American Pecan Council
Unapproved Meeting Minutes
November 16-17, 2016

The American Pecan Council (Council) held an organizational meeting on November 16, 2016, with 35 participants.

Michael Durando, Director of the USDA Marketing Order and Agreement Division (MOAD), welcomed present Council members and attendees. He further recognized USDA, AMS, Southeast Marketing Field Office (SEMFO) for putting the meeting together. He thanked Council members and alternates for their patience with travel arrangements and advised them to contact Dolores Lowenstine (Marketing Assistant, SEMFO) with any questions concerning travel reimbursements. He emphasized that in order to have a successful meeting, the Council would need to discuss and come to a conclusion on the following: borrowing authority, finalizing a budget, recommending an assessment rate, and recommending handler reporting requirements. He explained he would facilitate the meeting until the Council selected a chairperson.

Mr. Durando called the meeting to order at 8:28A.M. CST. Jennie Varela, SEMFO, conducted roll call and a quorum was established.

American Pecan Council Members

Seat	Member		Alternate	
Eastern-Grower	Buck Paulk	Present	Angie S. Ellis	Present
	Trent Mason	Present	Randy Hudson	Not Present
	Molly Willis	Present	Claire Powell	Present
Central-Grower	Mike Adams	Present	Jennifer Ivey	Not Present
	Michael L. Spradling	Present	Lalo Medina	Not Present
	Billy Scott Landgraf	Present	Mike Montgomery	Present
Western-Grower	Louie J. Salopek[1]	Present	Frank P. Salopek	Present
	G.L. Straley	Present	Leslie L. Daviet II	Present
	Phillip Arnold	Present	John Heuler	Present
Eastern-Sheller	Jeff Worn	Present	M. Brandon Harrell	Present
	Lawrence Willson	Present	Kenny Tarver	Not Present
Central-Sheller	Daniel J. Zedan	Present	Helen Watts	Present
	William D. York, Jr.	Present	Rickey Jones	Not Present
Western-Sheller	Bruce Caris	Present	Deborah Walden-Ralls	Not Present
	Sonja Roeder	Present	Blake Houston	Present

Also present were Abigail Campos (Marketing Specialist, SEMFO), Mr. Durando, Vincent Fusaro (Chief, Compliance & Enforcement Branch), Quentin Hart (Deputy Director, NASS Southern Plains Regional Office), Ms. Lowenstine, Emily Myers (Kellen Company), Christian

[1] Alternate member Mr. Frank Salopek was seated until Mr. Louie Salopek was able to join the meeting.

Nissen (Regional Director, SEMFO), Michelle P. Sharrow (Chief, Rulemaking Branch), and Fiona Pexton (Marketing Specialist), Ms. Varela, and Cindy Wise (Pecan South Magazine).

Mr. Durando pointed out that during the November 3, 2016, conference call meeting, members and alternates expressed an interest in getting to know each other, Council members and alternates, before nominating officers. Each attendee then introduced themselves and gave a brief description of their background.

The Council recessed for a break at 9:46AM and resumed the meeting at 10:08AM

Before moving forward with the scheduled agenda, Mr. Zedan raised a question concerning whether the meeting was subject to open meeting laws or if the Council was exempt. Mr. Durando addressed his question and informed all present members that the Council is considered a quasi-governmental entity and all meetings are open to the public. Another question was raised concerning whether members and alternates were allowed to discuss Council matters outside a scheduled meeting. Ms. Varela informed attendees that it is typical for Councils or Committees to form subcommittees to target specific issues in separate sessions. However, she noted, any decisions must be made during an official public meeting and indicated that it was in the Council's best interest to present subcommittee discussions to the full Council. In addition, the Council was informed that they are permitted to hold an executive session when it comes to raising personnel issues and in that case, the public would be asked to leave and only members, alternates, and USDA staff would to be present.

Ms. Varela proceeded with the next agenda item, member orientation (Attachment 1). She mentioned that each marketing order Council or Committee is given this presentation upon seating new members and or alternates. She provided attendees with an overview of the Agricultural Marketing Agreement Act of 1937 (Act) and how marketing orders are used as tool to stabilize market conditions and allow industries to work together to boost market profitability. They were further advised that there are a total of 29 marketing orders that USDA, AMS oversees, each of which varies in the type of approved authorities. She advised members that the marketing order for pecans (order) gives the Council the ability to collect and publish industry data, set minimum standards, require inspection, container and packing requirements, research, and collect assessments from the industry. The order does not have the authority for volume control or regulation of imports.

Next, Ms. Varela provided attendees with an organizational overview of USDA the AMS, Specialty Crops Division. She noted that many leadership positions, going down to the AMS Administrator, are filled by political appointees and thus would be changing under the coming administration. Thus, a number of USDA activities may slow down.

The presentation also included a brief description of formal and informal rulemaking. Ms. Varela pointed out that up until the meeting, the Council had only experienced formal rulemaking actions. In the upcoming months, the Council would be exposed to more informal rulemaking to implement recommendations made by the Council to carry out the authorities they had established in the Order. They were also informed that any rulemaking justification and a comment period before any action becomes a part of the Order's regulations. Ms. Varela pointed

out that the first informal rulemaking action the Council will see will be establishing an assessment rate. Further, she indicated that most informal rulemaking can take 3-4 months but can take longer depending on the review process beyond MOAD. Ms. Varela also briefly touched on formal-through-informal rulemaking and how it is used when certain core aspects of an order, often administrative, can be changed without disrupting business. Attendees were informed that the informal rulemaking process can take up to a year to implement.

The member orientation also included a section describing member roles and responsibilities. Ms. Varela reminded all members and alternates that they were nominated by the industry and selected by the Secretary of Agriculture. As members, some of their roles would include representing the industry, hiring staff members to take care of Council operations, and establish internal control policies. Mr. L. Salopek raised a question concerning what would happen if a member or alternate were to resign from the Council. Ms. Varela responded that when a member or alternate does resign from their position and there is usually order language or language in the bylaws describing the procedures for filling a vacancy. She further elaborated that normally when there is a resignation, the alternate member is seated until the Council proceeds with nominations and the new member is selected by the Secretary.

Mr. Durando further informed the Council that while they were still in the process of electing officers, they should bear in mind that all assessments being collected from the industry are considered government funds and any misuse, embezzlement and or fraud would not be tolerated. He further added that if such action would occur, an audit would take place and those liable would be prosecuted.

Ms. Varela also described Council member expectations and their roles. Council members were informed they have to adhere to antitrust laws and are not allowed to lobby. She drew attention to the expectation that members will try to make decisions in the best interest of the entire industry, not just themselves. She emphasized that as a new Council, attending meetings and remaining engaged will be key. She stated the Department's goal is to have a full Council seated at each meeting with participants who are familiar with the Order and any other pertinent material. Further, members were also advised that if at any time there were to be a conflict of interest with any decision making, including hiring of staff, they should notify members and USDA.

With regards to the operations of the Council, Ms. Varela informed members that the Council was at liberty to hire contracted staff, management company, or a combination. As it will be the Council's staff, Ms. Varela encouraged the Council to establish goals, performance standards, set up benchmarks, and review contracts in detail. She further informed members that MOAD staff and Office of General Council (OGC) would be available to assist the Council with any legal questions concerning contracts. Additionally, Council staff will be held to same lobbying restrictions as members.

