

Ex. 5

Novotny, Dale - AMS

From: Bruce Kaser <bruce@pratumfarm.com>
Sent: Monday, October 17, 2016 1:04 AM
To: Schmaedick, Melissa - AMS
Cc: hazelnut@oregonhazelnuts.org; Chilukuri, Rupa - OGC; 'Polly Owen'; 'Meredith Nagely'; Broadbent, Barry - AMS; Novotny, Dale - AMS; Sharrow, Michelle - AMS
Subject: RE: USDA Press Release No. 149-16 (Proposed Rule Changes to Hazelnut Marketing Order 982)
Attachments: BAK Testimony Re Order 982 Amendment - Oct 16 2016.pdf

Because time is short, please consider the comments in the attachment during your hearing on Tuesday. There is no way I can provide print copies to you in timely fashion. Thanks.

From: Schmaedick, Melissa - AMS [mailto:Melissa.Schmaedick@ams.usda.gov]
Sent: Friday, October 14, 2016 8:51 AM
To: Bruce Kaser
Cc: hazelnut@oregonhazelnuts.org; Chilukuri, Rupa - OGC; 'Polly Owen'; 'Meredith Nagely'; Broadbent, Barry - AMS; Novotny, Dale - AMS; Sharrow, Michelle - AMS
Subject: RE: USDA Press Release No. 149-16 (Proposed Rule Changes to Hazelnut Marketing Order 982)

Good Morning Mr. Kaser,

In response to your email, you will be receiving a copy of the Hazelnut Marketing Board's letter requesting a public hearing and a copy of USDA correspondence directly from the HMB office. In addition, I am including a link to 7 CFR part 900 which outlines the amendatory process for federal marketing orders regulating fruit, vegetables and specialty crops, including tree nuts and, separately, milk. Please use this link as a reference for further understanding the guidelines we follow in the conduct of a hearing, specifically §§ 900.1 through 900.18.

http://www.ecfr.gov/cgi-bin/text-idx?SID=b1f0228f8f41227bcbb07f8dbdd89765&mc=true&tpl=/ecfrbrowse/Title07/7cfr900_main_02.tpl

Thank you,

Melissa Schmaedick
Senior Marketing Specialist
Marketing Order Administration Division
Specialty Crops Program
Agricultural Marketing Service
US Department of Agriculture

From: Bruce Kaser [mailto:bruce@pratumfarm.com]
Sent: Wednesday, October 12, 2016 3:53 PM
To: Schmaedick, Melissa - AMS <Melissa.Schmaedick@ams.usda.gov>
Cc: hazelnut@oregonhazelnuts.org; Chilukuri, Rupa - OGC <Rupa.Chilukuri@ogc.usda.gov>; 'Polly Owen' <polly@oregonhazelnuts.org>; 'Meredith Nagely' <meredith@oregonhazelnuts.org>; Broadbent, Barry - AMS <Barry.Broadbent@ams.usda.gov>; Novotny, Dale - AMS <DaleJ.Novotny@ams.usda.gov>; Sharrow, Michelle - AMS

<Michelle.Sharrow@ams.usda.gov>

Subject: RE: USDA Press Release No. 149-16 (Proposed Rule Changes to Hazelnut Marketing Order 982)

Thanks Melissa,

The USDA sent out a notice of a day-long hearing to the public on a proposed change to a marketing order that has been unchanged for decades, with practically no advance warning of the hearing. I live in the state of Washington and cannot attend a hearing in Oregon on short notice; and I'm probably not all that interested in it, anyhow. However, I do have the right to submit written testimony at an administrative hearing of this kind, which is required to be accepted under administrative rules. All I'm asking for is a copy of whatever HMB sent to USDA and a copy of anything USDA sent back to HMB. These documents are fair game for public inspection. I'm not looking for any kind of comment, discussion of substance from USDA, any opinion, etc. I know the ex parte rules and my request is not in conflict with them. The HMB must have sent an explanatory letter to USDA articulating the reasons for the proposed changes. And the HMB wrote the proposed changes. I'm mostly looking for the explanatory letter would have given to USDA and am hoping you might scan and email it to me.

Thanks again.

From: Schmaedick, Melissa - AMS [<mailto:Melissa.Schmaedick@ams.usda.gov>]

Sent: Wednesday, October 12, 2016 12:41 PM

To: Bruce Kaser

Cc: hazelnut@oregonhazelnuts.org; Chilukuri, Rupa - OGC; 'Polly Owen'; Meredith Nagely; Broadbent, Barry - AMS; Novotny, Dale - AMS; Sharrow, Michelle - AMS

Subject: RE: USDA Press Release No. 149-16 (Proposed Rule Changes to Hazelnut Marketing Order 982)

Hello Mr. Kaser,

Thank you for your email. At this time, USDA employees involved in the upcoming public hearing on proposed amendments to the federal marketing order regulating the handling of hazelnuts grown in Oregon and Washington are prohibited from discussing the substance of the proposed changes due to ex parte restrictions. As such, your email and this response will be made a part of the rulemaking record for this proceeding. Substantive questions about the proposal can and should be addressed to the Hazelnut Marketing Board (HMB), as they are the sponsors of the proposed amendments. I have cc'd the HMB on this message. If you have questions on procedural issues, such as how to participate in the hearing, I can assist you with those.

The complete Notice of Hearing, which includes the HMB's proposals, can be found at <https://www.regulations.gov/document?D=AMS-SC-16-0074-0001> for your review. The public hearing is open to all interested parties desiring to comment on the merits of the proposed amendments. Any individual is welcome. Please note that the hearing will be held on October 18, at the Wilsonville Holiday Inn.

Again, thank you for your interest in this proceeding and your involvement in the Oregon and Washington hazelnut industry.

Respectfully,

Melissa Schmaedick
Senior Marketing Specialist
Marketing Order Administration Division
Specialty Crops Program
Agricultural Marketing Service
US Department of Agriculture

From: Bruce Kaser [mailto:bruce@pratumfarm.com]

Sent: Tuesday, October 11, 2016 5:38 PM

To: Schmaedick, Melissa - AMS <Melissa.Schmaedick@ams.usda.gov>; Sharrow, Michelle - AMS <Michelle.Sharrow@ams.usda.gov>

Cc: hazelnut@oregonhazelnuts.org

Subject: USDA Press Release No. 149-16 (Proposed Rule Changes to Hazelnut Marketing Order 982)

Hi Melissa & Michelle,

Your email addresses were identified as sources of information concerning proposed rules changes to Hazelnut Marketing Order 982.

I am a hazelnut grower in Oregon, operating as Pratum Farm, LLC.

The reasons for the proposed changes to HMO 982 are unclear.

The existing order already gives the Hazelnut Marketing Board ("HMB") authority to regulate "quality," although that specific word is probably not used in the existing order (the order uses terms like "grade" or "substandard" which are synonymous with "quality"). The existing order is clear enough that the HMB can create regulatory guidelines for things like shell-out, mold, rancidity, and worms – and these are the things that pretty much define the universe of "quality" for growers and handlers.

I note that the actual wording of the proposed amendments only refer to "quality," but the notice in the Federal Register alludes to "aid in pathogen reduction." There's a reason something was said about pathogen reduction. So the question is: why is the amendment being proposed by HMB and what is really going on?

The HMB must have written a letter to USDA explaining what HMB wants to do and why the proposed amendments are needed or are good for the industry. If that sort of document exists, please provide a copy to me.

I'm copying Polly Owen at HMB, in case she has something that helps.

Thanks!

Bruce Kaser

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