

UNITED STATES DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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PROPOSED AMENDMENTS TO THE MARKETING ORDER
REGULATING RAISINS PRODUCED FROM GRAPES
GROWN IN CALIFORNIA
(MARKETING ORDER NO. 989)

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WEDNESDAY,
MAY 4, 2016

The hearing came to order at 9:00 a.m.
at the Hilton Garden Inn located at 520 West Shaw
Avenue, Clovis, California, Bobbie J. McCartney,
Chief Administrative Law Judge, presiding.

BEFORE:

BOBBIE J. MCCARTNEY

Chief Administrative Law Judge

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:00 a.m.

3 JUDGE MCCARTNEY: Going on the record,
4 a recap. I'm Judge McCartney. I'm here to help
5 you with the process of providing evidence and
6 testimony in support or disagreement, depending
7 on your perspective, of the proposed rulemaking
8 that's at issue here.

9 I think everyone's on the same page as
10 to why we're here and what our goals are today.
11 Our court reporter has done a great job of
12 tracking the exhibits. Our records reflect
13 Exhibits 1 through 35 have been offered and
14 admitted. She's also cross-referenced the
15 sponsoring witness, with respect to the exhibits
16 that have been admitted into the record and that,
17 therefore, is part of our record and will be
18 available at the conclusion of the hearing. Are
19 we prepared to proceed with our next witness?

20 PARTICIPANT: Your Honor, I think
21 Richard Sahatjian, yesterday, asked if he could
22 be up first today to be recalled as a witness.

1 JUDGE MCCARTNEY: Yes, you may be
2 recalled as a witness. Please take the stand.
3 Please give your name and affirm that you have
4 been previously sworn in.

5 MR. SAHATJIAN: My name's Richard
6 Sahatjian. I have been previously sworn in.

7 JUDGE MCCARTNEY: You are being
8 recalled at your own request. Do you have a
9 particular proposal or comment that you wish to
10 make into the record at this time?

11 MR. SAHATJIAN: I'm speaking about
12 Proposal No. 5, Continuance Referenda. I just
13 want to clarify the voting record, at least as
14 far as my vote is concerned. Because yesterday,
15 it was indicated that there was a unanimous vote
16 in support of the continuance referenda from the
17 RAC Committee.

18 I thought that was just a bit
19 misleading, based on the January 27 RAC minutes.
20 It's Exhibit 15. There were actually three votes
21 on the matter. I think it came out of the
22 workgroup committee that there would be a

1 continuance referendum in five to six years. In
2 the main Raisin Administrative Committee board
3 meeting, it was amended to two years, that there
4 would be a referendum in two years. That
5 actually passed by --

6 JUDGE MCCARTNEY: What was the date --

7 (Simultaneous speaking)

8 MR. SAHATJIAN: That was January 27,
9 2016. That passed 15 to 12, so it was split
10 pretty evenly, but it won. The decision was to
11 move forward with having the referendum. Then,
12 as Mr. Kriebel said yesterday, it was a
13 relatively contentious issue -- and I don't mean
14 to misspeak, so if you need to check the record
15 on that, you can. Actually, there was three
16 votes. The second vote was a similar motion to
17 have a referendum no less than two years, no
18 later than six years.

19 That passed 16 to 10. Actually, I
20 thought there was a third one. Actually, before
21 that one, there was a motion to have a referendum
22 no less than two years, and no later than three

1 years, and that also passed, 16 to 11. There
2 were three votes on this issue.

3 They were all split votes. The vote
4 that came out unanimous April 14, 2016, that was
5 moving it back from the two-year minimum to
6 five-year minimum. In other words, there
7 wouldn't be a referendum at the end of two years,
8 possibly. We're changing that back to the end of
9 five years. That would be the soonest a
10 referendum could take place. That was what was
11 voted unanimously because we already lost the
12 main vote. We obviously didn't want there to be
13 a referendum within two years. We preferred it
14 to be five years, over two years, but
15 nonetheless, we didn't support the continuance
16 referendum.

17 I don't want there to be a
18 misunderstanding that there was unanimous consent
19 from the RAC, from the board, that we all are in
20 favor of the continuance referenda. That's the
21 first thing I wanted to just clarify. The second
22 thing I wanted to clarify -- I've just talked

1 with a few people who've mentioned that there
2 seems to be a majority of the marketing orders
3 that have this continuance referendum built into
4 the marketing order.

5 I just had a chance to look into that
6 a bit last night. Of the 20 commodities that are
7 regulated by a marketing order, ten make no
8 mention of a continuance referenda. That's half.
9 Of the others, seven include a continuance
10 referenda in the order, and the remaining three
11 are split. What I mean by split, for potatoes,
12 for example, there's different marketing orders
13 for different regions. So Oregon or Colorado,
14 they have different marketing orders. The
15 California and Oregon marketing orders actually
16 terminated back in 2014, but those -- there's
17 three that are split. The notion that the
18 majority or most of the marketing orders -- or
19 the commodities regulated by marketing orders
20 have a continuance referenda built into the
21 marketing order is not factual. I don't think
22 that's factually accurate. Again, I just want to

1 express my concern with the language, as it's
2 presented. That's all I have to say.

3 JUDGE MCCARTNEY: All right. Do we
4 have any follow-up questions of this witness
5 regarding this testimony? That does include
6 individuals from the audience. I want to make
7 myself clear on that. Unless, of course, you're
8 going to be a witness and coming to the stand
9 anyway.

10 I'm clarifying the position about
11 asking questions. Anyone can ask questions of
12 the witness. If you're going to be a witness
13 yourself, and you have a point to make versus
14 asking a question, then I ask you to reserve your
15 opinion testimony until you are under oath and
16 take the stand, as it's much more useful in the
17 transcript when you're giving testimony under
18 oath, as opposed to just opining from the podium.
19 No further questions of this witness?

20 MS. SCHMAEDICK: Your Honor. Thank
21 you, Melissa Schmaedick, USDA.

22 BY MS. SCHMAEDICK:

1 Q Thank you, Mr. Sahatjian, for your
2 clarification. In an effort to sum up, am I
3 understanding correctly that -- are you opposed
4 to continuance referenda in general, or are you
5 just opposed to the way it's being proposed in
6 this particular proposal?

7 A I'm opposed to the language, as
8 presented. I'm not proposed to continuance
9 referenda in general.

10 Q Okay. Thank you for that
11 clarification. I'm also wondering if you would
12 be available to answer questions about another
13 proposal, the proposal for different regulations
14 for different markets?

15 JUDGE MCCARTNEY: Before we move on to
16 that, could I ask -- I want to ask a clarifying
17 question. Am I recalling your testimony
18 correctly from yesterday that your issue was the
19 two-thirds and the impact on what you perceive to
20 be the instability of the continuance of the
21 order based on the two-thirds language, as
22 currently proposed?

1 MR. SAHATJIAN: Yes, exactly. My
2 issue is having a situation where one third of
3 the industry can derail the marketing order for
4 the entire industry when it may, in fact, be
5 working well for two thirds of the industry. I
6 don't think that two thirds of the industry
7 should be held hostage to one third of the
8 industry.

9 JUDGE MCCARTNEY: Do you have any
10 recollection as to whether that issue was the
11 source of the divisiveness or contention in the
12 initial vote?

13 MR. SAHATJIAN: I think it was
14 certainly a factor. The balance, I think, as I
15 mentioned yesterday, if it was a discontinuance
16 referendum, where you had two-thirds that were in
17 favor of discontinuing it, I would be fine with
18 that. But having it flipped around doesn't make
19 sense to me.

20 JUDGE MCCARTNEY: Thank you. You may
21 proceed, Counsel.

22 MS. SCHMAEDICK: Thank you.

1 BY MS. SCHMAEDICK:

2 Q Yesterday, I believe one of the
3 proposals that you spoke to was the proposal for
4 different regulations for different markets, is
5 that correct?

6 A Yes, that's correct.

7 Q Would you be willing to revisit some
8 questions on that proposal?

9 A Sure.

10 MS. SCHMAEDICK: Your Honor, I have
11 copies of the Federal Marketing Order for
12 Raisins, and I would like to mark it as Exhibit
13 36 and give a copy to the witness.

14 (Whereupon, the above-described
15 document was marked as Exhibit 36 for reference.)

16 JUDGE MCCARTNEY: This is Exhibit 36?

17 MS. SCHMAEDICK: Yes, that's correct.

18 MR. SAHATJIAN: Thank you.

19 JUDGE MCCARTNEY: Will this be a
20 USDA-sponsored exhibit?

21 MS. SCHMAEDICK: Yes, Your Honor.

22 BY MS. SCHMAEDICK:

1 Q Are you familiar with the Marketing
2 Order for Raisins?

3 A Yes, I am.

4 Q If I understand the proposal for
5 adding authority for different markets for
6 different regulations, as outlined in Exhibit No.
7 1, the Notice of Hearing, that would be Proposal
8 No. 4, which would amend -- I'll read from
9 Exhibit No. 1, "Amend Section 989.59 to add
10 authority to establish different regulations for
11 different markets." Mr. Sahatjian, I marked --
12 the first pink marker will bring you to Section
13 989.59 in the order. Do you see that?

14 A Yes, I do.

15 JUDGE MCCARTNEY: Thank you for that,
16 Counsel, tabbed and indexed.

17 BY MS. SCHMAEDICK:

18 Q If you go to the second pink marker,
19 the second pink marker flags Section 989.702, and
20 it reads, "Minimum grade standards for packed
21 raisins." I'll continue to read the first
22 sentence of that section. It says, "Effective

1 pursuant to 989.59, the minimum grade standards
2 for packed raisins shall be as follows." Mr.
3 Sahatjian, do you see below that statement, there
4 are separate paragraphs? Paragraph (a) is for
5 natural sundried seedless, dipped seedless, and
6 other seedless sulfured raisins. Paragraph (b)
7 is for golden seedless; (c) is for Monukka and
8 other seedless raisins. Do you see that?

9 A Yes, I do.

10 Q Going back to the proposal for
11 different regulations for different markets, do
12 you envision, if this authority were in place,
13 and Section 59 were amended to add that
14 authority, would you then expect to see a similar
15 section, such as 989.703, for example, which
16 might then identify the different destinations
17 and the appropriate market regulations for those
18 destinations? Is that what the intent of your
19 proposal is?

20 A I don't think I want to speculate as
21 to what we would do. I think that may be a
22 possibility, but at this point, I don't have

1 anything set in my head. I don't know if anyone
2 else would have anything clearly set in their
3 head about what they want to do. But it
4 certainly would be something that could be added.
5 Alternatively, just changing these, rather than
6 having a whole new section. Yes, I don't think I
7 want to speculate as to what we would do or would
8 not do.

9 Q Thank you. I understand that. My
10 question is, though, that if, in some future
11 time, you were, for example, to create an
12 ochratoxin threshold or requirement for the EU,
13 would that language be added to this Section 702
14 or something similar?

15 A It may be added to the grades, or it
16 may not be added. I don't want to speculate as
17 to where it's going to be included.

18 Q All right. Thank you. That concludes
19 my questions.

20 MS. CHILUKURI: Your Honor, we'd move
21 to enter that exhibit into evidence.

22 JUDGE MCCARTNEY: Any objections to

1 the admissibility of Exhibit 36? There being
2 none, it's hereby admitted.

3 (Whereupon, Exhibit 36 was received
4 into evidence.)

5 JUDGE MCCARTNEY: Any further
6 questions for this witness? There being none,
7 you're hereby excused.

8 MR. SAHATJIAN: Thank you.

9 JUDGE MCCARTNEY: Thank you for your
10 testimony. Will the next witness please
11 approach? Please state your name for the record,
12 and have you been previously sworn, sir?

13 MR. JUE: No.

14 JUDGE MCCARTNEY: All right. State
15 your name for the record, and then stand and I'll
16 swear you in.

17 MR. JUE: Hello. My name is Jeffrey
18 Jue.

19 JUDGE MCCARTNEY: Please stand, raise
20 your right hand. Do you solemnly swear the
21 testimony that you're about to give will be the
22 truth, the whole truth, and nothing but the

1 truth, so help you God?

2 MR. JUE: I do.

3 JUDGE MCCARTNEY: Have you given your
4 contact information to the court reporter?

5 MR. JUE: Yes, I have.

6 (Simultaneous speaking.)

7 MR. JUE: You should have my
8 testimony, and you should have an Exhibit 38.

9 JUDGE MCCARTNEY: Thirty-eight. Is
10 that the only exhibit that you'll be sponsoring
11 today, Exhibit 38?

12 MR. JUE: Yes.

13 JUDGE MCCARTNEY: Thirty-seven's your
14 statement.

15 PARTICIPANT: Thirty-seven and
16 thirty-eight.

17 JUDGE MCCARTNEY: Thirty-eight is?

18 MR. JUE: It's the Guideline for
19 Fruit, Vegetable, and Specialty Crop Marketing
20 Orders, dated January 25, 1982, published by the
21 U.S. Department of Agriculture.

22 (Whereupon, the above-described

1 documents were marked as Exhibits 37 and 38.)