Ms. Varela continued with the member orientation section on lobbying. She stated that USDA is not set to prohibit their actions as individuals but rather as a representative of the Council. As a quasi-governmental agency, neither member nor staff of the Council is allowed to lobby on

behalf of the Council. If at any case members or staff have questions concerning issues, they are encouraged to reach out to USDA for further information or assistance. She noted there are avenues to share information through USDA. Mr. Durando further added that if at any time the Council or members wanted to meet with other federal agencies, USDA would need to be informed and present for any meeting. In addition, if any members are interested in lobbying, they need to "change hats" and act as an individual and not a representative of the Council. Mr. Michael Spradling raised a question concerning meeting whether members were allowed to visit congressional offices as a grower. Mr. Durando responded that speaking to those on the Hill as an individual was allowed but not as a representative of the Council. Ms. Varela further added that if any members were registered lobbyists, they would have to inform USDA.

Ms. Varela reviewed antitrust policy with members and informed them that as long as they're acting within the scope of the Order, no issues should rise up. Mr. Durando further added that collective efforts between another country and Council is not permitted. Mr. Zedan raised a question concerning collaboration with other countries to set a uniform set of standards. Ms. Varela quickly added that the Council would need to work with USDA and that depending on the situation, the Department may need to defer to the U.S. Trade Representative. Mr. Bruce Caris raised a question concerning industry growers wanting to make contributions to the Council and how they were to handle the situation. Ms. Varela stated that USDA would guide Council staff members and get advice from OGC if necessary to make sure all donations are permitted under the order. Mr. Adams informed members that the production area in the Order covers only 15 states and anything outside of that would have to be looked at closer. He further added that contributions were built into the order but that all contributions must be free from encumbrances or restrictions.

In addition to being a quasi-government organization, members were reminded that all meetings were open to the public along with meeting records. The only exception to the rule, as discussed previously, would be an executive session when personal matters would be discussed. She also stated that all meetings must meet a quorum and would also be guided by Robert's Rules of Order. She further referenced §986.55 of the order lays out procedures where actions of the Council will require a two-thirds vote and also any actions securing bank loans for the purpose of financing would require a face to face meeting. She further elaborated that all Freedom of Information Act (FOIA) requests are handled by USDA, and any request must identify specific records.

Ms. Varela moved forward with discussing the components of Compliance and how they work with the Council when it comes to the collection of assessments and how having an e-compliance plan in place to addresses any issues concerning delinquent accounts. Members were informed that samples of e-compliance plan(s) and internal control policies were available in the resource binders provided to Council members and that Mr. Fusaro would be able to answer more questions regarding compliance.

As the Council continues to develop, Ms. Varela informed members that Council would be drafting a marketing policy which will address crop estimates, expected shipments, and also lay the ground work for Council activities in the coming year. She suggested that although a

marketing policy will not be required this season, the Council may want to use the requirements as a guide for what type of information they wish to collect.

Ms. Varela moved to discuss the various types of communication the Council may be involved. She informed members that whether the Council decided to have the marketing component in house or hire out, any communication would be subject to USDA review. This would include any advertisement, newsletters, social media, and other forms of communication. She further explained to members that reviews have a quick turnaround and USDA ensures that all forms of communication meet Food and Drug Administration (FDA) and or Federal Trade Commission (FTC) standards. Mr. Lawrence Willson followed with a question concerning the amount of time it takes for USDA to review and approve communications, such as advertisements and newsletters. Ms. Varela quickly responded that depending on the type of review, USDA usually provides a response within a few days. Any reviews involving studies or health claims, can take a little longer to review.

Furthermore, Ms. Varela informed members that the Council will also have to complete a study under the Federal Agriculture Improvement and Reform (FAIR) Act that reviews data on how the promotions done by commodities boost industry marketing and provide an analysis of return on investment. She further stated that the Council won't have to complete the study until 2021 and that the requirement can be used to the Councils advantage in reviewing and evaluating their effectiveness. It was asked whether this study could be done earlier and USDA staff confirmed that yes, the Council could arrange for a study before that date.

Ms. Varela also informed members that the order requires a continuance referendum every five years which will determine whether industry members favor the continuance of the order. She added that when the referendum does take place, the next being in 2021, the Council is allowed to publish factual information describing the impacts of the order. This concluded the membership orientation.

Next, Mr. Durando introduced Mrs. Michelle Sharrow, Chief, Rulemaking Branch, to provide an introduction on rulemaking among other branch functions. Mrs. Sharrow informed members that the rulemaking branch currently has five technical experts that review 80-100 rulemaking actions every fiscal year, one third of which are drafted out of the SEMFO. In addition to rulemaking, her branch act as the liaison with OGC to answer questions that require legal review. Mr. Durando further added that any assistance from USDA and OGC is provided free of charge to the Council unlike the Research and Promotion programs that charge a fee. Mr. Caris followed with a question concerning ex parte during formal and or informal process. Mrs. Sharrow replied that all communications with USDA concerning the merits of the action must be made prior to its publication in the Federal Register.

Mr. Vincent Fusaro, Chief, Compliance & Enforcement Branch then provided members with an overview of the branch. He mentioned that his branch currently has nine specialists that provide compliance, oversight and direction to all compliance activities, reviews, records and also coordinate with OGC to collect past due funds. During his presentation, he reassured the Council that both SEMFO and the compliance branch will be working with the Council in

developing their e-compliance plan. He further informed members that the e-compliance plan was put in place to protect the Council and catch any discrepancies that may arise. He briefly provided described a fraud case that was discovered as a result of a review audit. When necessary, it is the compliance branch that coordinates with the Department of Justice for prosecution. Mr. Fusaro also recommended that the Council consider who and how many compliance officers they would like to employ to carry out the organizations policies and offered that his staff would be available to help train the Council's compliance staff. Mr. Zedan followed with a question concerning whether the order allowed adding imports. Mr. Fusaro responded that the order does not have that authority. USDA staff explained that regulations on imports are subject to Section 8e of the Act and pecans are not currently listed in that section. Further, Mr. Durando explained that 8e regulations are in place for commodities with established standards covering 100% of production during the regulated period.

Mr. Zedan further asked whether the Council was allowed to require reporting of imported product. Both Ms. Varela and Mr. Durando agreed that they could not provide a definite answer and would have to contact OGC on such action. Mr. Christian Nissen, further elaborated that the Council does not have the authority collect assessments on imported products but that USDA will look into the subject. Mr. Spradling raised a question to Mr. Fusaro concerning what steps the compliance branch had in place to enforce that all handlers are paying assessments. Mr. Fusaro responded that the Council will have their own compliance team that will conduct handler visits, audits, review records, follow-up delinquent assessments, and inspection records. In addition, Mr. Fusaro added that the Council's compliance officers will coordinate with SEMFO specialists. Ms. Varela further added that compliance is put in place to assist the Council in running a smooth operation. Mr. Spradling inquired whether USDA had a handler database that informed handlers of the requirements that they should follow. Mr. Fusaro responded that once the Council gets organized and contracts their staff, staff members will be the ones to reach out to industry handlers. Mr. Durando further added that Council currently does not have an assessment or reporting requirement, he further reassured members that once a regulation is finalized and in place, the organization will have staff and policies in place to handle operations. Mr. Spradling asked what happens to those who are already collecting assessments and whether or not they're liable and responsible for submitting information. Mr. Durando and Ms. Varela confirmed that the Order only collects assessments from handlers and not producers. Mr. Adams concurred with both Mr. Durando and Ms. Varela that industry members have been told that handlers are required by law to pay the assessment not producers. He further stated industry members have also been informed that the 2016 crop will be collected upon, once the assessment is published.

After listening to the questions being raised concerning the collection of assessments, Mr. Fusaro raised the importance of establishing a strong foundation through the hiring staff and putting policies in place to better assist with the transition and establish accountability. Mr. Willson asked if it would be possible to inform all handlers that the assessment rate would be retroactive once the rule is published. Mr. Durando addressed the Council that they, the Council, do have the authority to recommend and finalize an assessment rate that is applicable and retroactive to October 1 of the current crop year.

