the alpha acid is properly identified.

**§ 991.58 Transfers.**

(a) Nothing contained in this part shall prevent a producer from transferring the location where that producer's annual allotment is produced to another location except that the producer shall report the transfer to the Committee within 30 days after the transfer.

(b) A producer may transfer all or part of an allotment base to another producer under rules and regulations established by the Committee: *Provided,* That the allotment base obtained by transfer from another producer or issued pursuant to § 991.53(e) shall not be transferred for at

least 2 years following transfer or issuance, and that the person receiving the allotment base submit to the Committee, evidence of an ability to produce hops from such allotment base in the first marketing year following the transfer or issuance of the allotment base.

**Reports and Records**

**§ 991.60 Reports.**

(a) Inventory. Each handler shall file, with the Committee or its designee, a certified report showing such information as the Committee may specify with respect to any hops which were held by such handler on March 1 and September 1 or such other dates as the Committee may designate.

(b) Receipts. Each handler shall, upon request of the Committee, file with the Committee a certified report showing the quantity of hops handled.

(c) Other Reports. Upon the request of the Committee, each handler shall furnish to the Committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this part.

**§ 991.61 Records.**

Each handler shall maintain such records pertaining to all hops handled as will substantiate the required reports. All such records shall be maintained for not less than 2 years after the termination of the marketing year to which such records relate.

**§ 991.62 Verification of reports & records.**

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the Committee through its duly authorized employees, shall have access to any premises where applicable records are maintained, where hops and or hop products are received or held, and at any time during reasonable business hours shall be permitted to inspect such handler premises, and any and all records of such handlers with respect to matters within the purview of this part.

**§ 991.63 Confidential information.**

All reports and records furnished or submitted by handlers to, or obtained by the employees of, the Committee which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the Committee who

shall disclose such information to no person other than the Secretary.

#### Miscellaneous Provisions

##### § 991.70 Compliance.

No person shall handle hops and or hop products except in conformity with the provisions of this part.

##### § 991.71 Rights of the Secretary.

Members of the Committee and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Committee shall be subject to the continuing right of disapproval by the Secretary at any time. Upon such disapproval, the disapproved action of the Committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

##### § 991.72 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

##### § 991.73 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as his/her agent or representative in connection with any of the provisions of this part.

##### § 991.74 Personal Liability.

No member or alternate member of the Committee and no employee or agent of the Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

##### § 991.75 Duration of Immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

##### § 991.76 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or

thing is held invalid, the validity of the remainder of this part of the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

##### § 991.77 Effective Time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his/her signature and shall continue in force until terminated in one of the ways specified in 991.78.

##### § 991.78 Termination.

(a) Failure to effectuate. The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he/she finds that such provisions obstruct or do not tend to effectuate the declared policy of the act.

(b) Referendum. The Secretary shall terminate the provisions of this part at the end of any marketing year whenever he/she finds that such termination is favored by a majority of the producers who during the preceding marketing year produced for market more than 50 percent of the volume of Alpha Acid so produced: *Provided*, That termination shall be effective only if announced before May 31 of the then current marketing year.

(c) Termination of act. The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

##### § 991.79 Continuance.

(a) Within 4 years of the effective date of this part, the Secretary shall conduct a continuance referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every 8 years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who during a representative period determined by the Secretary, have been engaged in the production of hops for market in the production area.

(b) Termination of act. The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

##### § 991.80 Proceedings After Termination.

Upon termination of the provisions of this part, the Committee shall, for the purpose of liquidating the affairs of the Committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of

such termination. The said trustees shall:

(a) Continue in such capacity until discharged by the Secretary;

(b) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and of the trustees, to such persons as the Secretary may direct; and

(c) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Committee or the trustees pursuant thereto. Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the Committee and upon the trustees.

##### § 991.81 Effect of Termination or Amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this part or any regulation issued hereunder, or

(b) Release or extinguish any violation of this part or any regulation issued hereunder, or

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

##### § 991.92 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

##### § 991.93 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

##### § 991.94 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act,



an order providing for regulating the handling of hops in the same manner as is provided for in this agreement.

The following proposals were submitted by Lenseigne Farms, Inc.

*Proposal Number 2*

Establishment of initial allotment base would be based upon actual production for the most current season for which data is available. No specific regulatory text was submitted.

*Proposal Number 3*

Ensure that initial base quantities are only allocated to existing producers. No specific regulatory text was submitted.

*Proposal Number 4*

The representative period for purposes of voter eligibility would be the most current season for which data is available. No specific regulatory text was submitted.

*Proposal Number 5*

Establish a market allocation pool, using salable and reserve percentages, instead of a producer allotment program. No specific regulatory text was submitted.

*Proposal Number 6*

Provide a 3-year or more exemption from volume regulation for forward contracting agreements on hops. No specific regulatory text was submitted.

*Proposal Number 7*

Provide an exemption for "aroma varieties" from marketing order regulations. No specific regulatory text was submitted.

*Proposal Number 8*

If a producer allotment marketing order is established, allow a minimum of 10 percent of existing base quantities be made available to new and existing growers annually. No specific regulatory text was submitted.

*Proposal Number 9*

If a producer allotment marketing order is established, base quantities would be based on actual alpha acid content. No specific regulatory text was submitted.

*Proposal Number 10*

If a producer allotment marketing order is established, prohibit the sale, lease or transfer of base. No specific regulatory text was submitted.

Dated: July 23, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2002-CE-23-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise Airworthiness Directive (AD) 2002-22-17, which currently requires you to repetitively inspect the inboard forward flap bellcranks for cracks and eventually replace these bellcranks on all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. AD 2002-22-17 resulted from Cessna re-evaluating the bellcrank life limit analysis and determining that the original estimate is too high. Since FAA issued AD 2002-22-17, Cessna has designed a new flap bellcrank with a life limit of 40,000 landings (instead of 7,000 landings). This proposed AD would retain the requirement that you repetitively inspect the inboard forward flap bellcranks for cracks and eventually replace these bellcranks and would provide the option of installing the new design flap bellcrank to increase the life limits and terminate the repetitive inspections. The actions specified by this proposed AD are intended to detect, correct, and prevent future cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 6, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-23-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location

between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002-CE-23-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316-946-4125; facsimile: 816-946-4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How do I comment on this proposed AD?* The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of this proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How can I be sure FAA receives my comment?* If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002-CE-23-AD." We will date