

Marketing Order Mechanics – What You Need to Know

Western Pecan Growers
Association Conference

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KING & SPALDING

Quickly – Where have we been?

- Years of talking and listening – lead by Mike Adams and the American Pecan Board (2013-2015)
- Draft of the Federal Marketing Order circulated (March – May 2015) and published in the Federal Register (June 2015) – Melissa Schmaedick and Jen Varela of USDA gave valuable assistance to the effort
- Meeting with Secretary of Agriculture - Thomas Vilsack, Under Secretary Edward Avalos and Agricultural Marketing Service Director Anne Alonzo – facilitated by Louie Salopek – April 2015
- Request by the American Pecan Board and the United States Department of Agriculture to target the 2016 crop as the first crop subject to assessment and to expedite the FMO – April 2015

Where have we been? (cont'd)

- Congressional support letters from 8 U.S. Senators and 32 Congress members sent to the Secretary of Agriculture – July 2015
- Public Hearings held before the USDA and an Administrative Judge in Las Cruces, NM, Dallas, TX and Tifton, GA – over 55 witnesses for the Pecan Industry, over 60 hours of testimony over eight days – July 2015
- Important testimony received in Las Cruces from: Mike Adams, Dr. Marco Palma, Bruce Caris, Louie Salopek, Dennis Lucero, Thomas Chavez, Phillip Arnold, David Salopek, Jennifer Ivey, Kevin Ivey, G.L. Straley, John Heuler, Albert Keck, Jay Glover, Ben King, Erin Steidlmayer, Lalo Medina and Randy Hudson

Where have we been? (cont'd)

- Important testimony received in Dallas from: Helen Watts, Mike Adams, Cindy Wise, Dan York, Lotsee Spradling, Larry Stein, Kinley Sorrells, Charles Rohla, Scott Landgraf, Stephen Norman, Glenn Honaker, John Turner, Joe Massey and Monte Nesbitt
- Important testimony received in Tifton from: Larry Willson, Randy Hudson, Bill Cobb, Barry Fuller, Hilton Segler, Tom Harmon, Jeb Barrow, R. G. Lamar, Lenny Wells, Janice Dees, Thomas Mason, J. B. Easterlin, Lamar Jenkins, Jeff Worn, Trent Mason, Homer Henson, Brad Ellis, Thomas Stevenson, Jaclyn Dixon Ford, Fred Beshears, Jerry Dowdy and Mike Adams
- A really strong group of industry witnesses, each of whom spent hours preparing and testifying – “iron man” awards go to Mike Adams and Randy Hudson, who each testified for over 6 hours

Where have we been? (cont'd)

- The Hearing got off to a very good start and we especially want to thank those that came and were in the audience to support the hearings
- American Pecan Board filed post-hearing legal briefs in support of the Federal Marketing Order for Pecans – September 2015
- USDA Published in the Federal Register the “Proposed Rule” adopting 99% of the American Pecan Board’s proposal for the Federal Marketing Order for Pecans – October 2015
- No Exceptions were filed to the USDA’s Proposal Rule – November – December 2015

Where have we been? (cont'd)

- The Secretary of Agriculture's Decision and Referendum Order on the Federal Marketing Order for Pecans was published in the Federal Register on February 29, 2016 and available for Public Inspection since February 26, 2016
- The Secretary of Agriculture ordered that the grower vote – the Referendum – take place between March 9-30, 2016
- If a positive vote is received from the Pecan Growers on the Referendum, then the Secretary of Agriculture will publish a Final Rule in the Federal Register later this Spring

Where are we now?