As a follow-up to compliance issues, Mr. Durando reassured the Council that USDA is fully committed to helping the Council and the industry to establish and operate the order at no cost. He further added that MOAD has risen to the Supreme Court a number of times, and confirmed that any collection of penalties, would be sent to U.S. Treasury and not the Council.

Mr. Durando then introduced Ms. Fiona Pexton to discuss the Program Services Branch. Ms. Pexton informed members that their branch is in charge of sending out correspondence, memos, updating websites, blogs, articles, annual reports, responding to FOIA requests, updating Council or Committee forms, and processing selection orders. Mr. Dan York raised a question concerning the time frame it would take to finalize the assessment and inter-handler transfer form. Mr. Durando followed up by stating that the Council first has to recommend the reporting requirements. Ms. Sharrow added that the reporting requirements would be considered informal rulemaking which would require publication in the Federal Register, a public comment period, and also routed to Office of Management and Budget (OMB). She further added that OMB approval takes on average 30-60 days. Mr. York asked what recommendations USDA may have for handlers to use in the meantime while forms are being approved. Ms. Varela responded that the best method would be to keep and maintain good records of all transactions. Mr. Montgomery stated that the American Pecan Board (APB) has sample forms that are posted on the website for handlers to use in the meantime.

Mr. Durando resurfaced FOIA request and informed members that MOAD on average receives less than 5 requests per year. Further, each request made to the department must be responded within a certain time frame as mandated by federal law. Members were advised that any communication as a Council member, data or records are subject to FOIA.

With the current presidential transition, a question was raised if Secretary Vilsack will remain as in his position with the Department of Agriculture. Mr. Durando responded that the Secretary is empowered to serve until the inauguration day which will occur January 20, 2017. As of yet, there has been no announcement on the new administration. Along the lines of transition, he further added that it is possible that there may be a delay in process but it is highly suggested that members or industry members contact USDA staff to answer any questions they may have.

The Council recessed for a lunch break at 12:42PM and resumed the meeting at 1:55PM

Mr. L. Salopek was seated as a member representing the Western region which had been filled by alternate member Mr. Frank Salopek.

Mr. Durando welcomed all members back and moved forward with the next agenda item, election of officers. Mr. Zedan moved that the Council proceed with the election of officers. The motion was seconded by Mr. Jeff Worn. When put to a voice vote, the motion carried unanimously.

Mr. Durando asked for nominations for chairperson. Mr. L. Salopek nominated Mr. Mike Adams for chairman. The motion was seconded by Mr. Zedan. There were no other nominations. When put to a voice vote, the motion carried unanimously. Mr. Adams took a

moment to thank members for the nomination and also provided a timeline of events in the developments of the Order.

Mr. Adams opened up the floor for nominations for vice chairperson. Mr. Arnold nominated Mr. Bruce Caris for vice chairperson. The motion was seconded by Mr. Zedan. Mr. Spradling asked if the votes could be cast on paper. Ms. Varela added that if members would like to proceed with a paper ballot, she was prepared to do so. Mr. Adams responded that the chair will take that into consideration if there are multiple nominations. With that being said, Mr. Adams addressed the Council if there were any further nominations. Mr. Arnold moved to close the nominations, seconded by Mr. L. Salopek. When put to a voice vote, the motion carried unanimously. Mr. Adams called for an election of Bruce Caris for vice chairperson. When put to a voice vote, the motion carried unanimously.

Mr. Adams asked for nominations for Treasurer. Mr. Arnold nominated Mr. G.L. Straley for Treasurer, seconded by Mr. York. There were no other nominations. Mr. Adams called for an election of Mr. G.L. Straley for Treasurer. When put to a voice vote, the motion carried unanimously.

Mr. Adams asked for nominations for Secretary. Mr. Willson nominated Mr. Trent Mason, seconded by Mr. Zedan. With no further nominations, Mr. Straley made a motion to close nominations, seconded by Mr. L. Salopek. When put to a voice vote, the motion carried unanimously. Mr. Adams called for the election of Mr. Trent Mason for Secretary. When put to a voice vote, the motion carried unanimously.

Ms. Varela asked the chairperson if they would like to proceed with the suggested agenda or if they would like to make changes now that the Council had officers. Mr. Adams suggested they proceed according to the original agenda.

Mr. G.L. Straley made a motion to approve the minutes of the Council's conference call meeting on November 3, 2016. The motion was seconded by Mr. L. Salopek. When put to a voice vote, the motion carried unanimously.

Mr. Adams opened the floor for discussion on the headquarters location for the Council. Mr. Willson moved to have the Council headquarters in Dallas, Texas. The motion was seconded by Mr. L. Salopek. Mr. Adams noted that most airlines serve the Dallas-Fort Worth airport and Dallas is within driving distance of Oklahoma. Mr. Caris shared that he has been approached by someone with available office space in Dallas if they need short-term office space. When put to a voice vote, the motion carried unanimously. Mr. Durando further added that this decision is based on a general idea of where their headquarters will be placed.

Mr. Varela asked Mr. Adams if they were considering discussing staffing and administration or if that would be discussed at a later time. Mr. Adams stated they would revisit those issues sometime after discussing assessments.

Mr. Adams proceeded to discuss Council assessments and budget. The order establishes a two-to-three cent range for improved varieties and a one-to-two cent range for native and seedling and substandard pecans. He indicated that handlers were planning on the upper end of the range.

Mr. Arnold moved the Council establish assessment rates of three cents per pound for improved varieties, two cents per pound for native and seedling varieties, and two cents per pound for substandard pecans. He noted that the Council will need additional funds this season to get its operations started. Mr. L. Salopek seconded the motion. With the floor open for discussion, members had the opportunity to raise their concerns and their reasoning for what the assessment should be for the three categories. Mr. Spradling asked whether the Council should consider the three categories separately, as two cents on substandard pecans is proportionately a higher assessment on the lowest-valued segment. Mr. Spradling suggested amending the motion to one cent per pound of substandard (this was later withdrawn). Mr. L. Salopek reported that in the western states, there are few pecans that would be considered substandard and having fewer rates will simplify paying assessments. Mr. Adams has reiterated that the industry has asked to keep things simple. Mr. Worn asked if the substandard classification was made by the handler. Mr. Adams explained that yes, it would be classified at time of sale. Mr. Caris asked if there were many substandard native or seedling pecans. Mr. Spradling replied that it would vary by year. Mr. Zedan agreed that it would be a higher portion of the price usually paid for a substandard pecan. While the possibility of different rates was deemed allowable, Mr. Landgraf stated that the higher rate will discourage classifying pecans as substandard. Mr. Caris clarified that substandard pecans would be assessed at the substandard rate regardless of whether they are improved, native, or seedling varieties. Mr. Montgomery indicated he preferred remaining at two cents for substandard pecans for simplicity and could revisit it later.

Ms. Varela raised a question received from Debbie Hamrick of the North Carolina Farm Bureau, asking for the Council's reasoning for implementing an assessment rate after the year has started. Mr. Straley responded that implementing an assessment rate for the 2016 crop would allow the Council raise money and start up rather than waiting another fiscal year. To carry out the order, the Council will need the funds. Members further elaborated that the industry has been notified through multiple outlets of communication of the possible range of assessments. Ms. Varela raised a question on how the managing the assessment would impact small businesses. Members replied that small businesses would not suffer a major burden as long as they maintained accurate records, which many are already doing. Mr. Adams added that the inter-handler transfer provides relief to a small handler who does not wish to report.

The question was called and when put to a voice vote, the motion to establish an assessment rate of three cents carried unanimously.

The Council then discussed the second issue raised by the North Carolina Farm Bureau regarding the threshold exemptions for handlers set at 1,000 pounds or less. USDA was informed that some individuals raised the concern that the threshold was too low. She addressed the Council in asking if that was something the Council would like to address at this time. Mr. Worn indicated that the assessment for 3,000 pounds of improved pecans would be $60. The Council decided it would not entertain the question at this time.