2 JUDGE MCCARTNEY: You may proceed.

3 MR. JUE: My name is Jeffrey W. Jue.

4 I am a third-generation raisin grower, farming
5 300 acres of raisin grapes, and operating my own
6 dehydrator, in Fowler, which produces about 2,000
7 tons of golden raisins per year. I have an MBA
8 from the Wharton graduate school, and a Master's
9 in systems engineering from the University of
10 Pennsylvania. I also have a BA in economics from
11 Berkeley. I also farm nuts and citrus. I have
12 served on the board of directors for Sun-Maid
13 Growers of California from 1997 to 2003, and from
14 2006 to the present. I currently serve as
15 chairman of the Sun-Maid board. I have served as
16 a member of the Raisin Administrative Committee,
17 RAC, for almost 20 years, and have been an active
18 member of the RAC Rulemaking Workgroup since we
19 began.

20 Today, my comments reflect those of my
21 own, the Sun-Maid board, which is comprised
22 solely of California raisin growers, and a

1 majority of our Sun-Maid Grower members.

2 Sun-Maid Growers of California is an agricultural
3 marketing cooperative established in 1912, which
4 is owned by, and operated on behalf of, our 650
5 family farmers, who farm approximately 40,000
6 acres of raisin grapes within a 75-mile radius of
7 Fresno, California.

8 Our producer members typically
9 represent 25 to 30 percent of the raisins which
10 are subject to the federal marketing order.

11 There are two subjects I wish to address today:
12 first, my opposition to the term limits being
13 proposed by the USDA; and second, support for the
14 proposed continuance referendum authority.

15 Regarding term limits, there are a number of key
16 reasons why these are not appropriate for the
17 raising industry in our federal marketing order.

18 As raisins are farmed primarily in only a 75-mile
19 radius of Fresno, growers, producers, and packers
20 have very common agricultural, weather, economic
21 production, and marketing issues. We have a
22 large committee structure, with 46 members and

1 alternates, which allows for full and open debate
2 from a wide selection of the raising community.

3 As we all farm in the immediate area,
4 attendance at meetings is not difficult. More
5 importantly, the major economic stakeholders in
6 the raisin business have been, and are expected
7 to be, fairly stable in the future.

8 Consequently, term limits would disenfranchise
9 those persons who have substantial interests.

10 Regarding my support for the continuance
11 referenda authority, I believe the authority and
12 responsibility for the RAC is overdue.

13 We have never held a continuation
14 referendum, since our establishment in 1949.

15 This proposal has been discussed and debated in
16 the industry, and is an excellent compromise of
17 many viewpoints. The proposal is consistent with
18 -- and you have this exhibit as Exhibit No. 38.

19 I ask you to turn to Page 9. It's highlighted in
20 pink. The proposal is consistent with the
21 guidelines for fruit, vegetable, and specialty
22 crop marketing orders issued by the U.S.

1 Department of Agriculture on January 25, 1982,
2 which states that, "The secretary believes these
3 referenda are in the public interest.

4 "They provide the industry with the
5 means to regularly re-assess the value of
6 marketing orders and keep the Department informed
7 of the wishes of the majority of the industry.

8 Therefore, the secretary's requiring that
9 periodic referenda be conducted for each order.

10 USDA will work with each committee in development
11 of a time frame appropriate for each order."

12 Presently, there is no authority or process for
13 holding a referendum in the raisin marketing
14 order, and this will solve that deficiency.

15 There will be minimal costs when these
16 are held in the future. There are established
17 procedures for conducting these by the USDA, as
18 these are regularly held in other marketing
19 orders. The addition of a continuous referendum
20 every six years will assure that the marketing
21 order is responsive to industry needs and
22 changing circumstances. This process is the best

1 tool for assuring that the marketing order
2 remains responsive to the needs of the industry.
3 While it will not directly improve producer
4 returns, it will indirectly assure that the
5 industry believes the marketing order's operating
6 in their best interest, as the marketing order is
7 funded by the assessments of the industry.

8 Many growers are small businesses, and
9 this will provide a greater democratic role for
10 their participation. The proposal should be cost
11 neutral, as there is minimal cost to holding a
12 referendum. As explained in the proposed
13 language, the first referendum would be held
14 between the fifth year and the sixth year after
15 adoption, and every six years thereafter.

16 This sequence will provide an
17 excellent opportunity for the industry to review
18 the activities of the committee, while providing
19 adequate time in between the referendum. Thank
20 you for my comments, and are there any questions?

21 JUDGE MCCARTNEY: Are there any
22 questions of this witness?

1 MS. SCHMAEDICK: Melissa Schmaedick,
2 USDA.

3 BY MS. SCHMAEDICK:

4 Q Good morning, Mr. Jue.

5 A Good morning.

6 Q Thank you for your testimony. Based
7 on your statement, specifically that last
8 paragraph that you read on the second page, where
9 you state that the first draft referendum would
10 be held between the fifth year and the sixth year
11 after adoption, I want to just clarify that
12 you're referring to the proposed modified
13 language that was submitted yesterday by Ms.
14 Debbie Powell?

15 A Yes, between the fifth year and the
16 sixth year is the proposed modified language.

17 Q Okay, thank you. In your opinion, is
18 five years an adequate time for the industry to
19 assess whether or not these proposed changes, if
20 any of them take effect, are being beneficial?

21 A In my testimony, I mentioned that the
22 marketing order was established in 1949, and we

1 haven't had a continuance referendum ever. I
2 think that the five to six-year modified proposal
3 is based on a lot of industry debate, and its
4 consensus position that received unanimous
5 support at the RAC. Being a representative of
6 the RAC, I support it.

7 Q Okay, thank you. You believe five
8 years -- between five and six is better than the
9 two that was originally proposed?

10 A Again, as referenced in my testimony,
11 it was debated very heavily, and it was a
12 compromised position between all of us in the
13 industry. Based on that compromise, the RAC
14 unanimously supported it. As a member of the
15 RAC, I support that.

16 Q Thank you. Mr. Jue, were you part of
17 the workgroup that helped develop the RAC
18 proposals?

19 A Yes, I was.

20 Q Were you present at all of the
21 meetings that discussed the various proposals?

22 A I think I was present all but one

1 meeting, when I was sick.

2 Q Okay, thank you. Would you mind if I
3 asked you some questions about some of the other
4 proposals?

5 A Yes, please.

6 Q Is that yes, you would mind?

7 JUDGE MCCARTNEY: Interpret it as you
8 will, Counsel.

9 MR. JUE: Please proceed.

10 BY MS. SCHMAEDICK:

11 Q Thank you. I want to ask specifically
12 about the proposal for different regulations for
13 different markets. What I'm trying to understand
14 is both the intent of the proposals process, in
15 terms of -- well, let me back up -- the
16 importance of the proposal and why it would be an
17 important authority for the committee to have,
18 and then if the committee did have it, what is
19 the process envisioned for potentially including
20 new regulation under the marketing order. Are
21 you familiar enough with these questions to
22 answer?

1 A I can speak as a grower and a
2 participant of the workgroup, and I'd like to
3 answer as such. I am more of a grower than I am
4 a packer, but I will answer it as a member of the
5 workgroup, and as a grower.

6 Q Okay, thank you.

7 A First off, grades and standards have
8 different meaning to different people. As a
9 grower, grades and standards are what does it
10 take for me to get my raisins accepted by the
11 packer of my choice? For example, it's moisture
12 substandard, certainly quality things, as mode,
13 micro, and sand. But from an outgoing level, the
14 USDA has outgoing quality standards that many
15 packers would have to abide by, but I believe
16 that the real issue is what do the customers
17 want? The customers set the specifications in
18 their standards, and these standards may be very
19 different than the outgoing QA that the packers
20 are faced with.

21 The other point about different areas
22 or different regions or different markets is that

1 I think different customers have different
2 expectations. To be able to meet those
3 expectations, it would be beneficial for the
4 industry to meet it as a whole for the different
5 expectations. My limited understanding, as a
6 grower, is a good example may be Japan, or at
7 least my understanding of the Japanese market.

8 They are very, very, very particular
9 about some of the issues that they see with
10 raisins, not from a grower perspective, but from
11 a packer perspective, particularly things like
12 stems and cap stems. They have a zero tolerance.
13 That is not necessarily the same standard in
14 other places. So differing standards from a
15 particular market to another market would make
16 sense to me, as a grower.

17 Q Thank you. I believe that Exhibit 36
18 is still up in front of you, is that correct?

19 A Yes, I have that.

20 Q Thank you. I believe you stated that
21 you've been part of the RAC for 20 years, so I'm

22 --

1 A Time flies when you're having fun.

2 Q My first question is does this

3 document look familiar to you?

4 A I have read it. It never looks

5 familiar to you, but I have read it.

6 Q Okay, thank you.

7 A I would probably need to read it after

8 your question.

9 Q Well, my first question goes to the

10 first pink tab, which flags Section 989.59. Do

11 you see that?

12 A Yes, I do.

13 Q Proposal for different regs for

14 different markets would amend this Section 59, is

15 that correct?

16 A I'm not sure exactly how it would be

17 implemented, but it would have to be implemented

18 some way, but I would not know if it would be

19 implemented in this section, but it would make

20 sense to be implemented here.

21 Q I'll read from Exhibit No. 1.

22 Proposal No. 4 states, "Amend 989.59 to add

1 authority to establish different regulations for
2 different markets." Based on that, do you agree
3 with my statements?

4 A I do agree with you, yes.

5 Q Thank you. My question is you just
6 gave us an example about the Japanese market --

7 A Yes.

8 Q -- and an intolerance or a zero
9 tolerance for stems. Is that correct?

10 A That was one example, yes.

11 Q If this authority were implemented,
12 and if the committee could then recommend that a
13 regulation were put into effect that said zero
14 tolerance for stems to Japan, would you expect
15 to find that regulation in a section similar to
16 the second pink tab in Exhibit 36, which is
17 989.702?

18 A I would not know exactly how it would
19 be implemented. I believe that first, you need
20 to have the authority under that first section,
21 and it could be implemented again under 989.702,
22 could be a good possibility, but I would leave

1 that to the committee.

2 Q Right. Would you expect that the
3 committee would make a recommendation and that
4 there would be a rulemaking process which would
5 give a proposed rule and comment, and then would
6 be finalized and incorporated into the marketing
7 order?

8 A I'm not exactly sure of the process.
9 I would defer to however we need to do that. I
10 believe, though, that we do need the authority,
11 and I support Proposal 4. I'm probably a little
12 bit less sure how you implement it, but I do
13 support the authority.

14 Q Okay, thank you. No further
15 questions.

16 JUDGE MCCARTNEY: Are there any
17 further questions for this witness?

18 MR. MCFETRIDGE: Marc McFetridge,
19 USDA.

20 BY MR. MCFETRIDGE:

21 Q In your statement, you say that you're
22 a third-generation raisin grower, farming 300

1 acres, is that correct?

2 A Of raisins. I farm other acres of
3 other commodities.

4 Q Quick question on -- the Small
5 Business Administration offers a definition of a
6 small grower being one such that would have
7 annual receipts for raisins of less than
8 \$750,000. Would you classify yourself as a small
9 or large grower?

10 A Based on past experiences with
11 Sun-Maid, I'm a large grower. I hope I continue
12 to be a large grower, but that's pretty dependent
13 on Sun-Maid returns.

14 Q Thank you very much. That concludes
15 my questions.

16 JUDGE MCCARTNEY: There you go. Any
17 further questions for this witness?

18 MS. CHILUKURI: Yes, Your Honor, Rupa
19 Chilukuri, USDA.

20 BY MS. CHILUKURI:

21 Q Mr. Jue, you mentioned, during your
22 testimony, about the Japanese market, and that

1 your understanding is that, for instance, they
2 may have a preference or a zero tolerance for cap
3 stems. Do you have any other examples that you
4 could give me of, perhaps, other markets and
5 their preferences?

6 A Again, I'm a grower, so I'm one step
7 removed from being a packer. I believe that
8 question would be very appropriate for some of
9 our packers, but I do understand that in other
10 countries, for example, or unions, like the
11 European Union, there are different standards for
12 other types of dry grapes.

13 Again, being a grower, I'm more used
14 to the grower standards than I am the packer
15 standards, but I do understand that different
16 markets have different expectations. I would
17 think that the industry would need to work
18 together to define what are those standards, and
19 to figure out how to implement that. Again, I'm
20 probably less knowledgeable about the different
21 markets, being a grower.

22 Q I've asked this of other witnesses, as

1 well. I've gone through the list of proposals,
2 just to hear people's positions on that, so I
3 will do that now. As it relates to Proposal 1 to
4 authorize production research, are you in support
5 of that proposal?

6 A I support that, and Sun-Maid supports
7 that, and I think the RAC supported that
8 unanimously.

9 Q As it relates to Proposal 2, to
10 separate the nomination process for independent
11 grower members and independent grower alternate
12 member seats?

13 A I support that.

14 Q Okay. As it relates to Proposal 3, to
15 add authority to regulate quality, what is your
16 position on that?

17 A I support that.

18 Q You've discussed Proposal 4 and 5.
19 Proposal 6, to remove volume regulation and
20 reserve pool authority, what is your position on
21 that?

22 A I support that, and Sun-Maid supports

1 that.

2 Q Proposal 7, you've discussed that as
3 it relates to term limits, and you have expressed
4 that you are in opposition to that, is that
5 correct?

6 A That's correct. I do not support term
7 limits because I believe that we have ample
8 opportunity to participate on the RAC, and
9 debating the issues that impact our livelihood is
10 important. I also, furthermore, have a belief
11 that in the RAC, we have a rhythm and a process
12 that if you are not on the RAC because of term
13 limit restrictions, you would miss that
14 continuity. I think that it's important to have
15 that continuity so, therefore, I support not
16 having term limits.