Legal requirement to have a Growers Vote to adopt the Federal Marketing Order for Pecans

A Grower is anyone who has more than 30 acres of pecans or has harvested more than an average of 50,000 lbs. of inshell pecans each year over the last four years

If you know of a Grower that fits the description of a Grower above, and did not get a ballot, have them write Jen Varela at Jennie.Varela@ams.usda.gov or Christian.Nissan@ams.usda.gov or call at (863) 324-3375

The Growers Vote will be conducted by the USDA between March 9-30, 2016

The vote required to approve the Federal Market Order for Pecans is either two-thirds of the Growers voting in the referendum or two-thirds of the volume of pecans produced by those voting in the referendum

Where are we now? (cont'd)

- A Grower Vote is legally required every four or five years to re-approve the Federal Marketing Order for Pecans
- There is no Shellers (handler) vote approving the proposed Federal Marketing Order for Pecans (just the way the law was written in 1937). However a Grower/Sheller may vote in the Referendum in their role as a Grower (this does not apply to the Nomination and vote on Nominees)

Where are we going?

If the Growers do not approve: the American Pecan Board will have a lot more free time on their hands and the FMO process stops

If the Growers approve:

- Members and Alternates of the *to be formed* American Pecan Council will need to be selected
 - The American Pecan Board will be superseded by the American Pecan Council
- Board of the American Pecan Council – 17 Members (plus 17 Alternates), as follows:
 - 9 Growers
 - 6 Shellers
 - 1 Accumulator (at-large seat)

Where are we going? (cont'd)

- 1 Public Member – no Pecan interests (at-large seat)
- Same number of Alternates in the same categories as the Members (17 Alternates)
- Grower and Sheller Member nominees and their Alternates

shall be Growers and Shellers at the time of their nomination

- Eastern Region: Alabama, Florida, Georgia, North Carolina and South Carolina
and for the duration of their terms
- Central Region: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma and Texas
- Western Region: Arizona, California and New Mexico

Where are we going? (cont'd)

- Regions (Eastern, Central and Western): Each Region will have 3 Growers and 2 Sheller Members seats – guaranteed; and 3 Grower and 2 Sheller Alternate seats – guaranteed
 - Each Region's Grower Seats:
 - Seat 1: A = > 176 A; highest volume vote (lbs. of inshell pecans)
 - Seat 2: A = > 176 A; highest number of votes
 - Seat 3: A < 176 A; highest number of votes
 - Sheller seats:
 - Seat 1: Sheller handling > 12.5 mm lbs. of inshell
 - Seat 2: Sheller handling < 12.5 mm lbs. of inshell
- Shellers vote individually and on both seats

Where are we going? (cont'd)

- Growers vote individually and by volume; Growers vote on all seats
- Secretary of Agriculture has a right to approve all Members and Alternates
- Normally, terms for Members and Alternates is four (4) years, with a maximum service of two terms (8 years)
- The Federal Marketing Order for Pecans puts in place “staggered voting” so that not all seats will come up every four years. Instead, there will be a vote on approximately half of the Grower and Sheller seats every two years.
- What if I grow and shell pecans, am I a Grower or Sheller for purposes of voting? Such persons must elect their category and may not participate in both Grower and Sheller Nominations and voting

Work of the American Pecan Council

A. Some of the Duties of the Council:

1. Administer the FMO
2. Make Bylaws, rules and regulations
3. Receive, Investigate and Report to the USDA any complaints or violations
4. Act as an intermediary between the USDA and any Grower or Handler
5. Keep accurate books and records
6. Furnish the USDA with all information it requests
7. Hire employees, rent space
8. Audit books

Work of the American Pecan Council (cont'd)

9. Investigate growing, shipping and marketing data on pecans and assemble this data
10. Investigate compliance with the FMO
11. Recommend all Bylaw, rule or regulation changes
12. **Set Assessment rates for Pecans based on Council budgeting (anticipate: 1-2¢ per in shell lb. on native pecans and substandard nuts; and 2-3¢ per in shell lb. on all improved pecans)**

B. Authority for Big Jobs

1. Research and Promotion – Marketing and promotion of Pecans; researching new uses for pecans, coordinate efforts with other organizations

Work of the American Pecan Council (cont'd)