With the assessment voted on, Mr. Adams proceed to discuss the Council budget. Ms. Varela noted that the Council has production information from the National Agricultural Statistics Service for reference in their meeting materials. Ms. Powell suggested forming a budget

committee representing each region. Mr. Adams agreed that there would be some committees formed and budget will be one. Mr. Straley asked if the budget had to be approved before the assessment rate could be published, which Ms. Varela affirmed. Mr. Mason suggested using a crop estimate of 260 million pounds, which would include 227 million pounds of improved pecans. Mr. Willson added that only about 85% of pecans may be accounted for. Ms. Sonja Roeder asked how exports will be counted, to which Mr. Adams responded that the grower is the handler if selling directly overseas and will be responsible for assessments. Mr. Montgomery asked if the small amount produced and handled out of the production area was exempt, which Ms. Varela affirmed. Mr. Worn reported that in the past three seasons, 80-85 % of production has been improved varieties, as a starting point for estimates. Mr. Willson asked if most orders are able to collect assessments on all shipments. Ms. Varela responded that her office will approve the proposed expenditures, but should the actual assessments come in under the estimate, that is fine and on the other side, if more assessments are collected, those funds can be placed in reserve. Mr. Zedan indicated a preference for a more conservative estimate, such as 75% of production being improved.

Mr. G.L. Straley informed the Council that with the proposed assessment rates, assessment income would be about six million dollars with a crop estimate of 260 million pounds with 75% improved. Mr. Zedan asked if MAP funds will now fall to the Council. As The U.S. Pecan Growers Council has received these funds in the past, it was noted that the Council will not receive these funds. However, as Mr. Les Daviet noted, U.S. Pecan growers is interested in partnering with the Council on its market access projects. Ms. Varela noted that the Foreign Agricultural Service is keeping up to date on the Council's activities in case the situation changes in the future. She also indicated that most marketing orders will present their project budget for approval sometime after the overall budget has been approved.

Mr. Adams moved on to discussing management of the Council. Mr. Zedan raised the question if they should consider a management company or hiring in house, noting that the Almond Board of California has its own staff. Mr. Worn and Mr. Spradling indicated that it would be important to have their own staff familiar with the industry. Mr. Adams responded that it would be in the best interest of the industry to handle in house because management companies handle more than one firm. Mr. Willson responded that hiring a company could be cost effective for the Council and Mr. Arnold added that some have told him it might be easier to hire a company to start up the Council. Mr. York expressed the need for an Executive Director to manage the day-to-day business of the Council. Ms. Powell noted that it may be beneficial to hire a firm to search for a CEO. Mr. Caris suggested forming some committees to work on staffing, reporting, research, and marketing. Mr. Adams proposed that the Executive Committee come up with a budget and suggested committees for the Council to review the coming day.

Mr. Zedan noted that regardless of staffing, they will need to be sure submitted data is confidential. Ms. Varela and Mr. Durando confirmed that the order does not permit members to see any confidential information and all staff will be bound to confidentiality. To their knowledge, proprietary information is not released under FOIA.

Mr. Adams opened the floor for the discussion of reporting. Ms. Varela informed members that the resource binder that was provided to them included a number of samples of reporting forms. Any regulation, including reporting, is subject to rulemaking for notice and comment. OMB requires an estimate of how many people will fill out an information collection, how often, and how long it will take to complete. Mr. Adams indicated a reporting committee will need to address those tasks.

Mr. Adams moved onto the Council's bylaws. He informed the members that Mr. Paul Quiros, who had assisted the American Pecan Board, has expressed interest in continuing to work with the Council. Ms. Varela explained that a marketing order can request outside legal counsel for a specific issue if it is not something that can be handled by USDA, but otherwise OGC is the Council's legal counsel. Mr. Durando added that any such requests need to be specific as to purpose and duration. As such, Mr. Landgraf moved the Council retain Mr. Quiros to draft the Council bylaws. Mr. Mason seconded the motion. Mr. Willson suggested the Council find out what the rate for his services would be before making a decision. Mr. Spradling asked about the cost of USDA's OGC. Mr. Durando explained any legal questions referred to OGC are at no cost to the Council. Mr. Spradling expressed his appreciation for Mr. Quiros's work for the industry, but did not think private counsel was not necessary for drafting bylaws. Ms. Varela reminded the Council that there are some samples of recent bylaws in the binders that were written by committees themselves. Mr. Adams raised the issue of antitrust as an example. Ms. Varela responded that that antitrust is one area where there is enough expertise at USDA and the Department of Justice that OGC would be unlikely to allow outside representation. Further, OGC has been providing training to MOAD staff on that issue as well as sending attorneys to meetings when there is a need to have legal counsel on site. Mr. Durando explained that the USDA specialist at each meeting knows to call OGC if something comes up at a meeting. Mr. Landgraf restated his motion to include assistance with developing contracts and hiring a staff. Mr. Caris moved to table the item of hiring Mr. Quiros as counsel to draft the Council bylaws until the Council finds out his rate. The motion to table was seconded by Mr. Zedan. When put to a voice vote, the motion carried unanimously. In response to a question about timeframe, Mr. Durando added that approval of such a request can usually be turned around in a few days.

Mr. Adams proceeded to discuss the nomination for the Council's at-large seats consisting of one public member and one accumulator member and respective alternates. The Council is authorized to make these nominations. Mr. Jeff Worn nominated Mr. J.B. Easterlin for the accumulator seat. The motion was seconded by Mr. Mason. Mr. Spradling nominated Mr. Chad Selmon from Golden Peanut and Tree Nut for the accumulator seat. Mr. Caris seconded the nomination. Mr. Adams asked if it was premature to make a selection at this meeting. Mr. L. Salopek asked for time to review information about the nominees. Ms. Roeder agreed that she would like to see some bios before making a decision. Mr. Willson and Mr. Worn expressed a desire to cast a vote by mail or email. Mr. York asked for clarification of the definition of accumulator. Mr. Zedan asked for clarification on a nominee's affiliation as part of the information gathering. Mr. Adams accepted the nominations made and asked that any additional nominations for accumulator be sent to Mr. Caris in the next two weeks. Mr. Caris suggested closing the nominations, sending the information, and sending votes to Ms. Varela, but she

responded that she would need to check on that procedure. Mr. Caris moved to close the nominations for the accumulator seat, seconded by Mr. Worn. When put to a voice vote, the motion carried unanimously.

Regarding the public member seat, Mr. Adams called for nominations. Mr. Worn nominated Pat Kearney, seconded by Ms. Willis. Mr. Straley nominated Dawn Jones, seconded by Mr. L. Salopek. Mr. Adams reminded the Council that public members cannot have a financial interest in pecans. Mr. Worn moved that the nominations be closed, seconded by Mr. Arnold. When put to a voice vote, the motion carried unanimously. Ms. Varela indicated that the appointment process, involving a background statement would be similar to the earlier selection process and agreed to send the information to Mr. Caris.

Regarding issues left to be discussed, Mr. York reported that he has been asked about where to send reporting forms and assessments. Mr. Worn expressed concerns he's heard about imported products benefitting from the market being developed in the U.S. Both large and small shellers are wondering what the Council can do when growing and shelling are cheaper in Mexico. Mr. Zedan suggested in the future they may need to look at a checkoff, but in the current structure it cannot be dealt with. Mr. Mason agreed that he has had similar experiences, especially in dealing with regulatory disadvantages. Mr. L. Salopek expressed that many Mexican growers would like to be involved in a marketing order. Mr. Adams recognized the concerns and suggested that in the long term their marketing can emphasize the benefits of the US industry. The Council's goal is to increase the demand for pecans. Mr. Zedan added that this issue is part of why it is important to determine whether handlers can report acquisitions from Mexico.