17 Q Is it to term limits, generally, or do
18 you have -- for instance, looking at the proposed
19 language, would you have an alternative proposal
20 in mind?

21 A I do not support term limits at all.
22 I believe that we, as growers, need to

1 participate, and I believe that there are
2 opportunities to participate. I do not see the
3 benefits of having term limits and requiring
4 people to step aside from the committee.

5 I believe that's entirely important to
6 be on the committee. There's lots of opportunity
7 to participate. I think that it's important to
8 all of our livelihoods to be able to be
9 knowledgeable of what's going on in the industry.
10 The marketing order is set up with a fairly large
11 committee of 46 people, so there's lots of
12 opportunity. I support not having any type of
13 term limits.

14 Q Thank you for your testimony, sir.

15 JUDGE MCCARTNEY: Any further
16 questions of this witness? Any objections to the
17 admissibility of Exhibits 37 and 38? There being
18 none, exhibits are hereby admitted, and you may
19 be excused.

20 (Whereupon, Exhibits 37 and 38 were
21 received into evidence.)

22 MR. JUE: Thank you.

1 JUDGE MCCARTNEY: I have had a
2 thoughtful reminder that the courtesy coffee is
3 only available until 10:00. We're not going to
4 recess until 10:30, but if you want to discreetly
5 obtain a cup of coffee and bring it back in, you
6 are free to do so. Will the next witness please
7 take the stand? Please state your name for the
8 record.

9 MR. KISTER: My name is Steve Kister.

10 JUDGE MCCARTNEY: Have you been sworn,
11 sir?

12 MR. KISTER: No.

13 JUDGE MCCARTNEY: Please stand, raise
14 your right hand. Do you solemnly swear the
15 testimony that you're about to give will be the
16 truth, the whole truth, and nothing but the
17 truth, so help you God?

18 MR. KISTER: I do.

19 JUDGE MCCARTNEY: Have you given your
20 contact information to the court reporter?

21 MR. KISTER: Yes, I have.

22 JUDGE MCCARTNEY: Do you have exhibits

1 that you wish to sponsor?

2 MR. KISTER: Yes. No exhibits, just
3 my statement.

4 JUDGE MCCARTNEY: Just your statement?

5 MR. KISTER: Yes.

6 JUDGE MCCARTNEY: Do you have a hard
7 copy of that? That would be Exhibit 39.

8 (Whereupon, the above-described
9 document was marked as Exhibit 39 for reference.)

10 JUDGE MCCARTNEY: You may proceed.

11 MR. KISTER: My name is Steve Kister.
12 I farm 300 acres of raisins, of which 200 acres
13 is overhead trellis, utilizing a new style of
14 dried-on-the-vine drying and harvesting method.
15 I also farm 108 acres of almonds. I have served
16 continuously on the RAC committee since first
17 being selected by the Raisin Bargaining
18 Association in 1994, through 2004, and then being
19 selected by Sun-Maid Growers of California from
20 2004 to the present. I have served as a director
21 and past president of the Raisin Bargaining
22 Association. In 2004, I was elected to the board

1 of directors of Sun-Maid Growers of California.

2 I want to echo the comments of Jeff
3 Jue in support of the proposal to add authority
4 for continuance referenda every six years. As
5 Mr. Jue stated, this proposal is consistent with
6 the long-standing guidelines of the USDA, and
7 there's no present mechanism in the marketing
8 order for such continuance referenda. As
9 consequence, there has not been a continuation
10 referendum in the raisin marketing order since
11 its inception in 1949.

12 I support the original recommendation
13 of the RAC Rulemaking Workgroup, which proposes,
14 "No less than five years, and no later than six
15 years of the effective date of this part, the
16 secretary shall conduct a referendum to ascertain
17 whether continuance of this part is favored by
18 producers. Subsequent referenda to ascertain
19 continuance shall be conducted every six years
20 thereafter." We considered other time frames,
21 but this proposal provides the industry with
22 adequate time to implement programs, witness the

1 success or failure, and make adjustments in
2 between each referendum. Giving producers the
3 opportunity to periodically evaluate their
4 support of the marketing order is the best
5 oversight to assure that activities of the order
6 are responsive to the needs of producers. There
7 are minimal costs in holding referendums, and
8 there are well-established procedures within the
9 USDA for conducting these. Thank you for your
10 consideration. Are there any questions?

11 JUDGE MCCARTNEY: Are there any
12 questions for this witness?

13 MS. SCHMAEDICK: Melissa Schmaedick,
14 USDA.

15 BY MS. SCHMAEDICK:

16 Q Good morning, and thank you for your
17 testimony, Mr. Kister.

18 A Good morning.

19 Q I'm actually going to go in a slightly
20 different direction, and I'm going to ask you if
21 you're familiar with the proposal for production
22 research?

1 A Somewhat. I didn't attend all the
2 Rulemaking Committee meetings.

3 Q Correct. Were you part of the working
4 group?

5 A No, I was not part of the workgroup.

6 Q That's what I had understood. But my
7 question is -- I see that you're a grower --

8 A Right.

9 Q -- and you have 300 acres of raisins.
10 According to your statement, you're using the
11 dried-on-the-vine drying and harvesting method.
12 As you state, that's a fairly new style, is that
13 correct?

14 A It's been around for more than a
15 decade, but it still is a small percentage of the
16 industry.

17 Q Yesterday, we heard some testimony
18 from different folks who were in support of the
19 proposal for production research. I believe
20 there were references to developing new methods,
21 such as this drying-on-the-vine trellising
22 approach. I wanted to ask you about your

1 personal experience with new technology that
2 comes out of research, and whether or not that
3 has positively impacted you, as a grower, in your
4 growing operation?

5 A Yes, I think not only has it benefited
6 me, but it's benefited the whole industry.

7 Because I think you'd have to look at raisin
8 production on an evolving basis. Even the
9 dried-on-the-vine grapes, like Fiestas and Selma
10 Pete, that we use have been discovered through
11 collective research, through ag research in the
12 past. The rootstocks that we're using, all done
13 collectively, through the University of
14 California, for example, in production research.
15 If you really look at the raisin industry, it's
16 changing every decade. It's not going to stop
17 changing. That's why we need continuing research
18 into it.

19 Q So in your opinion, not having the
20 ability to conduct that research, would that have
21 a negative impact on the industry?

22 A Excuse me?

1 Q If you were not able to conduct
2 research, would that be a negative thing for the
3 industry?

4 A Exactly. I think it'd be far more
5 difficult for the California raisin industry to
6 move forward.

7 Q Thank you. I have no further
8 questions.

9 JUDGE MCCARTNEY: Any further
10 questions?

11 MR. MCFETRIDGE: Marc McFetridge,
12 USDA.

13 BY MR. MCFETRIDGE:

14 Q Quick question. In your testimony,
15 you state that you farm 300 acres of raisins, is
16 that correct?

17 A That's correct.

18 Q Based on the Small Business
19 Administration's definition of a small grower
20 having annual receipts of raisins less than
21 \$750,000 per year, would you classify yourself as
22 a small or large grower?

1 A I probably -- I'm just a little over
2 that threshold.

3 Q So you'd say most likely a large
4 grower?

5 A Last year, raisin sales, on my own, I
6 think were about \$1 million.

7 Q Thank you. A quick question. In your
8 statement, you say that there are minimal costs
9 for holding a continuance referenda. Is that
10 correct?

11 A They're minimal.

12 Q Would you say that the added benefit
13 for having the continuance referendum would
14 outweigh these minimal costs?

15 A Oh, yes, certainly, especially within
16 our industry. Because if you look at what our
17 industry's been through over the last decade, the
18 challenges to the order and the problems we've
19 had with compliance, it's probably more important
20 than ever to get all the stakeholders to really
21 buy into what we're doing at the RAC.

22 Q Thank you very much. No further

1 questions.

2 JUDGE MCCARTNEY: Any questions,
3 Counsel?

4 PARTICIPANT: No.

5 JUDGE MCCARTNEY: Are there any
6 further questions for this witness? Are there
7 any objections to the admissibility of Exhibit
8 39? There being none, the exhibit's hereby
9 admitted, and you are excused. Thank you for
10 your testimony.

11 (Whereupon, Exhibit 39 was received
12 into evidence.)

13 MR. KISTER: Thank you.

14 JUDGE MCCARTNEY: Will the next
15 witness please take the stand?

16 MS. ASMAR: Morning.

17 JUDGE MCCARTNEY: Your name, please?

18 MS. ASMAR: My name is Jane Bedrosian
19 Asmar.

20 JUDGE MCCARTNEY: Have you been sworn?

21 MS. ASMAR: No, I have not.

22 JUDGE MCCARTNEY: Please stand, raise

1 your right hand. Do you solemnly swear that the
2 testimony that you're about to give will be the
3 truth, the whole truth, and nothing but the
4 truth, so help you God?

5 MS. ASMAR: I do.

6 JUDGE MCCARTNEY: Have you provided
7 your contact information to the court reporter?

8 MS. ASMAR: I have.

9 JUDGE MCCARTNEY: Do you have any
10 exhibits that you wish to sponsor?

11 MS. ASMAR: No, just my testimony,
12 which I believe everybody has.

13 JUDGE MCCARTNEY: That will be marked
14 Exhibit 40, so that is an exhibit.

15 (Whereupon, the above-described
16 document was marked as Exhibit 40 for reference.)

17 MS. ASMAR: That is? Okay, then yes.

18 JUDGE MCCARTNEY: Yes, you do.

19 MS. ASMAR: I'm new to all this.

20 JUDGE MCCARTNEY: That's quite all
21 right. I'm here to help.

22 MS. ASMAR: Thank you.

1 JUDGE MCCARTNEY: You may proceed.

2 MS. ASMAR: Okay. Good morning. My
3 name is Jane Bedrosian Asmar, and I appreciate
4 the opportunity to testify as a member of the
5 Raisin Administrative Committee. My background
6 is I'm a graduate of the University of Southern
7 California, and I currently serve as senior vice
8 president of sales and marketing at National
9 Raisin Company, a raisin processor located in
10 Fowler, California. Although I am employed in
11 the processing industry, I am testifying here
12 today as a proud representative of our nearly
13 3,000 growers of California raisins. My family
14 has been growing raisins for over 80 years, with
15 each generation working in the family business.
16 I have been fortunate to grow up learning each
17 aspect of raising farming, from planting, to
18 marketing, to delivery. Our family's industry
19 experience grew broader when my dad and his
20 brothers began National Raisin Company almost 50
21 years ago.

22 Their aim in starting National Raisin

1 Company was to provide growers with an efficient
2 and profitable way to get their raisins to
3 market. Because I've spent my entire life in the
4 raisin industry, I am familiar with the
5 opportunities and challenges faced by our
6 growers, and this experience helps strengthen my
7 testimony today.

8 In this regard, I am here to advocate
9 for the proposed amendment to Section 989.91,
10 which requires a periodic vote to ascertain
11 whether continuance or termination of the Federal
12 Marketing Order 989 is favored by our growers.

13 As set forth in the Section 989.91(c), the
14 proposed amendment requires a vote no less than
15 five years, and no later than six years after the
16 effective date of the amendment to ascertain
17 whether continuance of a marketing order is
18 favored by the producers. Simply stated, the
19 amendment provides each of our growers with the
20 opportunity to vote on the continuance or
21 termination of the Marketing Order 989. Without
22 this amendment, our growers have no ability for

1 periodic continuance referenda.

2 The fact there is no language
3 providing for this process has left our growers
4 with absolutely no voice. The last sentence
5 there, I thought there was a continuance held in
6 1989, but I guess there was not. During my time
7 in the industry, I have seen the markets change
8 quickly and significantly. Accordingly, our
9 growers need maximum flexibility to adapt to
10 market conditions.

11 If the order still makes business
12 sense, then growers need the ability to vote for
13 a continuance. Conversely, if the order is
14 hurting our growers in the market, then growers
15 must be able to vote for termination, as allowed
16 by the timing procedures in the proposed
17 amendment. In other words, the growers who are
18 helped or harmed by the order must have the
19 direct ability to vote on the issue of whether it
20 continues or terminates. Please know that my
21 goal here today is not to argue against or for
22 continuance or termination, but rather, I want to

1 stress to the USDA that our growers must have the
2 ability to decide for themselves. This amendment
3 does this by allowing growers to vote and,
4 therefore, provides them the ability to have more
5 control of their business and ensures that each
6 grower can participate in the democratic process
7 of a referendum.

8 Please know that I also support the
9 amendment because it creates no significant cost
10 to our growers or the USDA. Although there will
11 be certain administrative costs associated with
12 outreach, education, and other related voting
13 activities, these costs are minimal, compared to
14 the voting benefits received.

15 Further, the time frame set forth in
16 the amendment, specifically, every six years
17 after the initial referendum, ensures that the
18 costs involved in the amendment will not be
19 incurred annually. I recognize that costs are
20 always a concern, but this amendment does not
21 result in a significant burden on either our
22 growers, or the USDA. I also think that it is

1 important to note that the proposed amendment
2 follows well-established USDA policy. As you
3 know, USDA policy confirms there is a need to
4 periodically review whether any order is favored
5 by the applicable growers. Currently, there is
6 no method in Marketing Order 989 to meet this
7 policy.

