

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 20-J-0011
AMS-SC-19-0082; SC-19-984-1

In re:

Walnuts Grown in California; Hearing on Proposed Amendment of Marketing
Order No. 984

NOTICE REGARDING APRIL EX PARTE COMMUNICATIONS

Pursuant to 5 U.S.C. 557(d)(1)(D), counsel for USDA is filing with the Hearing Clerk notice regarding an ex parte communication by an interested party. In addition to this filing, pursuant to 7 CFR 900.16, this ex parte communication will also be discussed briefly on the record at the upcoming amendatory hearing. This ex parte communication is attached (the numbering continues from the previous notice filed on April 15, 2020):

- Attachment 5: Email exchange on April 16, 2020, between Michael Machado of Machado Family Farms, Inc., Melissa Schmaedick, Senior Marketing Specialist, MOAD, and Andrew Hatch, Chief of the Rulemaking Support Branch, MOAD, regarding Mr. Machado's opinion of the proposed amendments to marketing order 984.

Respectfully submitted,

_____/s/_____
RUPA CHILUKURI
TRACY MCGOWAN
Attorneys for AMS, USDA
Office of the General Counsel

ATTACHMENT 5

From: [Schmaedick, Melissa - AMS](#)
To: [Michael Machado](#)
Cc: [Hatch, Andrew - AMS](#); [Bennett, Patty - AMS](#); [Chilukuri, Rupa - OGC, Washington, DC](#); [McNeil Connelly, Michelle](#)
Subject: RE: Walnut Board Recommendation for Credit Back
Date: Friday, April 17, 2020 1:35:04 PM

Dear Mr. Machado:

Thank you for your email. Under ex parte regulation under 7 CFR §900.16 USDA employees involved in this rulemaking proceeding may not discuss the merits of proposed amendments from the issuance of the notice of hearing to the issuance of the Secretary's decision, including receiving statements in favor or opposed to the amendments outside of the hearing. As such, I am not able to accept your email as evidence. Substantive questions and discussions about the merits of the proposals can and should be addressed to the California Walnut Board (CWB), as they are the sponsors of the proposed amendments. I have cc'd the CWB on this message.

We encourage you to consider testifying during the hearing. To testify and present evidence to the presiding judge, we request that you send me or my colleague, Andy Hatch (cc'd above) an email statement indicating that you would like to testify along with your full name, phone number and email address so that we may pre-register you and schedule your testimony. If you would like to submit an electronic copy of a prepared statement or supporting document, please send that information to walnut.hearing@usda.gov by 5 p.m. Eastern Time April 15, 2020, so that they can be made public at the time of the hearing.

Please note that under ex parte regulation, your email and this response will be made a part of the rulemaking record for the purpose of curing an ex parte breach.

Thank you for your interest in this proceeding and your involvement in the California walnut industry.

Respectfully,

Melissa Schmaedick,
Senior Marketing Specialist

US Department of Agriculture
Agricultural Marketing Service
Specialty Crops Program
Marketing Order and Agreement Division

From: Michael Machado <pmfarms555@aol.com>
Sent: Thursday, April 16, 2020 6:52 PM
To: Schmaedick, Melissa - AMS <Melissa.Schmaedick@usda.gov>
Subject: Fwd: Walnut Board Recommendation for Credit Back

Thank you for the opportunity to submit comments regarding the request to allow the California Walnut Board to credit back for market promotion expenses.

As a walnut grower in Central California, my per assessment ranges from \$112 to \$168 per acre. The expenditures made by both the California Walnut Board and California Walnut Commission (Board/Commission) have shown little to no return on investment. There seems to be more effort made in advertising in farmer trade magazines "how good the Board/Commission " is...I really do not need my assessment dollars used to lobby for my continued support

Hawking generic walnuts at trade shows, using generic presentations in domestic supermarkets may have increase "hits" to the website, but little has been demonstrated in sustaining or increasing demand beyond the shows/presentations.

It seems the Board/Commission has relegated their activities to the lowest common denominator with little or no regard to effectiveness knowing that funding is secure through assessments.

The Board/Commission does not necessarily reflect the industry and is not subject to term limits, which fosters a "good ole boys" mentality.

The proposal for a credit-back program is grower initiated, reluctantly endorsed by the Board.. Short of abandoning the marketing order, the credit-back program should be approved to allow growers and handlers an opportunity to promote and sell walnuts with monies that they have paid through assessments.. Any increase in demand and takeaway of walnuts benefits the industry as a whole.

A caveat to approval should be that this be done within existing assessments and assessments should NOT be raised to offset credit-back in order to maintain status quo.

The challenges presented the current state of the national economy and the economy of walnuts necessitates new ideas, new action and efforts to effectively support and enhance the industry. Credit Back will allow advertising that can generate brand identification, brand loyalty and repeat business, increasing consumption of walnuts, benefiting the whole industry.

Submitted,

Michael Machado, President
Machado Family Farms, Inc
209 601-5277

CERTIFICATE OF SERVICE

Walnuts Grown in California

Docket: 20-J-0011

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of the NOTICE REGARDING APRIL EX PARTE COMMUNICATIONS has been furnished and was served upon the following parties on April 16, 2020 by the following:

USDA (OGC) - Electronic Mail

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Respectfully Submitted,

Caroline Hill, Hearing Clerk
USDA/Office of Administrative Law Judges
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