Mr. Landgraf asked about maximum tolerances being regulated under the order. Mr. Durando replied that to date there are no such applications of quality regulations, but it is something that could be brought up to OGC. As an example he described almond regulations that look at salmonella as a quality issue.

Mr. Adams indicated the executive committee will meet and develop a budget, list of committees, and agenda for day two.

The meeting was adjourned at 5:22 PM until 8:00 AM the following day.

Mr. Adams called the meeting to back to order at 8:12 AM CST.

Ms. Campos conducted roll call and a quorum was established.

Before proceeding with the Council's remaining agenda, Ms. Lowenstine provided Council members and alternates with an overview of the Invitational Travel Reimbursement Form and documents needed for travel reimbursement. She further instructed members to contact her directly if they have any questions or concerns.

Mr. Adams proceeded to review the meeting agenda with member and alternates. He further provided everyone with an overview and timeline on promulgating the order and establishing the Council. He noted that pecan growers are the constituent group that voted in the order and can

vote it out. He recognized almonds and walnuts as commodities that have made marketing orders work.

Mr. Adams suggested revisiting some items from the previous day, beginning with the at-large nomination process. Mr. Spradling offered a point of order, noting that as the issue had been tabled previously, it would require a two-thirds vote to reopen. Mr. Mason moved the Council reconsider tabling the nomination for the seats, seconded by Mr. L. Salopek. When put to a voice vote, the motion carried unanimously. Mr. Caris opened the floor for discussion on the subject matter. Mr. L. Salopek mentioned that nominations should be kept open for a month. Mr. Worn noted that while he is confident about his nominee, keeping the nomination period open would allow other interested parties in to be nominated for the positions and also to recruit talent. Ms. Ellis added that there is a lot of talent in the industry and she would like to speak to individuals about their role before nominating them. Mr. Arnold made a motion to open the nomination period, have all bios sent to Mr. Caris, and set the deadline for nominations to close two weeks before the Council's next meeting. The motion was seconded by Mr. York. Mr. Daviet suggested that in looking for nominees, the Council should consider what type of expertise needs to be brought to the group. Mr. Worn asked if there were job descriptions for the at-large seats. Mr. Adams responded that both are written into the order. Mr. John Heuler suggested that one thing the Council lacks is a science background and offered to nominate Mr. Richard Heerema from New Mexico State University for the public member seat. There was some question as to whether his work with pecans would conflict with requirements for a public member. Ms. Varela read the following from section 986.46 of the order: "The public member and alternate public member may not have any financial interest, individually or corporately, or affiliation with persons vested in the pecan industry." She further indicated this does not preclude the nomination; other Boards have been able to include researchers as public members, but it may take some more information to show there is not a direct financial link. Mr. Willson added that Mr. Heerema may also be a good addition to one of the Council's committees. When put to a voice vote, the motion to extend the nomination period carried unanimously.

Mr. Adams informed the Council that Mr. Paul Quiros agreed to work on the Councils' bylaws pro-bono. Mr. Caris added that it is his understanding that as an industry member, Mr. Quiros could serve on the Council's committees without any formal request for approval. Mr. Durando agreed that anyone can be brought onto a committee to share their expertise as long as an individual does not claim to represent the Council on any particular matter. If Mr. Quiros or any other attorney was to act in an official capacity, that would require approval. Mr. Daviet asked what state the Council would be operating in. Ms. Varela responded that based on the Council's previous decision regarding headquarters, she anticipated their incorporation in Texas. As there are already marketing orders operating in the state, she suggested they might be good resources for help in getting the Council's operations established. Mr. Durando added that if legal action is ever brought against the order, it is a suit against the government and handled in Federal court. Mr. Adams asked if that meant they did not need D&O insurance. USDA staff indicated that there is a bond required under the internal controls policy.

Mr. Straley addressed the Council with the breakdown of the proposed budget for the 2016-2017 fiscal year (Attachment 2). With a proposed assessment rate of three cents per pound of improved varieties, and two cents per pound of native and seedling varieties and substandard pecans, the Council had estimated they would collect just over $6 million in assessments. The committee decided to round down to the $6 million mark for budgeting purposes. In reviewing a sample cranberry budget for guidance, the committee had estimated that about 15% of the budget should be allocated to administration, which would equal $900,000. Next, the committee wanted to set aside $500,000 in reserves. Of the remaining non-reserve funds, the committee felt 70%, or $3,850,000, should be allocated to marketing, research and promotion. The remaining funds were allocated to various committee areas including $250,000, for reporting and statistics, $200,000, for compliance, $100,000, for communication, $75,000, for finance, $75,000, for governance, and $50,000, for personnel.

Mr. L. Salopek asked if personnel was part of administration. Mr. Straley responded that category would cover the costs of searching for a CEO in this first year and may not need funding in the future. Mr. Spradling asked if there was more of a breakdown of the administrative category. Mr. Straley further explained that the Council recommended the budget with the idea that it would employ 2-3 and that the administration included the cost to lease an office and emphasized that these allocations are a starting point. Mr. Worn raised a few questions regarding how decisions will be made on funding each category. Mr. Adams replied that they would soon break into committees which can use these allocations as a starting point. In addition, Ms. Ellis recommended that the administration section should be brought down to 10% of the overall budget rather than 15%. Mr. Zedan added that he will be meeting with some members of the Almond Board and will have a better idea of statistical costs after that meeting. He further added that the Council is behind schedule in terms of assessing the current crop suggested contracting staff in the short term to get the Council running.

Mr. Caris introduced Ms. Emily Myers, Kellen Company, to the Council to further discuss the option of hiring an association management company (AMC). Ms. Myers noted that she was speaking broadly from her experience and not in her capacity with Kellen. She explained to Council members that hiring a management company could jumpstart their organization by providing strategic management, financial assistance and provide staffing needs interim or long term. She estimated an AMC could have staff ready to go in a couple of weeks. Mr. Adams asked if her company provided dedicated staff. She responded that it depends on the size and needs of the organization. She added that the association is also involved in hiring. Mr. L. Salopek asked if this would be under a subcommittee to do further research. Mr. Willson asked about the experience of their marketing orders. Ms. Varela responded that some committees do share staff with organizations and many of the larger programs have their own staff. She echoed Ms. Myers earlier statement that the Council does not need to stick with one management option forever. Mr. Durando added USDA has heard from parties that have expressed an interest in assisting the Council, such as William Watson, formerly of the Watermelon Board, and Bret Erickson, with Texas International Produce Association (TIPA). Mr. Worn asked what the cost of hiring a marketing company would be and what services they would provide. Ms. Myers replied that the Council would have to contact a marketing company to get an estimate. Mr.

Caris noted that it would not be costly to ask a couple of AMCs to give them quotes. The chairperson referred this item to the Governance Committee for further review.