8 However, the proposed amendment can
9 help bring this order in line with the USDA
10 policies by ensuring a vote to determine whether
11 it meets our growers' current needs. In summary,
12 the proposed amendment to Section 989.91 provides
13 our growers with a long overdue voting concern
14 for the order. The ability to vote is paramount
15 and provides our growers with the best
16 opportunity to achieve in a highly competitive
17 raisin market.

18 The amendment results in no
19 significant cost, and if approved, would ensure
20 compliance with the USDA policy of a periodic
21 review of the effectiveness of Marketing Order
22 989. Accordingly, I respectfully ask that

1 Section 989.91 be amended, as proposed. Thank
2 you, and are there any questions?

3 JUDGE MCCARTNEY: Counsel, any
4 questions for this witness?

5 MS. SCHMAEDICK: Melissa Schmaedick,
6 USDA.

7 BY MS. SCHMAEDICK:

8 Q Thank you, Ms. Asmar, for your
9 testimony today. I have a couple of questions.
10 I thank you for your statements on these two
11 proposals, but I'd like to ask you about Proposal
12 No. 1, which is production research. I realize
13 that you're speaking as a handler, but it also
14 indicates that you are a grower, as well, is that
15 correct?

16 A Yes, my family.

17 Q Given the family history that you've
18 just spoken to, I'm wondering if you could talk
19 about the importance of production research and
20 how that has, in your opinion, impacted the
21 industry and, yes, overall production?

22 A I think it's important that we do

1 research for our growers, and that we find more
2 efficient ways to grow our raisin grapes because
3 we are in a global market, and we are competing
4 worldwide. Our California raisins, I feel, are
5 premium. We're under a lot of regulations and
6 costs, here in California. So to compete
7 globally is challenging. With our growers, we
8 want to give them the maximum return. For that
9 to occur, they need to have the ability to grow
10 efficiently and to produce efficiently, so they
11 can get maximum return.

12 With that, we have to look at other
13 means and other varieties to produce more dry,
14 per ton, per acre, so that they get the maximum
15 return, with less labor costs or production
16 inputs, whatever it is. That only comes through
17 research and collaboration with the industry.

18 Q Thank you. Also, given your role as
19 a senior vice president of sales and marketing
20 with National Raisin Company, I'm wondering if
21 you could speak to your experience in working
22 with foreign markets, foreign customers, and

1 address the issue of quality, as it is different
2 from grade.

3 In your opinion, in this changing
4 market that you've just described, are there
5 issues that are coming up? For example, we've
6 heard about ochratoxin. Several witnesses have
7 spoken to ochratoxin as an issue that may become
8 important, in terms of trade with the EU. Have
9 you had any direct experience with that situation
10 or other situations where having the authority to
11 regulate quality would be important?

12 A In terms of grades and standards, of
13 course, every country has their MRLs. They have
14 different -- certain countries have certain
15 standards that they look at, that they want. For
16 instance, as we spoke about Japan, they're really
17 big on caps and loose vine stems. Everything has
18 to be perfect.

19 In Europe, they're very much concerned
20 with what inputs the farmers use, or what comes
21 naturally occurring from our soils that could
22 cause what they find they may deem that may not

1 be acceptable. It's challenging because it's
2 changing.

3 Regulation is getting -- we're seeing
4 more of it, especially with FISMA coming on board
5 and global food safety initiatives. As an
6 industry, we have to be able to react to those
7 and be able to move with that and change with
8 that, so that we don't inhibit our sales to those
9 countries.

10 Q Thank you. Do you believe that the
11 ability to regulate quality would allow you to
12 address issues that may come up underneath the --
13 you stated FSMA. I believe you're referring to
14 the Food Safety Modernization Act.

15 A Modernization Act, yes.

16 Q Thank you. In that context, would
17 authority to regulate quality, then, capture
18 issues that may potentially come up in that
19 context?

20 A Yes.

21 Q Thank you. You also made mention of
22 MRLs. Just for the clarity of the record, could

1 you explain what an MRL is?

2 A It is minimum residue -- is it maximum
3 residue?

4 (Simultaneous speaking.)

5 JUDGE MCCARTNEY: I think consensus is
6 maximum residue level.

7 MS. ASMAR: Yes, maximum --

8 JUDGE MCCARTNEY: Is that a lifeline
9 approach?

10 MS. ASMAR: Thank you, my lifeline
11 here. There are so many -- thank you for my
12 lifeline. Now, can we do the 50/50? Yes, there
13 are -- countries do have that, and we're seeing
14 that, I think -- as an industry, we're seeing
15 more of that being brought forth, so we have to
16 be very sensitive to that, as an industry.

17 BY MS. SCHMAEDICK:

18 Q Thank you. That leads me to my next
19 question about the proposal for different
20 regulations for different markets. Could you
21 have -- in the event that authority to regulate
22 quality were implemented, and the authority to

1 create different regulations for different
2 markets were implemented, would one potential
3 example be a regulation to a specific MRL going
4 into a specific country?

5 I believe you spoke to the countries'
6 incoming requirements. Would these two
7 authorities, in tandem, quality and different
8 regs, allow the U.S. or the California raisin
9 industry to adopt a program that says everything
10 that is exiting California must meet these
11 standards?

12 A That country's needs.

13 Q Right.

14 A Mm-hm.

15 Q Would that be important?

16 A I can only speak for myself, not for
17 -- I could see something like that, but again,
18 that would have to defer to the workgroup or how
19 we would put that in a broader context. I think
20 yes, we have to address it, but I don't know how
21 that would look in the marketing order.

22 Q Okay, thank you. But your

1 understanding is that there would be a process to
2 explore any type of regulation that may be
3 needed?

4 A Yes.

5 Q And that there would be a process of
6 putting those regulations in the context of the
7 marketing order?

8 A Yes. I agree there should be a
9 process for us to explore that, yes.

10 Q Okay, thank you. No further
11 questions.

12 A Thank you.

13 JUDGE MCCARTNEY: Anything further for
14 this witness?

15 MR. MCFETRIDGE: Mark McFetridge,
16 USDA.

17 BY MR. MCFETRIDGE:

18 Q You stated in your testimony that
19 you're senior vice president of sales and
20 marketing for National Raisin Company?

21 A That's correct.

22 Q Would you feel comfortable discussing

1 if you feel that National Raisin Company would be
2 classified as a small or large handler, based on
3 the Small Business Administration definition of
4 having annual raisin sales of greater than or
5 less than \$7.5 million annually?

6 A We'd be classified as a large packer
7 or handler.

8 Q Thank you. Would you feel comfortable
9 doing the same definition for your family as
10 growers of having annual receipts of greater than
11 or less than \$750,000 per year?

12 A We're large.

13 Q All right, thank you.

14 A Thank you.

15 JUDGE MCCARTNEY: Yes, do you have
16 questions for this witness?

17 MS. STOBBE: I do. Maria Stobbe with
18 USDA.

19 BY MS. STOBBE:

20 Q Ms. Asmar, you mentioned that your
21 family is also a raisin grower.

22 A Mm-hm.

1 Q Would you classify their business as
2 being associated with one of the cooperatives or
3 as an independent?

4 A As an independent.

5 Q As an independent, do you support the
6 continuance referendum inclusion?

7 A Yes.

8 Q Yes?

9 A Yes.

10 Q We've received testimony from other
11 independents voicing a concern with the voting
12 requirements for that continuance referendum. Do
13 you have that same concern?

14 A The voting requirements, as I
15 understand it, is two-thirds majority, correct,
16 for it to pass? We are in support of that.

17 Q Okay, thank you.

18 A Mm-hm.

19 JUDGE MCCARTNEY: Any further
20 questions?

21 MS. SCHMAEDICK: Melissa Schmaedick,
22 USDA.

1 BY MS. SCHMAEDICK:

2 Q Ms. Asmar, are you familiar with the
3 proposal, I believe, in Exhibit 1, it is Proposal
4 2, which would authorize separate nominations for
5 independent grower members and independent grower
6 alternate members? Are you familiar with that?

7 A I will be candid. I have read it, but
8 I am -- I can answer the best that I can with it.

9 Q Okay, thank you. In your opinion,
10 would it be helpful to have all of the
11 independent grower member seats, as well as all
12 of the independent grower alternate seats,
13 filled?

14 A It would be helpful, yes, but
15 sometimes it's not. Sometimes there are
16 particular independent growers that want to be a
17 member, and not an alternate, but there is
18 opportunity for everybody to have a voice on the
19 RAC board.

20 Q You just stated that sometimes there
21 are individuals that prefer to have either a
22 member versus an alternate, so --

1 A They're few, but I think as a whole,
2 everybody wants to be on there, has the ability
3 to be on there.

4 Q Yesterday, we had some witnesses
5 testify to this proposal that would allow for,
6 essentially, two different nominations, one for a
7 grower seat, and one for an alternate seat. Are
8 you familiar with that?

9 A I'll be honest; no.

10 Q If there were two different
11 nominations, one for grower and one for
12 alternate, in your opinion, would that allow for
13 more flexibility for individuals to pick how they
14 might want to serve?

15 A Yes.

16 Q Thank you. As an independent grower,
17 do you support this proposal?

18 A I do.

19 Q Thank you. No further questions.

20 JUDGE MCCARTNEY: Anything further for
21 this witness? Any further questions for this
22 witness from the audience? All right, any

1 objections to the admissibility of Exhibit 40?
2 There being none, Exhibit 40 is hereby admitted.
3 You're excused.

4 (Whereupon, Exhibit 40 was received
5 into evidence.)

6 MS. ASMAR: Thank you.

7 JUDGE MCCARTNEY: Thank you. Will the
8 next witness please take the stand? Good
9 morning, sir.

10 MR. GOTO: Good morning.

11 JUDGE MCCARTNEY: Please state your
12 name for the record.

13 MR. GOTO: My name is Glen Goto, CEO
14 of the Raisin Bargaining Association.

15 JUDGE MCCARTNEY: Have you been
16 previously sworn?

17 MR. GOTO: Yes, I have, Your Honor.

18 JUDGE MCCARTNEY: Great. Have you
19 provided your contact information to the court
20 reporter?

21 MR. GOTO: Yes, I believe I have.

22 JUDGE MCCARTNEY: All right. Do you

1 have an exhibit that you wish to sponsor this
2 morning?

3 MR. GOTO: Yes, it's being handed out
4 right now.

5 JUDGE MCCARTNEY: That would be
6 Exhibit 41. You may proceed, sir.

7 (Whereupon, the above-described
8 document was marked as Exhibit 41 for reference.)

9 MR. GOTO: Thank you. My name is Glen
10 Goto, and I am the chief executive officer of the
11 Raisin Bargaining Association. The RBA is a
12 bargaining cooperative established 49 years ago,
13 in 1967. The association represents
14 approximately 1,000 vineyard farmers in the
15 California raisin industry. The Raisin
16 Bargaining Association negotiates for the field
17 price of natural seedless and Zante Currant
18 raisins annually on behalf of our members. We
19 also represent the membership on industry-related
20 boards and committees, such as the Raisin
21 Administrative Committee and the California
22 Raisin Marketing Board.

1 My tenure as the CEO of the Raisin
2 Bargaining Association began in February 2002,
3 and have represented the association on Raisin
4 Administrative Committee and California Raisin
5 Marketing Boards ever since then. My testimony
6 is related to Proposal No. 5, continuation
7 referenda.

8 The proposal, as it has been written
9 in the Federal Register, as Section 989.91,
10 states, "Suspension or termination, Paragraph
11 (c), no less than two crop years and no later
12 than six crop years after the effective date of
13 this amendment, the secretary shall conduct a
14 referendum to ascertain whether the continuance
15 of this part is favored by producers. Subsequent
16 referenda to ascertain continuance shall be
17 conducted every six crop years thereafter. The
18 secretary may terminate the provisions of this
19 part at the end of any crop year in which the
20 secretary has found a continuance of this part is
21 not favored by a two-thirds majority of voting
22 producers or a two-thirds majority of volume

1 represented thereby who, during a representative
2 period determined by the Secretary, have been
3 engaged in the production for market of grapes
4 used in the production of raisins in the State of
5 California.

6 "Such termination shall be announced
7 on or before the end of the crop year." The
8 proposal, as stated in the Federal Register, was
9 not derived from a unanimous vote of the Raisin
10 Administrative Committee. The exhibit
11 referencing the minutes of the concurrent
12 Administrative Issues Subcommittee and Raisin
13 Administrative Committee held on January 27, 2016
14 point out the vast differences of opinion there
15 were in regards to the idea of continuation
16 referenda.

17 The result of the January 27, 2016
18 meeting was a contentious and divided committee,
19 voting 16 to 10 in favor of the language that was
20 recommended to the USDA and posted in the Federal
21 Register. The Raisin Administrative Committee
22 does make efforts to reach consensus on important

1 industry issues as is possible. In this
2 particular instance, the committee did reconsider
3 the January 27, 2016 split vote on Proposed
4 Amendment No. 5, Continuation Referendum, at a
5 meeting on April 14, 2016.

6 On a motion made by Mr. John Marthadal
7 (phonetic) and seconded by myself, the committee
8 did vote unanimously to modify the language of
9 the proposal to reflect the original
10 recommendation of the Rulemaking Workgroup. "No
11 less than five years and no later than six years
12 of the effective date of this part, the secretary
13 shall conduct a referendum to ascertain whether
14 continuance of this part is favored by producers.

15 Subsequent referenda to ascertain
16 continuance shall be conducted every six years
17 thereafter." My testimony supports changing the
18 language of this proposal written into the
19 Federal Register to the recommendation of the
20 Raisin Administrative Committee meeting held on
21 April 14, 2016. Thank you.