2. Handling Regulations – grade, quality and size regulation; packaging standards; quality; freshness; etc.
3. Collecting and reporting on inventories and pecans handled each year – gathering and publishing useful pecan industry data

Next Steps

STEP ONE: GROWER VOTE TO APPROVE FMO

- Administered by the USDA, anticipate the ballots to Growers will be sent out in early March, with voting to take place March 9-30, 2016. The USDA may use email balloting, paper ballots or local meetings to administer the Grower's vote

Next Steps (cont'd)

STEP TWO: CALL FOR NOMINATIONS

Important Note: Growers and Shellers nominate Growers and Shellers, as the case maybe, as Board Members (and Alternates) and then vote on the nominees to determine the top nominees for each seat, but the top vote getters are not seated as the Member and the Alternate unless the Secretary of Agriculture approves them. In this way the voting is different from a normal election in the US. Under the law, the Secretary of Agriculture is charged to make sure the Council is properly composed before he or she can allow the American Pecan Council to exercise the powers under the FMO

- The USDA will distribute the forms for the Nominations (by mail or email) or hold Grower and Sheller meetings
- From the Nominees the Growers and Shellers submit, there will be created a ballot that will be used for the vote for Board Members and Alternate Nominees

Next Steps (cont'd)

STEP THREE: VOTING ON NOMINEES

- After each Sheller and Grower Ballot has been created, the USDA will send it out to be voted on by the Growers and Sellers, voting separately. This can also be done by a meeting at the discretion of the USDA. **The top vote getters are still called Nominees but the Shellers and Growers will have ranked their preferences by their votes**

Next Steps (cont'd)

STEP FOUR: APPROVAL BY USDA

- The USDA will oversee the voting for fairness – every vote counts
- In most cases, the Nomination process and the voting on Nominees will occur before July 15 and the results reported to the Secretary of Agriculture by that time. This year may be different and may be delayed based on the timing of the Final Order
- Generally, though he or she is not bound to do so, the Secretary of Agriculture will confirm Nominee voting. The highest vote getter will be the Council Member and the second highest vote getter will be the Alternate for each seat. But the Secretary of Agriculture, by law, is free to reject any Nomination submitted. If the Secretary of Agriculture rejects a Nominee, a new nomination process may be begun or the Secretary of Agriculture may make an appointment

Next Steps (cont'd)

STEP FIVE: SEATING OF THE AMERICAN PECAN COUNCIL

- The goal is to officially seat the Board of the American Pecan Council and its Alternates before October 1, 2016
- The Fiscal year for the American Pecan Council is October 1 to September 30 and is intended to begin with each year's 'new' crop harvest

Next Steps (cont'd)

STEP SIX: ELECTION OF AT-LARGE SEATS

- The Council will nominate the Accumulator and Public Member At-Large seats for Council Members and Alternates, subject to the approval of the Secretary of Agriculture

Review

- I. Inclusive Process conducted by the American Pecan Board over the last three years resulted in a Final Order approving the FMO
- II. A Grower vote will either approve or disapprove the FMO, yes or no, which will be conducted by the USDA between March 9-30, 2016
- III. If a positive Grower vote (two-thirds by vote or two-thirds by volume voted)
 - A. A period of Nominations for Grower and Sheller Seats for nine (9) Grower Seats and six (6) Sheller Seats
 - B. A Grower vote on Grower Seats and Sheller vote on Sheller Seats to produce “Nominees,” to be approved by the Secretary of Agriculture
 - C. This will all normally be completed by July 15 in years when votes are taken (generally every two years)

Review (cont'd)

- IV. USDA must approve all Council Members and Alternates from the voted Nominees, or will ask that additional Nominees be put forth
- V. The Seated Council of Growers and Shellers will nominate one Accumulator and one Public Member to be the two At-Large Council Members with corresponding Alternates for each of these Seats, completing the 17 Council Members and 17 Alternates
- VI. The work of the American Pecan Council will begin as soon as the Council is seated with a target of beginning before October 1, 2016