Mr. Mike Adams moved on to discuss the Council's banking situation. The Council does not yet have funds and handlers are inquiring where they should send advance assessment payments. Additionally, the Council is concerned with maintaining confidentiality. He expressed a desire to have an address published to send in assessments. Mr. Montgomery agreed that he has been contacted by several handlers in the central region with regards to this issue. As a result, Mr. Adams recommended that as an interim solution, Mr. Landgraf, who is a bank director, open a bank account and PO Box in Madill, OK to receive assessments on behalf of the Council until they have a permanent address and account. Mr. York raised concern over liability issues if Mr. Landgraf were to receive and handle thousands of dollars. Mr. Fusaro suggested the Council members should work closely with their marketing specialist to develop an understanding of internal control policies before proceeding. Further, Mr. Nissen indicated that assessments and shipment information could not be sent to a member. He suggested an outside party, such as an accountant could be hired to receive the payments and maintain records. Ms. Powell suggested talking to the TIPA since they are already familiar with marketing order assessments. Mr. Willson added shellers may be comfortable sending payments into the Kellen Company since they are familiar with them through the National Pecan Shellers' Association or an attorney could set up an escrow account. Ms. Varela expressed an understanding of the Council's desire to move quickly, but reminded them that the quality of data collected was one of the industry's concerns in putting together an order and so it may benefit them to collect assessments in an organized fashion rather than try to match up information later. Mr. Worn asked how a handler should comply until the Council is ready to accept reports and funds. Ms. Varela suggested that keeping clear records will allow them to report as soon as the system is in place. Mr. Zedan, recommended that the Council communicate that they are taking their time and developing forms so that handlers will only have to report once in an organized fashion. Ms. Roeder stated that there is a lot of confusion among industry members and that perhaps it would be best for the Council to put out a statement concerning sending in assessments later rather than sending to one address now and another in six months. Mr. Adams notified Council members that Cindy Wise will be publishing an article in the Pecan South Magazine the following day that will let handlers know what the Council intends to do. He highlighted the desire to get information out to the industry and use funds that they are holding rather than take out a loan.

Mr. Arnold suggested the communication going out should indicate the Council is working on specific reporting requirements with a target date, such as January 1. Mr. York pointed out that many handlers will want to reflect assessments in their records before December 31. Ms. Ellis added that a corporate resolution by the Council in order to open accounts. Mr. Straley suggested the Council would have to meet again within a month to meet such a deadline and Mr. Arnold indicated that perhaps mid- January would be more likely. Mr. Durando indicated that the council's decisions to be methodical and protect the integrity of data by not rushing into reporting would be a positive story in itself. Mr. Caris asked for some clarification on when reports or assessments would be due and how the Council might communicate their recommendation for informal rulemaking. Ms. Varela agreed that as a general practice, writing

up a summary or press release could be approved and distributed quickly to let the industry know what the Council is recommended. Mr. Spradling asked if the Council could collect assessments before a rule is published. Ms. Varela clarified that the money can be accepted, but the assessment cannot yet be enforced.

Mr. Adams recommended the governance committee speak to Ms. Wise to give her some information for the coming article and will wait for recommendations from the reporting committee before issuing instructions on reporting or assessments. Mr. Arnold noted that this situation indicated the precedence of setting up a website.

Mr. Straley moved the Council approve the budget as presented. The motion was seconded by Mr. L. Salopek. When put to a voice vote, the motion carried unanimously.

Mr. Adams informed Council members that in order to target all tasks that need to be done by the Council, he along with several members felt it would be appropriate to form the following committees: Governance, Finance, Reporting and Statistics, Personnel, Compliance, Communication, and Marketing. Mr. Adams asked that the committees get together after the break for a breakout session. Mr. Caris indicated that committee assignments were fluid and members should feel free to join more than one if they wish. Mr. Durando asked all USDA staff to join the breakout sessions to be available as a resource.

The Governance Committee was tasked with the search for a CEO, developing bylaws, and looking into interim management firms. Mr. Adams indicated Mr. York and Mr. Willson were added to the Council officers on this committee to add a balance of perspectives. The Finance committee will be Chaired by Mr. Straley and continue to develop the Council's budget and monitor funds over the year. Reporting and Statistics will work on developing reporting requirements, industry forms, and data. The Personnel Committee will work on developing job descriptions and salary ranges later on when the Council is hiring staff. The Compliance, Grades, and Standards committee will look at developing quality standards. The Communication Committee will work all website development, newsletters, publication, industry contact list, and social media. Mr. Worn asked about getting other industry lists of contacts. Mr. Adams explained that much of that information is proprietary, so the Council will work to develop its own database. Mr. Spradling suggested approaching each state organization. Mr. Arnold suggested bringing in younger members to the Communications Committee to take advantage of social media. Mr. Heuler reiterated that Council will need to have a public presence. Members were instructed to select a committee and break out in to group sessions following the break. Each committee will report to the Council their overall ideas as well as committee names. Mr. Worn also indicated that he has done a lot of research and work on product development and wants to see integration between product research and marketing on that committee.

The following members were suggested for committee membership:

Governance: Mr. Adams, Mr. Caris, Mr. Straley, Mr. Mason, Mr. Willson, Mr. York

Finance: Mr. Straley (chair), Mr. Paulk, Ms. Ellis

Personnel: none at this time

Reporting and Statistics – Mr. Willson, Mr. Zedan, Mr. Lalo Medina, Mr. Worn, Mr. Heuler, Mr. Blake Houston

Compliance, Grades, and Standards: Mr. York

Communication: Mr. Arnold, Mr. Spradling, Mr. Mason, Ms. Helen Watts

Marketing, Research and Promotion: Mr. Caris (chair), Mr. Landgraf, Ms. Roeder, Mr. Brandon Harrell, and Mr. L. Salopek.

All others not assigned were asked to choose a committee to join during the breakout session. As Mr. Straley was leaving, Mr. Caris asked for his input on future meeting dates which would be considered later. Mr. Straley indicated he was fine with meeting any time other than Dec 5-7.

Mr. Adams dismissed members for a 20 minute recess at 10:25A.M. to be followed by Committee breakout sessions.

Meeting resumed at 11:38A.M. and Mr. Daviet was seated for Mr. Straley as a western grower member.

Mr. Caris, reported that the Marketing, Research, and Promotion Committee had some good conversations and are looking into shelf life studies and health claim research. They discussed having a group voicing the health information on pecans and also putting together a scientific advisory council to help analyze project proposals. They would like more time

Mr. Zedan was selected as chair of the Reporting and Statistics Committee reported that they would like to gather more data from the industry including acreage numbers, committed inventory, and recommended that handlers report electronically on a monthly basis (1st of the month) in order to be more efficient, with the option to report on paper. Further they would like the Council to consider changing the crop year to September 1 to August 31. This would capture earlier harvests and the earlier Mexican crop. The committee also reported that they would like to have approval of the handler reporting forms by the next meeting. Mr. Zedan indicated he will be meeting with the Almond Board in the upcoming weeks and will report back what data the industry currently collects that may be essential for the industry to consider gathering through handler reporting forms, including information by variety and committed inventory.

Mr. York reported that met with Mr. Fusaro who indicated there will be a USDA compliance staff member assigned to help the Council, along with the marketing specialist to assist with the development of the Council's compliance plan. Mr. York intends to focus on industry standards rather than customer-defined standards. Mr. Fusaro clarified that the Council will need its own compliance staff.

Ms. Watts reported that the Communications Committee will work on developing an industry and resource list, reach out to existing industry publications. The committee also received guidance from USDA on the review process, and taking advantage of social media. The committee intends to have a followup conference call before the next Council meeting. Mr. Adams asked if a committee can meet outside of a full meeting. Ms. Varela responded that yes, committees can meet on their own, but their decisions must still come before the entire council

and while there does not need to be broad publication of the meeting, it has to be open to anyone who wants to participate. As everything is in early stages it may be beneficial, though not required, to have USDA staff present. Mr. Adams added that a written record of those meetings will be important.

Mr. Paulk reported on behalf of the Finance Committee. He and Ms. Ellis, discussed making adjustments to the overall budget once information comes in from the various committees, establishing a bank account, and hiring a CPA in the interim to oversee monies coming in. Mr. Paul proposed having Mr. Straley find an accounting firm by December 15 and giving handlers a simple form that includes the address where assessments can be mailed until something more permanent is established. Mr. Adams noted that the Reporting Committee is working on forms and the Finance Committee can work with them on that.