22 JUDGE MCCARTNEY: Are there any

1 questions for this witness? Going once --

2 MR. GOTO: Really, I'm out of here.

3 MS. SCHMAEDICK: Melissa Schmaedick,
4 USDA.

5 BY MS. SCHMAEDICK:

6 Q Thank you for your testimony, Mr.
7 Goto. According to your statement, you are the
8 CEO of the Raisin Bargaining Association.

9 A That's correct.

10 Q Correct. Again, according to your
11 statement, the RBA represents about 1,000
12 farmers, is that correct?

13 A Roughly 1,000 vineyard growers.
14 (Simultaneous speaking).

15 Q Vineyard growers, okay.

16 A Correct.

17 Q My question for you is -- well, let me
18 follow with another question. You, I believe,
19 mentioned that you were part of the workgroup
20 that developed --

21 A Yes, I was.

22 Q -- the RAC --

1 A Yes, I was.

2 Q -- proposals?

3 A Yes, ma'am.

4 Q As the CEO of the Raisin Bargaining
5 Association, did you have an opportunity to speak
6 with your grower members about the proposals that
7 the RAC is proposing?

8 A Yes, we did.

9 Q In your opinion, what has the general
10 response been?

11 A The raisin industry's an interesting
12 commodity group. Growers are more interested in
13 what we're going to end up getting -- price of
14 the raisins on annual basis than what we're doing
15 with the Raisin Administrative Committee, quite
16 honestly, so there's not a whole lot of interest
17 out there when you do talk about issues of the
18 industries that pertain to the Raisin
19 Administrative Committee and the marketing order.
20 But in general, they believe that there is a need
21 for this referendum and these discussions to
22 occur, so that we can at least have an

1 opportunity to voice their opinion on whether the
2 order goes forward or not.

3 Q Thank you. In your opinion, have your
4 grower members been impacted by the suspension of
5 research that was conducted by the state program?
6 I understand that, based on past testimony, there
7 hasn't been research actively conducted since
8 about 2012.

9 A Yes. My personal belief is that the
10 industry needs a solid research platform to
11 operate from. It's very important for the future
12 of the industry. The Raisin Bargaining
13 Association has made every effort to try to
14 maintain a strong arm of research in the
15 industry. Yes, we support research being
16 provided in the federal marketing order, in the
17 event that it's not able to be done through the
18 state order.

19 Q Thank you. I have no further
20 questions for you.

21 MR. MCFETRIDGE: Marc McFetridge,
22 USDA.

1 BY MR. MCFETRIDGE:

2 Q Would you feel comfortable discussing
3 your grower base of 1,000 vineyard farmer as to
4 classify them as small or large growers, based on
5 the Small Business Administration's definition of
6 having annual receipts of greater than or less
7 than \$750,000 of raisin receipts per year?

8 A I think the best way to answer that
9 was the way it was answered yesterday. I
10 understand that we do have growers that range
11 anywhere from 1 to 5,000 acres, so we have a vast
12 range of growers. I can't tell you the precise
13 percentage of which is a large grower and which
14 is a small grower, but we do have growers that
15 encounter both areas of that spectrum.

16 Q Thank you. In previous testimony,
17 it's been discussed that there'd be minimal cost
18 associated with a possible continuance referendum
19 in the future. Based on your opinion, do you
20 feel that the added benefit of having a
21 continuance referendum would outweigh these
22 minimal costs that could be associated with it?

1 A The cost issue, I'm not aware of.
2 That's a good question. I wasn't around in 1989
3 when, I guess, they had the last referendum.
4 Then this past -- we just had a referendum just a
5 few months ago. I'm not aware of the cost --
6 what the cost of that referendum was, either. I
7 really don't know how to respond to what the cost
8 would be, but if it was significant, then it's an
9 issue. If the industry believes the continuation
10 referendum is critical and important, then the
11 cost shouldn't be an issue, as far as carrying
12 that forward.

13 Q Thank you very much.

14 A Marc, we need 20,000 tons of raisins
15 to be purchased by USDA, for the record.

16 JUDGE MCCARTNEY: Just saying.

17 MR. GOTO: Just saying, yes, for the
18 record, yes.

19 JUDGE MCCARTNEY: Any further
20 questions for this witness?

21 MS. CHILUKURI: Rupa Chilukuri, USDA.

22 BY MS. CHILUKURI:

1 Q Mr. Goto, I've asked this of other
2 witnesses, and I'll ask this of you. I'm just
3 running down the different proposals. As it
4 relates to Proposal 1 to authorize production
5 research, I think you said this, you are in
6 support of that proposal?

7 A Yes, I am in support of that, yes.

8 Q Proposal No. 2, to separate the
9 nominations for independent grower member and
10 independent grower alternate member seats, what
11 is your position on that?

12 A I think that makes a lot of sense,
13 yes. I would support that.

14 Q As it relates to Proposal 3 to add
15 authority to regulate quality, are you in support
16 of that proposal?

17 A Yes, I think that's critical. I think
18 that's important for the industry in the future,
19 yes, I would support that.

20 Q Proposal 4, to add authority to
21 establish different regulations for different
22 markets, what is your position on that proposal?

1 A I would support that, as well, yes.

2 Q You've discussed Proposal No. 5. As
3 it relates to Proposal No. 6, to remove volume
4 regulation and reserve pool authority, what is
5 your position on that proposal?

6 A My personal opinion is that volume
7 regulation, if done in the correct fashion, would
8 be a benefit for the industry. Based on the
9 Supreme Court decision and the position of the
10 USDA, I would support the proposal as brought
11 forth on this referendum.

12 Q Proposal No. 7, to establish term
13 limits, what is your position on that proposal?

14 A I don't support that. I agree with
15 the testimony that I've heard so far against term
16 limits for the industry.

17 Q Okay, thank you very much, sir.

18 A You're welcome.

19 JUDGE MCCARTNEY: Are there any
20 further questions for this witness? Are there
21 any objections to the admissibility of Exhibit
22 41? There being none, the exhibit is hereby

1 admitted, and you are excused.

2 (Whereupon, Exhibit 41 was received
3 into evidence.)

4 MR. GOTO: Thank you.

5 JUDGE MCCARTNEY: We are nearing our
6 morning break time. We have two ways that we can
7 go here. We can break early and come back at
8 10:30. We can wait until 10:30, or see how the
9 next witness proceeds. Who will be the next
10 witness taking the stand?

11 (Simultaneous speaking.)

12 PARTICIPANT: Michael Durando, I
13 think, will be the --

14 JUDGE MCCARTNEY: Let's go off the
15 record.

16 (Whereupon, the above-entitled hearing
17 went off the record at 10:17 a.m. and went back
18 on the record at 10:17 a.m.)

19 JUDGE MCCARTNEY: We're back on the
20 record. I understand that we have a witness who
21 wishes to be recalled. Please state your name
22 for the record, sir.

1 MR. KRIEBEL: Yes, Barry Kriebel.

2 JUDGE MCCARTNEY: You have been
3 previously sworn?

4 MR. KRIEBEL: Yes.

5 JUDGE MCCARTNEY: You may proceed.

6 MR. KRIEBEL: I just wish to make
7 comments on the quality issue. I'm not sure
8 whether or not the complete U.S. standards for
9 grades of processed raisins are in the record.

10 JUDGE MCCARTNEY: Is this a question

11 --

12 MR. KRIEBEL: Yes.

13 JUDGE MCCARTNEY: -- or a comment?

14 (Simultaneous speaking.)

15 JUDGE MCCARTNEY: I'm sorry; what is
16 the point?

17 MR. KRIEBEL: This is to which we're
18 speaking so much about a mandate.

19 JUDGE MCCARTNEY: Is that an exhibit
20 that's already been introduced into the record?

21 MR. KRIEBEL: Has it been introduced?

22 JUDGE MCCARTNEY: The witness is

1 referring to U.S. standards for grades of
2 processed raisins, effective date December 1,
3 1978.

4 MR. KRIEBEL: Yes, it's available on
5 the USDA website.

6 JUDGE MCCARTNEY: Do you feel that it
7 needs to be entered into the record if it's
8 publicly available?

9 MR. KRIEBEL: Yes.

10 JUDGE MCCARTNEY: Why do you feel that
11 it needs to be entered as a formal exhibit?

12 MR. KRIEBEL: Because it addresses
13 some of the issues on how we could see these
14 changing in the future. I'd like to speak to --
15 refer to this in my comments, at this point.

16 JUDGE MCCARTNEY: First, we need to
17 lay a proper foundation. Is that document the
18 document that is readily available by Internet
19 search?

20 MR. KRIEBEL: Yes.

21 JUDGE MCCARTNEY: How did you obtain
22 access to it through your Internet search? What

1 were the variables that you entered to retrieve
2 the document?

3 MR. KRIEBEL: I entered USDA processed
4 standards for raisins.

5 JUDGE MCCARTNEY: Is this the only
6 document that manifested itself in response to
7 your Internet inquiry?

8 MR. KRIEBEL: Well, it's a Google
9 search, so you get -- but this is the official
10 outbound standards document to which we have been
11 referring to and which is referred to in the
12 marketing order, to which we all operate, as
13 handlers, today.

14 JUDGE MCCARTNEY: I understand that's
15 a 1978 publication.

16 MR. KRIEBEL: Correct.

17 JUDGE MCCARTNEY: Have there been any
18 modifications, amendments, or other changes to
19 the published document that should also be
20 reflected in the record?

21 MR. KRIEBEL: To the extent we
22 eliminated Grade C at a time after 1978. I

1 believe that's essentially the only modification.
2 It also was published in the Federal Register on
3 November 7, 1978, at 43 Federal Register, Page
4 51753.

5 JUDGE MCCARTNEY: Does Counsel for
6 USDA have any objections to taking judicial
7 notice of the referenced document?

8 MS. CHILUKURI: No, Your Honor.

9 JUDGE MCCARTNEY: All right, the
10 document will be admitted. I don't feel the need
11 for a hard copy, however, the link to the
12 publicly available document will be reflected in
13 the record, and the record will reflect that
14 judicial notice will be given to this document,
15 with a specific exhibit number, Exhibit 42.
16 Unless, of course, the court reporter wishes to
17 carry that heavy document around with her for the
18 rest of the day. Do we need a hard copy, or is
19 this judicial reference sufficient?

20 (Whereupon, the above-referenced
21 document was marked as Exhibit 42, for reference,
22 and received into evidence.)

1 MS. CHILUKURI: I think the judicial
2 reference suffices.

3 JUDGE MCCARTNEY: All right, so
4 Exhibit 42 --

5 MS. CHILUKURI: Or official notice
6 suffices.

7 JUDGE MCCARTNEY: -- hereby admitted.
8 Anything further?

9 MR. KRIEBEL: I'd like to explain how
10 handlers work within this. First, included in
11 the definitions of this is, for example, Table 1
12 --

13 JUDGE MCCARTNEY: Before you proceed,
14 just for housekeeping, let's print out the first
15 page of the Federal Register, so that we can have
16 that attached with an exhibit number, for
17 purposes for tracking for certification of the
18 record. How can we best accomplish that? During
19 the break?

20 PARTICIPANT: You printed something
21 today from the front desk. Shouldn't we be able
22 to do that again?

1 JUDGE MCCARTNEY: Before we close --

2 PARTICIPANT: We'll figure it out.

3 JUDGE MCCARTNEY: -- for the day, I
4 would like to have just at least the front page
5 of the document.

6 PARTICIPANT: Sure.

7 MR. KRIEBEL: I could forward it to --

8 JUDGE MCCARTNEY: No, I need the front
9 page hard copy. We've got it taken care of. You
10 may proceed, sir.

11 MR. KRIEBEL: Okay. Table 1 describes
12 how the USDA determines defects for stems, cap
13 stems and sugar and so forth. Us Americans, we
14 all think that our measuring system is ideal for
15 the world, but it's not. We're the only
16 industrialized country that is still on the ounce
17 system, rather than the metric system.

18 Virtually every buyer that we sell to
19 overseas wants their specifications, oftentimes,
20 on a metric basis. I just want to clarify, for
21 the record, that's one of the things that some of
22 us were envisioning if we had different standards

1 for different countries. Just changing them to
2 metric, that's just one. Secondly, I want the
3 record to show that as handlers, we pay for USDA
4 inspection, outbound inspection.

5 They inspect in accordance with these
6 standards. So if we want a tougher standard, as
7 Mr. Jeff Jue testified for Japan, that's not a
8 standard that they inspect to because it's not
9 the standard. If a customer wants a different
10 standard, then typically the handler has that
11 additional cost, himself, to inspect to that
12 higher standard. One of the objectives of having
13 different standards for different destinations is
14 the potential of reducing cost in the system,
15 reducing the cost to the handlers, making the
16 system more efficient, so that the USDA could be
17 inspecting to different standards for different
18 destinations. I didn't believe that point had
19 been made previously.

20 JUDGE MCCARTNEY: That's an excellent
21 point. You may continue.

22 MR. KRIEBEL: Lastly, I'd like to

1 speak to the research proposal. Nobody has
2 mentioned that all of the research that has been
3 done on varieties has been non-GMO research.
4 With the issues of genetically modified being
5 such an issue with consumers around the world, I
6 just wanted to confirm, for the record, for
7 anybody who reads it in the future, that the
8 industry has had 100-year history of
9 non-genetically modified research. To the best
10 of my knowledge, there is no raisin variety
11 genetically modified research going on today.

