

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 EX PARTE COMMUNICATIONS

Pursuant to 5 U.S.C. 557(d)(1)(D), counsel for USDA is filing with the Hearing Clerk notice regarding various ex parte communications by interested parties. In addition to this filing, pursuant to 7 CFR 900.16, these ex parte communications will also be discussed briefly on the record at the upcoming amendatory hearing. These ex parte communications are attached:

- Attachment 1: Memorandum regarding April 8, 2020, telephone conversation between Michelle McNeil Connelly, Executive Director & CEO at California Walnut Board & Commission and Terry Vawter, Regional Director of the California Marketing Field Office and a related April 8, 2020 email exchange between Ms. Connelly, Ms. Vawter, Andrew Hatch, Chief of the Rulemaking Support Branch, Marketing Order and Agreement Division (MOAD) , and Melissa Schmaedick, Senior Marketing Specialist, MOAD, regarding potential witness testimony during the April 20 and 21, 2020, public hearing. Note that the email exchange redacts additional emails between a third party and Ms. Connelly in order to protect that person's privacy.



1400 Independence Avenue, SW.
Room 1510-S
Washington, DC 20250-0242

Subject: Phone and mail exchanges between the California Walnut Board and Commission and the Agricultural Marketing Service

In connection with the Federal Register Notice published February 11, 2020 (85 FR 7669), Mrs. Terry Vawter, Regional Director, California Marketing Field Office of the Marketing Order and Agreement Division, Specialty Crops Programs, AMS, USDA, received a phone call on April 7, 2020 from Ms. Michelle McNeil Connelly, Executive Director and CEO, California Walnut Board and Commission (CWB). Ms. Connelly shared her concerns with Ms. Vawter regarding the potential participation of a California walnut handler as a hearing witness. Following this phone conversation an email exchange ensued. Note that the email exchange has been redacted to remove the email exchange between the California walnut handler and Ms. Connelly to protect the handler's privacy, as the handler did not commit the ex parte breach. The email exchange is appended hereto.

ATTACHMENT 2

From: [Schmaedick, Melissa - AMS](#)
To: [Bremner Farms; Hatch, Andrew - AMS](#)
Cc: [Chilukuri, Rupa - OGC, Washington, DC; McNeil Connelly, Michelle; Dana Hull; Bennett, Patty - AMS](#)
Subject: RE: Comment regarding proposed credit for "market promotion" by individual handlers
Date: Friday, April 10, 2020 3:43:00 PM

Dear Mr. Bremner:

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 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: Bremner Farms <bremnerfarms@hotmail.com>

Sent: Friday, April 10, 2020 11:17 AM

To: Schmaedick, Melissa - AMS <Melissa.Schmaedick@usda.gov>; Hatch, Andrew - AMS

ATTACHMENT 2

<Andrew.Hatch@usda.gov>; AMS - WalnutHearing <Walnut.Hearing@usda.gov>

Subject: Comment regarding proposed credit for "market promotion" by individual handlers

This eliminates their need to contribute assessments to the general marketing fund. This will cause smaller handlers, who cannot afford individual promotion of their "brands", to pay more of the ongoing promotions carried on by the California Walnut Board. There would be significant advantage for large handlers.

Regards,

James Bremner
Bremner Farms
530-345-3771

ATTACHMENT 3

From: [Schmaedick, Melissa - AMS](#)
To: [Leon Etchepare](#)
Cc: [Hatch, Andrew - AMS](#); [Bennett, Patty - AMS](#); [Chilukuri, Rupa - OGC, Washington, DC](#); [McNeil Connelly, Michelle](#); [Dana Hull](#)
Subject: RE: Walnut marketing order comments
Date: Friday, April 10, 2020 5:09:00 PM

Dear Mr. Etchepare:

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

-----Original Message-----

From: Leon Etchepare <leon@emerald farms.farm>
Sent: Friday, April 10, 2020 5:04 PM
To: Schmaedick, Melissa - AMS <Melissa.Schmaedick@usda.gov>
Cc: Hatch, Andrew - AMS <Andrew.Hatch@usda.gov>
Subject: Walnut marketing order comments

Melissa,

I'm not sure how I would voice my concerns during the zoom meeting, but I have some significant issues with the way the order changes are written and who it benefits.

Regards,

ATTACHMENT 3

Leon Etchepare

c: 530-845-2791

e: leon@emerald farms.farm

****Please update my email address as it has changed****



1400 Independence Avenue, SW.
Room 1510-S
Washington, DC 20250-0242

Subject: Phone and email exchange between Mr. Podesta and the Agricultural Marketing Service

In connection with the Federal Register Notice published February 11, 2020 (85 FR 7669), Mr. Andrew Hatch, Rulemaking Support Branch Chief of the Marketing Order and Agreement Division, Specialty Crops Programs, AMS, USDA, received a phone call on April 13, 2020 from California walnut handler Mr. Craig Podesta. Mr. Podesta shared his concerns with Mr. Hatch regarding the proposed amendments to federal marketing order 984 and his desire to participate in the public hearing scheduled for April 20 and 21, 2020. Following this phone conversation Mr. Hatch emailed Mr. Podesta with information regarding pre-registration to testify at the upcoming hearing. That email is appended hereto.

ATTACHMENT 4

From: [Hatch, Andrew - AMS](#)
To: danamarkg@gmail.com
Cc: [Schmaedick, Melissa - AMS](#)
Subject: April 20-21 Walnut Hearing
Date: Monday, April 13, 2020 11:00:39 AM
Attachments: [Apr 10 Federal Register Notice.pdf](#)

Mr. Podesta:

Thank you for calling about the process USDA is following for accepting evidence and registering people wanting to testify at the hearing next week related to the walnut marketing order. Attached is a notice that USDA published in the Federal Register last week. It includes instructions on how to submit your evidence as well as how to get your name on the list to testify.

Andy Hatch
Marketing Order and Agreement Division
202.720.6862
andrew.hatch@usda.gov

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 EX PARTE COMMUNICATIONS has been furnished and was served upon the following parties on April 7, 2020 by the following:

USDA (OGC) - Electronic Mail

Rupa Chilukuri, OGC

Rupa.Chilukuri@usda.gov

Tracy McGowan, OGC

Tracy.McGowan@usda.gov

Joyce McFadden, OGC

Joyce.McFadden@usda.gov

Carla Wagner, OGC

Carla.Wagner@usda.gov

USDA (AMS) - Electronic Mail

Melissa Schmaedick, AMS

Melissa.Schmaedick@usda.gov

Andrew Hatch, AMS

Andrew.Hatch@usda.gov

Patty Bennett, AMS

Patty.Bennett@usda.gov

Respectfully Submitted,



Caroline Hill, Hearing Clerk
USDA/Office of Administrative Law Judges
Hearing Clerk's Office, Rm. 1031-S
1400 Independence Ave., SW.
Washington, DC 20250-9203