Ms. Varela went into some more detail on information collection. Whenever information is collected, there must be a period of notice and estimate of the burden of that collection. She suggested working with the Council to perhaps put some instructions on a website for voluntary payments. Mr. Durando and Mr. Nissen indicated the Council could publish an address for sending in money, and the accountant or manager could then ask for the reports to reconcile the account once they are approved. Mr. Zedan asked if it would be March or April before there were approved forms ready to use. Mr. Durando concurred.

Given the discussion on forms, Mr. Worn asked for a restatement of Mr. Paulk's proposal. Mr. Paulk moved to have the Council treasurer contract with a CPA to collect funds. The CPA address will be listed on any proposed forms. The motion was seconded by Mr. Mason. Mr. Daviet asked for clarification of the location of the CPA, which all agreed would be at the treasurer's discretion. Ms. Powell suggested the address be listed on the Council's website. When put to a voice vote, the motion carried unanimously.

Mr. Paulk next made a motion to authorize the executive committee open a bank account in the name of the American Pecan Council, with the requirement of two signatures, one being the treasurer. The motion was seconded by Mr. Trent Mason. Mr. Daviet asked if the account has to be in the Dallas/Fort Worth area. Mr. Paulk indicated that it would be up to the treasurer. Mr. Spradling asked Ms. Ellis if electronic signatures were acceptable, given the logistics of the industry. She concurred. When put to a voice vote, the motion carried unanimously.

Mr. Adams proceeded to discuss the Council's next meeting date. Mr. L. Salopek voiced his support for a similar meeting structure with a full day and following morning session. He also added that Wednesday and Thursday were good for meetings. Mr. Adams recalled Mr. Caris's earlier request to have ample time for committee sessions. Mr. Worn asked what items would be on the agenda if there wouldn't be any reports for months. Mr. Zedan replied the Council still needed to review and approve the forms it is developing. Mr. Adams asked if there was any business that could not be done in committee. Mr. Mason the Council needed to vote on its at-large positions. Mr. Caris inquired whether the full Council would have to approve the forms. Ms. Varela, responded yes, they will need to discuss the information that they want to collect, why it is necessary, and how it will impact those supplying the information. Mr. Daviet asked if

there was anything that would require meeting in December. Mr. Zedan asked if forms and nominations could be done via conference call. Ms. Varela replied that the nominations may be logistically difficult, but yes, the votes could take place via conference call.

Mr. Adams reported that he's been given suggestions that the Council should meet quarterly and in conjunction with other industry conferences. Mr. Daviet noted that U.S. Pecan is already meeting at the same time as the Southeastern and Western Pecan Growers meetings. Mr. Worn asked if the Council could work with U.S. Pecan to coordinate meeting times as there are a number of common members and they could work on joint projects. Mr. Adams added the Southeastern meeting would be in Biloxi in February. Mr. L. Salopek suggested that the Council could alternate between that and the Western meetings as they are usually a couple of weeks apart. Mr. L Salopek noted that he hoped waiting until February to meet would not delay anything. Ms. Varela indicated the matters the Council has discussed can be voted upon by conference call and that they may need one or two calls before February. Mr. Mason moved to schedule to the Council's next in-person for February 23-24 in Biloxi, Mississippi. The motion was seconded by Mr. Jeff Worn. Mr. Adams asked Mr. Mason to coordinate with Ms. Jenkins form Southeastern Pecan Growers to find meeting space. Mr. Caris suggested members should arrive on the 22nd in order to meet on the 23rd. Mr. Durando clarified the rulemaking on assessments would not be held up by a later in-person meeting date. When put to a voice vote, the motion carried unanimously. Mr. Adams noted that next in-person meeting after February, if held alongside the Texas Pecan Growers meeting would be July 9-12 in Frisco, Texas. It is possible they would need to meet before then. He expressed an intent to set calendar for the year at the February meeting.

Mr. L. Salopek asked if state employees could be considered for the public member seat. Ms. Varela replied that she had looked into the issue and USDA is fine with it as long as the potential member's employer does not object. He also expressed his thanks to USDA staff for their effort.

Mr. Spradling moved the Council submit a resolution to Secretary Tom Vilsack for his service through his career to our industry, and express their appreciation to Director Michael Durando and his team for all the work and effort they've done to get us to this point. Mr. L. Salopek suggested adding Edward Avalos, ex-oficio Under Secretary for Marketing and Regulatory Programs. The motion was seconded by Mr. Caris. When put to a voice vote, the motion carried unanimously.

With no other business to discuss, Mr. Trent Mason moved to adjourn the meeting and Mr. L. Salopek seconded the motion. Without opposition, the meeting was adjourned.

Mr. Adams expressed his appreciation for the members' time in serving on the Council.

Agricultural Marketing Service

Creating Opportunities for American Farmers and Businesses

American Pecan Council

Training

2016-2017

Authority and Coverage

- Authority: Agricultural Marketing Agreement Act of 1937 (AMAA)
- Commodities
  - Milk
  - Fruits
  - Vegetables
  - Specialty crops

- 29 Marketing Orders

Agricultural Marketing Service

Purposes of MOs

- Stabilize market conditions for fruit, vegetable and specialty crop producers
- Allow industries to work together to solve marketing problems
- Improve profitability
- Balance the supply of quality product with the demand by consumers

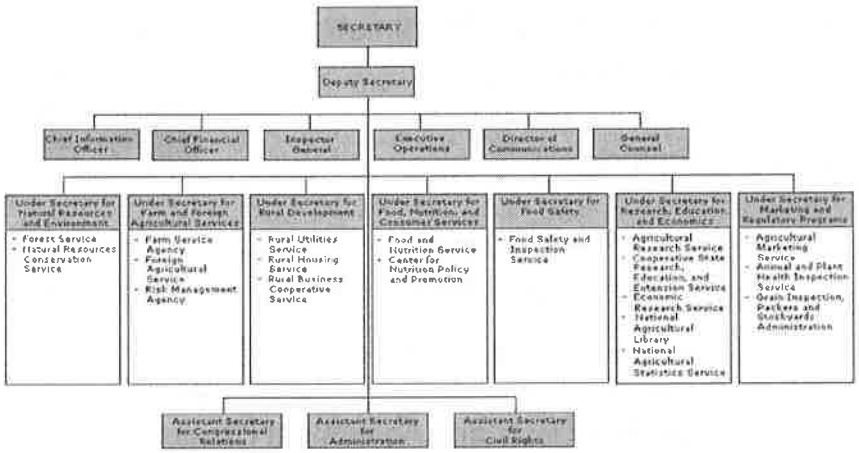
Agricultural Marketing Service

Authorized Activities Under AMAA

- Collect and publish industry and market data
- Minimum standards
- Mandatory inspection
- ~~Volume control~~
- Container and pack requirements
- Production research
- Market promotion, including paid advertising
- Market research
- Assessments on handlers

~~Under certain circumstances:~~
- ~~Regulation of imports~~

USDA Organizational Chart



Agricultural Marketing Service

Agricultural Marketing Service (AMS)

Elanor Starmer, Administrator
(Political appointee)

- Programs include:
  - Cotton and Tobacco
  - Dairy
  - Science and Technology
  - Transportation and Marketing
  - Livestock, Poultry, and Seed
  - Specialty Crops Program
  - National Organic Program
  - Compliance and Analysis

Agricultural Marketing Service

Specialty Crops Program

Chuck Parrott, Deputy Administrator
(Civil Service position)

Divisions include:

- Market News Division
- Perishable Agricultural Commodities Act Division (PACA)
- Specialty Crop Inspection Division (SCI)
- Promotion and Economics Division (PED)
- Marketing Order and Agreement Division (MOAD)

Agricultural Marketing Service

Marketing Order and Agreement Division

Mike Durando, Director
(Civil Service position)

Headquarters Branches

- Rulemaking
- Compliance and Enforcement
- Program Services

Marketing Field Offices

- CAMFO (Fresno, CA)
- NWMFO (Portland, OR)
- SEMFO (Winter Haven, FL)