12 JUDGE MCCARTNEY: Your point being
13 that with respect to the proposals, that market
14 friendly or market value finding could be
15 reflected in an official way through the revised
16 standards review?

17 MR. KRIEBEL: It could be in the
18 revised standards. It could be just how we
19 conduct research. It could even be the research,
20 itself, to validate that we have non-genetically
21 modified material.

22 JUDGE MCCARTNEY: Anything further?

1 MR. KRIEBEL: No, that was it.

2 JUDGE MCCARTNEY: Are there any
3 follow-up questions for this witness, based on
4 his testimony?

5 MS. SCHMAEDICK: Melissa Schmaedick,
6 USDA.

7 BY MS. SCHMAEDICK:

8 Q Thank you for your testimony, Mr.
9 Kriebel. I just want to clarify the role of the
10 document that you just brought to our attention,
11 which is the USDA's United States Standards for
12 Grades of Processed Raisins.

13 MS. SCHMAEDICK: I will read the
14 information that is on the title page of this
15 document, Your Honor. It states that the
16 document became effective December 1, 1978. The
17 branch of the agricultural marketing service
18 under which this document was published is United
19 States Department of Agriculture, Agricultural
20 Marketing Service, Fruit and Vegetable Division,
21 Processed Products Branch.

22 BY MS. SCHMAEDICK:

1 Q Mr. Kriebel, are you aware that the
2 Processed Products Branch is different from the
3 Marketing Order Administration?

4 A Yes.

5 Q Yes? Do you understand that the
6 ownership and the authorship of this document is
7 separate from the Federal Marketing Order for
8 Raisins?

9 A That's a point I've never quite
10 understood because this is the document that us
11 handlers generally refer to.

12 JUDGE MCCARTNEY: That would be a no.

13 BY MS. SCHMAEDICK:

14 Q Let me walk you through a process and
15 some questions here. As you just stated,
16 handlers use this guide, United States Standards
17 for Raisins. Are you currently using that as
18 sort of the basis for when you refer to your
19 Grade A, Grade B, Grade C? Is that correct?

20 A Yes, because within that section,
21 52.1846, it defines USDA Grade A, U.S. Grade B,
22 and it previously included in it -- it had U.S.

1 Grade C.

2 Q When you say previously included, you
3 mentioned that you were involved in a change?

4 A No, I didn't testify that I was
5 involved in the change. My recollection was that
6 it changed prior to 1986.

7 Q Perfect. Good. But in this document,
8 do you still see a reference to U.S. Grade C?

9 A In this document, yes.

10 Q Good.

11 A So I'm not --

12 Q That's -- thank you.

13 A Yes.

14 Q Now I'm going to turn your attention
15 to the marketing order, okay? Do you have
16 Exhibit 36 in front of you?

17 JUDGE MCCARTNEY: Yes, he does.

18 BY MS. SCHMAEDICK:

19 Q I want you to first go to the second
20 pink tab in Exhibit 36. Don't turn the page. Do
21 you see this -- the section heading says,
22 "989.702, Minimum Grade Standards for Packed

1 Raisins"?

2 A Yes.

3 Q Okay. Do you see the first line, that
4 says, "Effective pursuant to 989.59"?

5 A Yes.

6 Q "Minimum Grade Standards for Packed
7 Raisins." Okay, do you see that?

8 A Yes.

9 Q Okay. Now, I want you to look at the
10 first pink tab -- other direction, the first pink
11 tab.

12 A I was just looking at the other --

13 JUDGE MCCARTNEY: You may read that
14 entire document on your own time, but right now,
15 we're looking at the first tab.

16 MR. KRIEBEL: Yes.

17 BY MS. SCHMAEDICK:

18 Q So 989.59, under Paragraph (b), it
19 states, "The committee may recommend changes in
20 the minimum grade standards for packed raisins of
21 any varietal type and may recommend to the
22 secretary that minimum grade standards for any

1 varietal type be added or deleted. Do you see
2 that?

3 A Yes.

4 Q Now, go back to the second pink tab,
5 Section 702, and as you were beginning to look
6 at, there is a table. The table is under 2.IV.
7 For the record, I'll read it in. "This table
8 describes allowances for defects in cluster
9 seedless raisins," and it references Marketing
10 Order Grade A and Marketing Order Grade B." Do
11 you see those?

12 A Yes.

13 Q Now, if you were to compare Marketing
14 Order Grade A and Marketing Order Grade B to the
15 U.S. Grade Standards Grade A and Grade B, would
16 you have the same set of standards?

17 A Are you asking whether -- first, isn't
18 the one you're referring to me is just for
19 cluster seedless?

20 Q Yes, it is, but specifically, I wanted
21 to point to the Grade A and the Grade B
22 differentients.

1 A Could you repeat the question?

2 Q What I'm wondering is if you'll notice
3 that in the document that you pointed out that is
4 a Processed Products Branch document, there's a
5 Grade C. Based on your memory, there used to be
6 a Grade C in the marketing order, but it was
7 removed. So I'm asking if you understand that
8 the committee's authority to remove inclusion of
9 Grade C falls under the authority that is
10 described under Section 59, and that is why you
11 do not have a Grade C in your marketing order?

12 A Sure.

13 Q Okay, good. Earlier, you stated that
14 your intent was to change this document from the
15 Processed Products Branch, but my question is do
16 you mean that you want to change the regulations
17 that are in the marketing order, and if you have
18 authority to establish quality regulations, those
19 quality regulations would be outside of this
20 Processed Product Branch document?

21 A I think this is part of the confusion

22 --

1 Q Yes.

2 A -- is that these references are what
3 some people refer to as grade, meaning
4 substandard, meaning discoloration, when the
5 Processed Products definition goes to the things
6 that are very much important to buyers, pieces of
7 stem, cap stems, defect levels. I think the
8 intent of these two proposals that we have to add
9 quality and to make them be able to differentiate
10 by destinations is that we could do the breadth
11 of what is under the Processed Products Division
12 as part of the marketing order. Because my
13 understanding is that to some extent, these are
14 voluntary standards, under the Processed
15 Products, and we wanted to make them obligatory
16 standards under the marketing order.

17 Q Thank you. If I understand you
18 correctly, you support the authority to create
19 mandatory regulation under the marketing order?

20 A Yes, that would be similar to, but
21 maybe different from the Processed Products
22 standards.

1 Q Thank you. So you are not intending
2 to change the U.S. grade standards. You're
3 intending to change the requirements under the
4 marketing order?

5 A Well, you may change all of that.
6 Again, they may change over time.

7 Q Okay. But right now, we're talking
8 about the marketing order, right, and authorities
9 under the marketing order?

10 A That's what this hearing's about, yes.

11 Q Right, okay. So you agree and support
12 the ability to change regulation in the marketing
13 order?

14 A Yes.

15 Q Thank you.

16 JUDGE MCCARTNEY: Any other questions
17 for this witness?

18 MS. CHILUKURI: Your Honor, would it
19 be okay to take a break, so I can talk to you
20 about a procedural question, then reconvene with
21 the same witness? Briefly, I need to pull
22 something up, and I want to discuss that with

1 you.

2 JUDGE MCCARTNEY: All right, 15-minute
3 recess.

4 (Whereupon, the above-entitled hearing
5 went off the record at 10:37 a.m. and went back
6 on the record at 11:00 a.m.)

7 JUDGE MCCARTNEY: Mr. Kriebel, witness
8 stand, please. Let the record reflect Mr.
9 Kriebel's rejoined us on the witness stand. Are
10 there any further questions for this witness?

11 MS. CHILUKURI: Yes, Your Honor. I'd
12 like to approach the witness with an iPad of a
13 regulation.

14 JUDGE MCCARTNEY: Identify yourself
15 for the record, please.

16 MS. CHILUKURI: I apologize; Rupa
17 Chilukuri, USDA, and I'd like to approach the
18 witness and discuss 7 C.F.R. Part 36.

19 JUDGE MCCARTNEY: You may approach the
20 witness.

21 MS. CHILUKURI: Thank you. I'd also
22 like to take official notice of that regulation,

1 7 C.F.R. 36.

2 JUDGE MCCARTNEY: All right. I'd like
3 to follow the same protocol, if you would print
4 me out at least one page of the document, I'll
5 take judicial notice, marking it as Exhibit 43,
6 so identify it with particularity for the
7 purposes of the record, and then we'll have a
8 one-page hard copy to track the exhibit.

9 (Whereupon, the above-entitled
10 document was marked as Exhibit 43 for reference.)

11 MS. CHILUKURI: Yes, we'll have that
12 to you afterwards.

13 JUDGE MCCARTNEY: Thank you. You may
14 approach the witness.

15 BY MS. CHILUKURI:

16 Q Mr. Kriebel, could you please read
17 what Part 36 refers to?

18 A The header for Part 36 is, "Part 36,
19 Procedures by which the Agricultural Marketing
20 Service Develops, Revises, Suspends, or
21 Terminates Voluntary Official Grade Standards."

22 Q Then if you could scroll down and read

1 36.1(b)?

2 A "These procedures set forth the
3 process by which AMS will develop, revise,
4 suspend, or terminate the U.S. standards.

5 Q Thank you. If you could read the
6 title of 36.2?

7 A "Initiating Action on Grade
8 Standards."

9 Q Actually, if you could read all of
10 36.2 into the record?

11 A "The agency will develop, revise,
12 suspend, or terminate grade standards if it
13 determines that such action is in the public
14 interest. Any standardization action should
15 reflect the broad interest of individuals or an
16 industry involved in manufacturing, producing,
17 packaging, distributing, testing, consuming, or
18 using the product, or the interest of a federal,
19 state, or local agency. Proposed action should
20 always be based on sound technical and marketing
21 information and should include careful
22 consideration of the factors that determine the

1 commodity's quality and condition, and that will
2 allow trained personnel to determine,
3 objectively, conformance or non-conformance. (a)
4 AMS encourages interested parties to participate
5 in the review, development, and revision of grade
6 standards.

7 "Interested parties include growers,
8 producers, processors, shippers, distributors,
9 consumers, individuals, or groups, trade
10 associations, companies, and state or federal
11 agencies. Such groups and individuals may, at
12 any time, recommend that AMS develop, revise,
13 suspend, or terminate the grade standard.

14 Requests for agency action should be in writing,
15 preferably accompanied by a draft of the
16 suggested change.

17 "The agency, in cooperation with
18 interested parties, as applicable, will: (1)
19 determine the need for new or revised standards;
20 (2) collect technical, marketing, or other
21 appropriate data; (3) conduct research regarding
22 new or revised standards, as appropriate; and (4)

1 draft the proposed standards. (b) If the agency
2 determines that new standards are needed,
3 existing standards need to be revised, or the
4 suspension or termination of existing standards
5 is justified, it will undertake the action with
6 input from all interested parties."

7 Q Thank you.

8 JUDGE MCCARTNEY: Do you have anything
9 further for this witness?

10 MS. CHILUKURI: Yes.

11 BY MS. CHILUKURI:

12 Q Could you also read the title for
13 36.3?

14 A "Public Notification of Grade
15 Standards Action."

16 Q Thank you. Based on your reading of
17 these provisions, is it accurate to say that 7
18 C.F.R. 36 governs the procedure by which to
19 develop or revise or suspend or terminate
20 voluntary official grade standards?

21 A It would appear so to me, based on the
22 five minutes that I've been reviewing this.

1 JUDGE MCCARTNEY: I think you did
2 testify earlier that you're an attorney, so
3 unlike most laypeople, I think you have a special
4 knowledge here regarding the applicability of
5 C.F.R. regulatory import on standards versus
6 market orders.

7 MR. KRIEBEL: I will say I've never
8 studied it in depth.

9 JUDGE MCCARTNEY: Do you have reason
10 to doubt what it says on its face?

11 MR. KRIEBEL: No.

12 JUDGE MCCARTNEY: All right, thank
13 you.

14 MS. CHILUKURI: Thank you very much.
15 No further questions, and we'd ask that --

16 JUDGE MCCARTNEY: Are there any
17 further questions of this witness? I've already
18 indicated that judicial notice will be taken of
19 the C.F.R. references, and a hard copy will be
20 placed in the record to mark Exhibit 43 for that
21 purpose. Anything further?

22 (Whereupon, Exhibit 43 was received

1 into evidence.)

2 MS. CHILUKURI: Not on this, Your
3 Honor.

4 JUDGE MCCARTNEY: You may be excused.
5 Thank you for your testimony. Will the next
6 witness please take the stand?

7 MS. CHILUKURI: USDA would like to
8 call Michael Durando.

9 JUDGE SHERIDAN: Please state your
10 name for the record and affirm that you have been
11 previously sworn.

12 MR. DURANDO: Thank you, Your Honor.
13 My name is Michael Durando, D-U-R-A-N-D-O, and I
14 have been previously sworn.

15 BY MS. CHILUKURI:

16 Q Mr. Durando, what is your duty
17 station?

18 A My duty station is Washington, D.C.

19 Q How long have you been with USDA?

20 A I've been with USDA for more than 12
21 years. It'll be 13 years in July 2016.

22 Q What is your occupation at USDA? What

1 is your title?

2 A I am the director of the Marketing
3 Order and Agreement Division for the Specialty
4 Crops Program, Agricultural Marketing Service.

5 Q I understand that you have a written
6 statement and various documents that you will
7 refer to during your testimony, is that correct?

