

## Advocates for a Competitive Economy

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July 8, 2003

By Fax - 202-720-8477

A. J. Yates, Administrator  
Agricultural Marketing Service  
U.S. Dept. of Agriculture - 3071-South  
14<sup>th</sup> & Independence Avenue SW  
Washington, DC 20250

**Re: Request to Delay Promulgation Hearing for Proposed Hops Marketing Order;  
Need for Greater Showing of Consensus; Request for Straw Poll.**

Dear Administrator Yates:

The Hop Marketing Order Opposition Group requests that you either cancel the promulgation hearing or delay the hearing until after this season's harvest and until the proponents are able to demonstrate a sufficient consensus within the industry to justify a major commitment of USDA resources beyond the proposal stage.

### Any Hearing Should Be Delayed Until After Peak Harvest Operations.

The promulgation hearing was originally scheduled to begin August 5 in Hood River, Oregon. USDA issued a press release on July 1 calling for additional alternatives to be included in the notice of hearing. Specifically, "before the hearing can take place, an alternative method to assign base quantities must be developed." As set forth in more detail below, even the recently amended proposal still fails to meet the limitations in the AMAA for a lawful marketing order. The most recent changes suggested by the Proponents have not been widely discussed within the industry even though they concern hotly contested provisions, e.g., allocation of allotment base to former, current, and future producers.

The hearing is presently scheduled for August 14-16 and 18-22. These dates are completely unacceptable as they occur during peak harvest operations. Because of the unique nature of this crop, owners and managers need to be present on the farm during the harvest cycle. Proponents apparently assume that an August hearing will ensure an operational marketing order for the 2004 season. Such a schedule is simply impossible, especially given the controversial nature of the proposal and the complete lack of consensus in the industry. USDA should not give Proponents false hope by rushing to a promulgation hearing that overlaps the harvest. Such a hasty hearing will be incomplete and will not have the full attention of major industry participants who will be forced by the harvest schedule to attend only for brief periods of time.

Whether the hearing is held in August or October, following harvest, will have no practical affect on the first season of any potential regulation. The most recent new supply management order, tart cherries, took over four years from the beginning of the promulgation hearing until first regulation, and that industry is still struggling with initial implementation problems. The hops proposal is far more controversial and there is far less consensus in this industry than in the tart cherry industry.

#### The Proposal Remains Legally Defective Under the AMAA.

The Proponents have not cured defects suggested in USDA's July 1 press release. For example, under the AMAA, allotment base can only be allocated to growers under an equitable rule. Under the amended version of the Proposal, initial base would be allocated to former growers not legally qualified to receive any initial base. Moreover, some present 2003 growers, i.e. those who had been growers at some point in the past, would be denied base. Finally, there is no guarantee that new base would ever be made available to new entrants. It is a pointless waste of time and resources to proceed to hearing on a patently unlawful proposal. Accordingly, no hearing should be held at this time, at least until the Prophets present a lawful proposal.

#### The Industry Lacks a Critical Mass of Consensus on the Proposal.

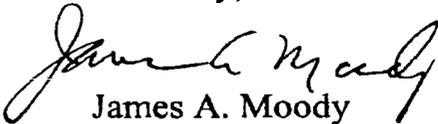
Even if the Proponents set forth a lawful proposal, no hearing should be held at this time because the industry lacks the minimum level of consensus essential to have a reasonable assurance of passage and to anticipate the cooperation necessary to support the implementation of a supply management program. Our group represents over 40% of the producers and tonnage in the hops industry, and we are adamantly opposed to the proposal. Passage in the initial

referendum requires a minimum of 2/3 support by number or volume, 7 U.S.C. § 608c(9). The present level of consensus is far short of this minimum requirement. Since USDA's July 1 release, the proponents have filed two amendments but these have not been broadly discussed with opponent groups and do not address or solve our concerns. The need for reasonable consensus is especially great since this is the industry's third attempt at a rigid supply management program. The prior orders were terminated in part because of bitter controversy over issues (allotment of base) that are at the very heart of the present controversy. Instead of attempting to achieve consensus, the Proponent's intent is blatantly obvious and has nothing to do with correcting "unreasonable" fluctuations in supplies and prices. They seek to interfere with and forever preclude structural changes in the industry and its practices presently underway through the normal market forces of supply and demand. Instead of relying on normal market forces to accomplish structural readjustment, the proposal seeks to turn back the clock and establish a system of rigid allotments and wealth transfers akin to feudal tenure.

Request for a USDA Straw Poll.

USDA should conduct a quick straw poll on the Proposal before scheduling a hearing. The promulgation process is lengthy and resource intensive. The Hop Marketing Order Opposition Group proposes that the USDA conduct a straw poll, if appropriate, with the help of a disinterested third-party acceptable to both proponents and opponents. Currently, the USDA already gathers industry entity and acreage information. This information is tallied by entity and lists acreage of each variety that the grower is growing for 2003. This information could then be combined with industry average yields in 2002 to achieve production levels by entity. This would provide a very statistically accurate reflection of current hop growers, their production volume, and their support/opposition to the Proposal. The Proponents should bear the burden of demonstrating that they have something at least close to the level of minimum support necessary for promulgation.

Sincerely,



James A. Moody  
Counsel for HMOOG

cc: Bob Keeney, 202-720-0565  
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