Agricultural Marketing Service

MOAD Responsibilities

- Representative attends all council meetings
- Evaluate all council recommendations
- Enforce marketing order requirements
- Enforce council operating requirements
- Conduct rulemaking (formal and informal)

Agricultural Marketing Service

Informal Rulemaking

Used to change or add regulations,
if permitted by MO

1. council recommendation and 10-point justification
2. USDA evaluates and may publish proposal in Federal Register
3. Notice and public comment period
4. USDA may finalize rule based on comments, and publish in Federal Register
5. Final rule becomes effective

Goal 3-4 months

Agricultural Marketing Service

Formal Rulemaking

Used to change or add complex order authority

1. Council recommendation and 9-point justification
2. USDA evaluates and may publish Notice of Hearing in the Federal Register
3. Public Hearing with industry testimony
4. Briefing period followed by USDA's Recommended Decision for public comment
5. Secretary's Decision issued
6. Grower Referendum indicating support for program
7. Issuance of Final Rule

Goal 18-24 months

Agricultural Marketing Service

Formal-Informal Rulemaking

Used to add or amend order authority with minimal economic and regulatory impact

1. Unanimous council recommendation and 9-point justification
2. USDA evaluates proposal and determines whether the process is appropriate
3. USDA publishes a Proposed Rule for public comment
4. Second Proposed Rule and Referendum Order issued
5. Grower referendum indicating support for the amendments
6. USDA provides handlers the opportunity to sign an amended marketing agreement
7. Issuance of Final Rule

Goal 12 months

Agricultural Marketing Service

Members' Roles

- Nominated by the industry, selected by the Secretary, and ***serve at the will*** of USDA
- Hire staff to run day-to-day operations
- Legally responsible for the administration of the marketing order, including finances
- Recommend regulatory and administrative actions to USDA

Agricultural Marketing Service

Members' Responsibilities

- Understand the marketing order, bylaws, parliamentary procedures, etc.
- Adhere to confidentiality, antitrust, and lobbying requirements
- Gather local opinions, but represent the industry's perspective
- Attend meetings or notify alternate
- Review all meeting materials
- Declare a conflict of interest prior to discussion

Agricultural Marketing Service

Council Staff

- Employed staff should be given annual performance evaluations
- Contracted staff should have their contracts reviewed annually and voted upon by the council
- Conducts the daily business affairs of the council
- Understand and respect personnel management or contract laws
- Adhere to confidentiality, antitrust, and lobbying requirements

Agricultural Marketing Service

Lobbying

- **Council** cannot become involved in lobbying and political activities, nor are they authorized to appear before other government agencies or Congress
- In your capacity as a **council member or staff member**, you are prohibited from lobbying Local, State, Federal, and Foreign government officials in an effort to influence legislation, or government policy or action
- When in doubt, check with your field office marketing specialist

Agricultural Marketing Service

Prohibited Lobbying Activities

- Meeting with elected officials to convey the council's views on a legislative matter
- Spending marketing order funds and resources to sway political views
- Distributing materials to industry members for the purpose of influencing a level of support or opposition to a government policy or action
- Submitting comments to agencies' Federal Register notices without AMS' consent
- Partnering with State or foreign governments or agencies without AMS' consent

Agricultural Marketing Service

Allowable Activities

With USDA approval, a council may:

- Meet with other government agencies
- Provide educational information to government officials, but cannot recommend changes
- Submit comments on proposed actions of other agencies

Agricultural Marketing Service

Antitrust

- Council members and staff are immune from prosecution under antitrust laws, so long as they are acting *within the scope of their duties* under their marketing order
- Avoid discussions that may lead to agreements with outside entities (domestic or foreign)
- Avoid exchanging market-sensitive information with foreign entities when council members or staff have reason to believe that such sharing is part of a plan to fix or stabilize prices or otherwise restrain competition
- Should any prohibited discussions commence, council members and employees should either leave the meeting room or the meeting should be adjourned, to avoid a perception of participation in an agreement

Agricultural Marketing Service

Public Meetings

- Provide notice of meetings according to MO or bylaws
- Open to the public, except for an executive session
- Quorum must be present to take any action or make a recommendation
- Guided by Roberts Rules of Order, generally, and by council bylaws

Agricultural Marketing Service

Public Records

- A Federal record is "…all recorded information, regardless of form or characteristics, **made or received by a Federal agency under Federal law or in connection with the transaction of public business** and preserved or appropriate for preservation by that agency or its legitimate successor as **evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United Sates Government** or because of the information value of data in them…"
- (44 U.S.C. 3301, Definition of Records)

Agricultural Marketing Service

FOIA

- Freedom of Information Act (FOIA) provides access to all federal agency records, or portions of those records, except for those records that are protected from disclosure by 9 exemptions
- FOIA requests are made to AMS Headquarters
- Includes personal use requests
- FOIA requests must identify specific records
- MOAD will work with council to respond to FOIA requests

Agricultural Marketing Service

Compliance

- Handlers are required to comply with all MO regulations
- Council's annual electronic compliance plan outlines the steps to prevent, locate, investigate, and document compliance efforts – a HACCP plan, of sorts
- Internal controls are an integral part of the compliance program and the e-Compliance plan
- MOAD's Compliance and Enforcement Branch (CEB) reviews the e-Compliance plan, and conducts a compliance review to ensure that compliance plan activities are followed and documented

Agricultural Marketing Service

Marketing Policy

Marketing Policy Statements – many MOs require an annual MPS, which sets the parameters necessary for the establishment of regulations each year. MPS requires the council to review and document several factors pertinent to its regulatory program, such as:

- Size and quality of the new crop
- Anticipated demand for the commodity
- Potential shipments of the commodity
- Supplies of competing commodities
- Trend and level of consumer income
- Other factors affecting the marketing of the commodity
- Regulations the industry is proposing for the year

Agricultural Marketing Service

Communications

- All domestic marketing promotion material is subject to USDA review and approval prior to use
- This includes all advertising (TV, print, viral), social media content, newsletters, public relations materials, B-rolls, etc.
- We ensure communications are truthful and non-misleading regarding health and nutrition messaging and are consistent with AMS policy
- AMS staff uses FTC, FDA, and AMS policy guidelines to conduct these reviews

Agricultural Marketing Service

FAIR Act Reviews

- MOs with marketing promotion programs are required to prove that their promotion efforts are economically effective and beneficial
- Research study to be conducted every five years
- Required by the 1996 Farm Bill, known as the FAIR Act
- APC will need to conduct one in 2021

Agricultural Marketing Service

Continuance Referenda

- Some MOs require periodic producer referenda to determine if the growers favor continuation of the program
- Council may provide factual information and may encourage growers to vote

Agricultural Marketing Service

Questions?

Southeast Marketing Field Office		
Regional Director	Chris Nissen	Christian.Nissen @ams.usda.gov
Sr. Marketing Specialist	Jen Varela	Jennie.Varela@ams.usda.gov
Marketing Specialist	Abigail Campos	Abigail.Campos@ams.usda.gov

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Internet Resources
http://www.ams.usda.gov/moa/fv
https://www.ams.usda.gov/rules-regulations/moa/986-pecans

Attachment 2

Pecan Marketing Council
FY 2016/2017 Proposed Budget

Income	
Assessments	$6,000,000.00
Total Income	$6,000,000.00
Operating Expenses	
Administrative	$900,000.00
Marketing, R&D	$3,850,000.00
Reporting and Statistics	$250,000.00
Compliance	$200,000.00
Communication	$100,000.00
Finance	$75,000.00
Governanace	$75,000.00
Personnell	$50,000.00
Reserve	$500,000.00
Total Expenses	$6,000,000.00
Deficit/Surplus	$0.00