8 A I do, indeed.

9 Q I just want to make sure that
10 everybody has the right numbers, in terms of
11 exhibits. Your testimony will be 44, what we'll
12 mark as 44.

13 MS. CHILUKURI: I apologize, but we
14 added that 7 C.F.R. 36, so people may need to
15 change their numbering. So 44 will be Mr.
16 Durando's testimony.

17 (Whereupon, the above-described
18 document was marked as Exhibit 44 for reference.)

19 We anticipate that 45 will be the July
20 16, 2015 letter that you'll refer to.

21 (Whereupon, the above-described
22 document was marked as Exhibit 45 for reference.)

1 Forty-six would be the USDA
2 guidelines. I think this includes one additional
3 page than what Mr. Jue had included in his
4 exhibit, so we'll enter that again.

5 (Whereupon, the above-described
6 document was marked as Exhibit 46 for reference.)

7 Forty-seven is the Committee Member
8 Information Table.

9 (Whereupon, the above-described
10 document was marked as Exhibit 47 for reference.)

11 Then 48 will be the modified language
12 for 989.28.

13 (Whereupon, the above-described
14 document was marked as Exhibit 48 for reference.)

15 MR. DURANDO: Pardon me, question for
16 clarification. I have a document in front of me
17 with, it appears to be that language. It's noted
18 as Exhibit 44. Is that the one that you're
19 referring to as 40 --

20 MS. CHILUKURI: Modified language will
21 be 48.

22 JUDGE MCCARTNEY: Thank you.

1 MS. CHILUKURI: So change that to 48,
2 and then once you're ready, you can proceed with
3 your written statement.

4 MR. DURANDO: Okay.

5 JUDGE MCCARTNEY: Do you need a moment
6 to go through the exhibits?

7 MR. DURANDO: I think I'm ready to go,
8 Your Honor.

9 JUDGE MCCARTNEY: You may proceed.

10 MR. DURANDO: Thank you, Your Honor,
11 and good morning. As previously stated, my name
12 is Michael Durando, and I'm director of the
13 Marketing Order and Agreement Division of the
14 Specialty Crops Program, Agricultural Marketing
15 Service, U.S. Department of Agriculture. My
16 office is located at 1400 Independence Avenue
17 Southwest in Washington, D.C. My current job
18 duties entail leading a professional staff of 45
19 individuals, distributed among our headquarters
20 building and three regional marketing field
21 offices, including the California Marketing Field
22 Office here in Fresno, California.

1 We ensure the effective administration
2 of and compliance with 45 different programs,
3 including 28 federal marketing orders for fruits,
4 vegetables, and specialty crops, with the raisin
5 marketing order being one of them, 14
6 corresponding import regulatory programs, two
7 export quality programs for apples and table
8 grapes, and the domestic and import quality
9 regulations for peanuts, as established pursuant
10 to Public Law 107-171, the Farm Security and
11 Rural Investment Act of 2002.

12 My education includes a Bachelor of
13 Science degree in agricultural science and
14 management from the University of California at
15 Davis, as well as graduate study certificates
16 from American University for its Key Executive
17 Leadership Program, and from the Federal
18 Executive Institute for its Leadership for a
19 Democratic Society Program. At this time, I'd
20 like to submit testimony in support of three
21 proposals on behalf of the USDA. These are
22 identified as Proposal 6, 7 and 8 in the notice

1 of hearing, which is Exhibit 1. Proposal 6 would
2 remove both the volume regulation and reserve
3 pool authorities under the raisin marketing
4 order.

5 Proposal 7 would establish term
6 limitations for industry members serving on the
7 Raisin Administrative Committee, also referred to
8 as the RAC. Proposal 8 would allow USDA to make
9 changes to the Raisin Marketing Order necessary
10 to conform to any amendment that may result from
11 the hearing and to correct minor inconsistencies
12 and typographical errors in the order. First,
13 I'd like to address Proposal 6.

14 USDA is proposing that all volume
15 regulation and reserve pool authorities, and
16 their related provisions, be removed. On June
17 22, 2015, the United States Supreme Court, in
18 Horn v. USDA, ruled that the application of the
19 marketing order's reserve pool authority to the
20 Horns was a taking under the Fifth Amendment to
21 the U.S. Constitution. By a July 16, 2015 letter
22 to the Raisin Administrative Committee, USDA

1 stated, "In light of the Horn decision, the U.S.
2 Department of Agriculture has decided not to
3 authorize the reserve program of the federal
4 marketing order for California raisins for the
5 foreseeable future, effective immediately." Your
6 Honor, at this time, I would like to submit a
7 copy of this letter and ask that it become part
8 of the letter. I believe that's Exhibit 45, if
9 I'm correct.

10 JUDGE MCCARTNEY: Exhibit 45 is your
11 statement, so that would be Exhibit 46.

12 MR. DURANDO: Forty-six, I apologize.

13 MS. CHILUKURI: Your Honor, can we
14 just clarify? I understood that Mr. Durando's
15 testimony would be 44.

16 JUDGE MCCARTNEY: Correct.

17 MS. CHILUKURI: So this letter would
18 be --

19 JUDGE MCCARTNEY: Would be 45.

20 MS. CHILUKURI: -- 45?

21 JUDGE MCCARTNEY: Yes. Thank you for
22 the clarification.

1 MS. CHILUKURI: Would you prefer that
2 we wait until the conclusion, or can we enter?

3 JUDGE MCCARTNEY: I think enter as you
4 go.

5 MS. CHILUKURI: Enter as you go?
6 Okay, so we'd like to enter Exhibit 45, at this
7 time.

8 JUDGE MCCARTNEY: Any objection to the
9 admissibility of Exhibit 45? Hereby admitted.

10 (Whereupon, Exhibit 45 was received
11 into evidence.)

12 JUDGE MCCARTNEY: Any objection to the
13 admissibility of Exhibit 44, which is the
14 statement? No objections. It's hereby admitted.

15 (Whereupon, Exhibit 44 was received
16 into evidence.)

17 MS. CHILUKURI: Please proceed, Mr.
18 Durando.

19 MR. DURANDO: Thank you. USDA has
20 determined that the reserve pool authority is
21 inextricably connected to the order's volume
22 regulation authority. Furthermore, language for

1 both authorities can be extracted from the order
2 language without disturbing the remaining program
3 functions. Therefore, USDA is proposing that all
4 volume regulation and reserve pool authorities,
5 in addition to all related provisions, be removed
6 from the order. As described in the notice of
7 hearing, Exhibit 1, this recommendation would
8 include, first of all, removing the following
9 sections: Section 989.55, Regulation by the
10 Secretary; Section 989.56, Raisin Diversion
11 Program; Section 989.65, Free and Reserve
12 Tonnage; Section 989.66, Reserve Tonnage
13 Generally; Section 989.67, Disposal of Reserve
14 Raisins; Section 989.71, Disposition of Unsold
15 Reserve Tonnage in Above Parity Situations;
16 Section 989.72, Exemption of Educational
17 Institutions; Section 989.82, Expenses of Reserve
18 Raisin Operations; Section 989.154, Marketing
19 Policy Computations; Section 989.156, Raisin
20 Diversion Program; Section 989.166, Reserve
21 Tonnage Generally; Section 989.167, Disposal of
22 Reserve Raisins; Section 989.221, Sale and Export

1 of Reserve Raisins by Handlers; Section 989.257,
2 Final Free and Reserve Percentages; Section
3 989.401, Payments for Services Performed with
4 Respect to Reserve Tonnage Raisins.

5 The recommendation would also revise
6 the following sections: Section 989.11,
7 "Producer," which mentions the diversion program;
8 Section 989.53, "Research and Development," to
9 remove research and development projects related
10 to reserve tonnage raisins; Section 989.54,
11 "Marketing Policy," to remove marketing policy
12 trade demand calculations linked to reserve
13 raisins; Section 989.58, "Natural Condition
14 Raisins," to remove references to free and
15 reserve tonnage raisins; Section 989.59,
16 "Regulation of the Handling of Raisins Subsequent
17 to their Acquisition by Handler," to remove
18 regulation of the handling of reserve raisins
19 subsequent to their acquisition by handlers;
20 Section 989.60, "Exemption," to remove exemptions
21 for reserve raisins; Section 989.73, "Reports,"
22 to remove reports related to reserve raisins;

1 Section 989.79, "Expenses," to remove the
2 authority for the RAC to incur expenses related
3 to volume regulation or reserve raisins; Section
4 989.80, "Assessments," to remove assessment
5 language involving volume regulations and reserve
6 pool raisins; Section 989.84, "Disposition
7 Limitation," to remove disposition limitations
8 for reserve raisins on handlers; Section 989.158,
9 "Natural Condition Raisins," to remove the
10 inclusion of reserve raisins from the natural
11 condition raisin definition and provisions for
12 reconditioning of off-grade raisins; Section
13 989.173, "Reports," to remove reporting
14 requirements related to reserve pool raisins and
15 volume regulation; Section 989.210, "Handling of
16 Varietal Types of Raisins Acquired Pursuant to a
17 Weight Dockage System," to remove handling
18 regulation of reserve varietal types of raisins
19 acquired using a weight dockage system.

20 Due to the above-mentioned removals,
21 Section 989.70 will be redesignated as Section
22 989.96. Finally, USDA proposes removing the

1 following the headings: "Volume Regulation,"
2 prior to Section 989.65; "Volume Regulation,"
3 prior to 989.166; and "Subpart - Schedule of
4 Payments," prior to Section 989.401.

5 The July 16, 2015 letter to the RAC
6 indicated USDA's intention to schedule a formal
7 rulemaking hearing, "To consider proposals to
8 amend provisions in the marketing order related
9 to the reserve program." During a July 28, 2015
10 meeting with the RAC, I told the Raisin
11 Administrative Committee of USDA's intention to
12 initiate rulemaking in the spring of 2016, for
13 the purpose of considering amendments to the
14 order. On August 20, 2016 -- and if I may, is
15 that -- the testimony shows '15, but was it '15
16 or '16?

17 PARTICIPANT: It would be '15.

18 (Simultaneous speaking.)

19 MR. DURANDO: On August 20, 2015, I
20 met with the Raisin Administrative Committee to
21 notify them that USDA was planning to propose the
22 removal of the volume control and reserve pool

1 authorities of the order, and that a hearing
2 would take place in May 2016.

3 RAC was provided with a draft of
4 USDA's proposed modifications to the marketing
5 order language that indicated which sections of
6 language would be removed, revised, and
7 redesignated. The committee was given the
8 opportunity to provide feedback on the proposed
9 modified language.

10 Some minor adjustments were made based
11 on industry feedback, and the industry has
12 indicated its general acceptance of USDA's
13 proposed modifications. Next, I'd like to
14 address Proposal 7. Proposal 7 is being
15 recommended in accordance with the, "USDA
16 Guidelines for Fruit, Vegetable, and Specialty
17 Crop Marketing Orders," issued in 1982. Your
18 Honor, I would, I guess, acknowledge that this
19 particular exhibit has been admitted, or should I
20 stand corrected and request that we would enter
21 our own exhibit?

22 MS. CHILUKURI: Your Honor, this

1 exhibit has been marked as 46, and we would like
2 to move for its admission.

3 MR. DURANDO: Very good.

4 JUDGE MCCARTNEY: Any objections to
5 the admissibility of Exhibit 46, as identified?
6 There being none, it's hereby admitted.

7 (Whereupon, Exhibit 46 was received
8 into evidence.)

9 MR. DURANDO: Thank you. These
10 guidelines were issued following an economic
11 review of federal marketing orders in response to
12 a presidential task force on regulatory relief.
13 The proposal would revise Section 989.28, Term of
14 Office, by adding a paragraph that would read as
15 follows: "Representatives may serve up to four
16 consecutive two-year terms of office. In no
17 event shall any representative serve more than
18 eight consecutive years on the committee. For
19 purposes of determining when a representative has
20 served four consecutive terms, the accrual of
21 terms shall begin following any period of at
22 least 12 consecutive months out of office. This

1 limitation on tenure shall not include service on
2 the committee prior to implementation of this
3 amendment." This proposed amendment would
4 establish a limit on the number of consecutive
5 terms a person may serve as a member of the
6 Raisin Administrative Committee.

7 The USDA believes that all marketing
8 order programs should include tenure limitations
9 for committee membership. The USDA believes that
10 this provision would increase industry
11 participation on the committee, provide for more
12 diverse membership, provide the committee with
13 new perspectives and ideas, and increase the
14 number of individuals in the industry with
15 committee experience.

16 Since the issuance of the guidelines,
17 USDA's experience indicates that a period of
18 eight years is an appropriate period. Since the
19 term of office for members is two years, USDA is
20 recommending that no member serve more than four
21 consecutive two-year terms, for a total of eight
22 years. Eight years is considered long enough for

1 committee members to make meaningful
2 contributions to the administration of the
3 marketing order, but not so long as to exclude
4 others from participation on the committee. Once
5 a member has served on the committee for four
6 consecutive terms, or eight years, the member
7 must sit out one year before being eligible to
8 serve as a representative again.

9 Your Honor, at this time, I would like
10 to submit as an exhibit, into the record, the
11 following table, which outlines all of the
12 federal specialty crop marketing orders that have
13 term limits and their respective program details.
14 I believe that's been marked as --

15 JUDGE MCCARTNEY: Exhibit 47.

16 MR. DURANDO: -- 47?

17 MS. CHILUKURI: Exhibit 47, and we'd
18 move for the admission of that exhibit, Your
19 Honor.

20 JUDGE MCCARTNEY: Any objections?

21 There being none, it's hereby admitted.

22 (Whereupon, Exhibit 47 was received

1 into evidence.)

2 JUDGE MCCARTNEY: You may continue.

3 MR. DURANDO: Thank you. This table
4 demonstrates that our proposal for term limits is
5 consistent with those that exist in other
6 programs. USDA is aware of the industry's desire
7 to maintain continuity in the service history of
8 its members.

9 As a result, we suggest a modification
10 to our original proposal, as stated in the notice
11 of hearing, Exhibit 1, to apply term limits to
12 members only, and not to alternate members. This
13 modification would allow continuity to be
14 maintained through individuals rotating their
15 service between member and alternate member
16 status. We believe that this proposal would
17 uphold the intent of the 1982 guidelines, as well
18 as meet the needs of the industry for continuity
19 of service.

20 The modified language proposed by USDA
21 would read as follows: "Committee members may
22 serve up to four consecutive two-year terms of

1 office. In no event shall any member serve more
2 than eight consecutive years on the committee.
3 For purposes of determining when a representative
4 has served four consecutive terms, the accrual of
5 terms shall begin following any period of at
6 least 12 consecutive months out of office. This
7 limitation on tenure shall not include service on
8 the committee prior to implementation of this
9 amendment. This limitation on tenure shall not
10 apply to the service of alternate members. Your
11 Honor, I would like to enter into the record the
12 proposed modified language for Section 989.28,
13 Term of Office. I believe that's identified as
14 Exhibit 48.

15 JUDGE MCCARTNEY: Correct.

16 MS. CHILUKURI: Yes, Your Honor, we'd
17 like to move for the admission of Exhibit 48.

18 JUDGE MCCARTNEY: Any objections?
19 There being none, the exhibit's hereby admitted.
20 You may continue.

21 (Whereupon, Exhibit 48 was received
22 into evidence.)

1 MR. DURANDO: Thank you. This
2 proposal would not apply to time served prior to
3 the implementation of this amendment. There
4 would be no cost to small businesses anticipated
5 with this proposal. Lastly, I'd like to address
6 Proposal 8. I would like to submit testimony on
7 behalf of USDA to allow for changes to be made to
8 the order as may be necessary to conform to any
9 amendment that may result from the hearing. At
10 this time, we have no specific changes to
11 propose, but USDA may discover the need to make
12 such changes when preparing the recommended
13 decision on the proposed amendments presented at
14 this hearing.

15 Any conforming changes would not be
16 substantive in nature. USDA would also like to
17 correct minor inconsistencies and typographical
18 errors that are not substantive in nature. For
19 instance, all appearances of the term
20 "non-normal" will be hyphenated. Your Honor,
21 this concludes my testimony for Proposal 6, 7,
22 and 8. Thank you very much.

1 JUDGE MCCARTNEY: are there any
2 questions for this witness?

3 MS. CHILUKURI: Yes, Your Honor.

4 BY MS. CHILUKURI:

5 Q I just want to clarify one thing in
6 your testimony, Mr. Durando. If you would refer
7 to Page 4 --

8 A Of the testimony?

9 Q Of Exhibit 44, of your written
10 statement.

11 A Yes.

12 Q Page 4, the first bullet says,
13 "984.58," is that correct?

14 A That's what the original text said,
15 yes.

16 Q That's incorrect. It should read 989
17 --

18 A Point 58.

19 Q --.58.

20 A Yes, it should be 989.58. That was a
21 typographical error that I discovered yesterday
22 and made a hand notation.

1 Q You were correct when you spoke. I
2 just wanted to make clear that the statement is
3 incorrect. Thank you.

4 A You're welcome.

5 Q I also had a question for you about
6 term limits. Are term limits in place in other
7 marketing orders, and if so, can you talk a
8 little bit about what results you've seen from
9 the implementation of term limits?

10 A Sure, be happy to. Yes, term limits
11 are in place in other marketing orders and
12 generally have proven to have the intended impact
13 on member participation and diversity. As
14 evidenced in the exhibit with the marketing order
15 committees that we submitted, which would be
16 Exhibit No. 47, the Committee Member Information
17 Table that shows 28 marketing orders. Of those
18 28 marketing orders, 15 actually have term
19 limits, including 3 out of 6 -- that's really
20 half -- of the federal marketing orders that are
21 based in California.

22 These include the Almond Board of

1 California, the Administrative Committee for
2 Pistachios, and the Kiwi Fruit Administrative
3 Committee. Our multi-state cherry industry
4 administrative board, which stretches nationally,
5 as well as our Cranberry Marketing Committee,
6 also have term limits.

7 As we've experienced term limits in
8 other committees in the past, there were many
9 options we've seen available for setting them.
10 Members can serve a number of consecutive terms
11 before taking a minimum of a one-year break or a
12 move to an alternate member position. Many of
13 our committees use this as an opportunity to
14 groom potential successors, while also retaining
15 seasoned members with important institutional
16 knowledge as alternate members who can continue
17 to advise the board or committee. Another
18 interesting example, in order to manage its
19 succession planning for term limits, the Almond
20 Board of California conducts an almond industry
21 leadership program -- they refer to it as their
22 ILP -- which provides mentorship and education on

1 the almond industry for younger, newer entrants
2 into the industry.

3 The program allows participants to be
4 better trained in a diverse range of important
5 issues, like environmental stewardship, food
6 quality and safety, as well as government and
7 trade and leadership development. At the end of
8 the AILP, participants are offered an opportunity
9 to sit on a committee for a year, in order to
10 encourage them to pursue leadership roles within
11 the industry and give them exposure to the inner
12 workings of the organization.

13 This actually helps build their
14 interest and expertise, in order to eventually
15 move on to a position on the Almond Board of
16 California board of directors. Programs such as
17 these are also a great way to keep a diverse
18 array of individuals engaged and fresh on the
19 specialty crops industry, as a whole. Another
20 response I would have would be that other
21 marketing orders have found that new members
22 bring in new knowledge to grow the industry and

1 help get the good word out about an
2 organization's commodity. Our Kiwi Fruit
3 Administrative Committee convened an ad hoc
4 diversity subcommittee in 2014 and implemented a
5 diversity plan that resulted in the addition of
6 three new members and three new alternates.

7 The Kiwi Fruit Administrative
8 Committee, or the KAC, reached out to eight local
9 and highly visible newspapers, including the
10 Appeal Democrat, the Chico Enterprise, the
11 Modesto Bee, the Sacramento Bee, the Fresno Bee,
12 the Porterville Post, the Valley Voice, and the
13 Packer, and placed press releases on its Facebook
14 page industry website and shared it with seven
15 county Farm Bureau offices.

16 It really does not take much to
17 conduct concentrated outreach, but the return on
18 investment is clear. Two of the new members and
19 two of the alternates who are now involved with
20 the Kiwi Fruit Administrative Committee are
21 actually involved in producing new kiwi fruit
22 varieties. These are varieties that are being

1 produced in California for the very time, so
2 again, something very new. I guess the last
3 thought I would have is the fact that generally
4 speaking, periodic continuance referenda, if
5 they're included in an order, they can contribute
6 to a heightened interest among producers and
7 handlers and others in the industry in serving on
8 a marketing order board or committee.

9 This is because generally, referenda
10 are a form of outreach, as they typically result
11 in additional communications to growers about the
12 marketing order and an overall heightened level
13 of awareness.

14 Q Thank you. I have no further
15 questions.

16 JUDGE MCCARTNEY: Are there any
17 further questions for this witness? Please
18 identify yourself for the record, sir.

19 MR. SCHUTZ: Monte Schutz, chairman of
20 the RAC. I just wanted to ask Mike if I could
21 get a copy of his reasons for --

22 (Simultaneous speaking).

1 PARTICIPANT: Excuse me, sir, is that
2 microphone on? There's a little switch on it.

3 MR. SCHUTZ: I'm sorry; is that
4 better? No?

5 JUDGE MCCARTNEY: Do you got it?

6 MR. SCHUTZ: Now can you hear me?

7 PARTICIPANT: Yes.

8 JUDGE MCCARTNEY: There we go.

9 MR. SCHUTZ: Monte Schutz, RAC
10 chairman. I just wanted to ask Mike if I could
11 get a copy of -- because I'm going to be speaking
12 against it later, and I just wanted a copy of the
13 reasons for -- that the USDA wants the term
14 limits, Proposal 7. You read them so fast, I
15 wasn't able to write them down, just the reasons.

16 JUDGE MCCARTNEY: We can get you a
17 copy.

18 MR. SCHUTZ: Thank you.

19 MR. DURANDO: Your Honor, is he
20 referring to my testimony?

21 PARTICIPANT: Yes.

22 JUDGE MCCARTNEY: Yes.

1 MR. DURANDO: I think my staff can
2 take care of that.

3 JUDGE MCCARTNEY: All right. Are
4 there any further questions for this witness?
5 All right. I do want to re-affirm, for the
6 record, that Exhibits 44 through 48 were offered
7 and admitted. There being nothing further for
8 this witness, you are hereby excused.

9 MR. DURANDO: Thank you, Your Honor.

10 JUDGE MCCARTNEY: Would the next
11 witness please take the stand?

12 MR. SCHUTZ: Once again, I'm fully
13 prepared. Nothing's changed in 24 hours.

14 JUDGE MCCARTNEY: Have you been
15 previously sworn, sir?

16 MR. SCHUTZ: Yes.

17 JUDGE MCCARTNEY: All right, I just
18 wanted to make sure. The record does reflect
19 that you have previously testified and,
20 therefore, you have been previously sworn in.
21 You may proceed. Do you have any additional
22 exhibits that you wish to sponsor at this time

1 that were not introduced earlier in your
2 testimony?

3 MR. SCHUTZ: No, I do not.

4 JUDGE MCCARTNEY: All right, you may
5 proceed.

6 MR. SCHUTZ: I'd like to speak against
7 the idea of term limits for us. It may work for
8 other marketing orders. I think for us it
9 wouldn't. We are a large committee. We're 47
10 members and 47 alternates. Currently, we have 14
11 vacancies on the alternate side, so we do
12 struggle filling those positions. If we got
13 termed out, as committee members, out of 47, I
14 really believe you would struggle to fill the 47
15 seats back.

16 There is no one knocking on the door
17 to get into our organization. We are very
18 welcoming, and we are very open minded to trying
19 to get new people in, and it just -- I don't
20 know, raisin growers are just a different group.
21 They're just very complacent, and they don't want
22 to participate or spend the time. So out of the

1 47, you've got the best of the guys that want to
2 donate the time.

3 I would hate to see any of them --
4 even though we disagree at times, I would hate to
5 see any of them be rotated off just for term
6 limits because we need input from all sides. I
7 think we have that. We are very diverse of the
8 raisin growers. We may not look diverse to the
9 community, but of raisin growers, we are a very
10 diverse group. I think we cover that.

11 JUDGE MCCARTNEY: Could I ask you a
12 question for my own clarification?

13 MR. SCHUTZ: Sure.

14 JUDGE MCCARTNEY: The proposed
15 amendment has excluded this proposal with respect
16 to alternates. So my understanding of the
17 participation opportunities for alternates is
18 that if you do not fill all of the seats of the
19 board, the alternates are fully available, ready,
20 willing, and able, if they are on the alternate
21 listing to participate, so how would they be
22 termed out or excluded from participation, given

1 that exception? They can still participate as
2 alternates, bringing all their skillsets and
3 knowledge.

4 MR. SCHUTZ: You're saying the
5 members, if we got termed out?

6 JUDGE MCCARTNEY: Yes.

7 MR. SCHUTZ: Yes, with his new
8 proposal, I guess that would be true, where I
9 could step down for a year, and then come back.

10 JUDGE MCCARTNEY: But you wouldn't
11 really be -- you'd be stepping down as a board
12 member, but all your skills, experience,
13 expertise would still be available in the
14 capacity as alternate, particularly if one of the
15 board seats did go unfilled --

16 (Simultaneous speaking).

17 MR. SCHUTZ: Then I think what we
18 would end up looking like is probably 13 members,
19 and then 36 alternates, all of these faces,
20 filling the spot, so you're right back to where
21 we are with 47. Honestly, just the vision would
22 be yes, we're all alternates today because the

1 members -- we didn't fill the spot.

2 JUDGE MCCARTNEY: I hear what you're
3 saying, so we're right back to where we began,
4 but isn't it -- my question is isn't it true,
5 though, that you wouldn't be termed out, in terms
6 of being prohibited or excluded from
7 participating, given the exclusion with respect
8 to the alternates?

9 MR. SCHUTZ: Yes, I guess that's --

10 JUDGE MCCARTNEY: Same faces,
11 different names.

12 MR. SCHUTZ: Yes, different title in
13 front of the -- exactly.

14 JUDGE MCCARTNEY: I understand.

15 MR. SCHUTZ: I think our other issue
16 is attendance. I just went back and looked at --
17 out of the 47, we are lucky to get probably 75
18 percent there for any given meeting. Again,
19 participation is very difficult, even out of the
20 47 members that are there. Of the alternates, we
21 probably have, I would guess, 25 percent show up
22 for a meeting. Attendance and keeping people out

1 is not, I think, an issue. Again, it's a time
2 commitment.

3 You term out the people that have
4 committed the time, I don't think you'll find
5 another new 47 people. I would really strongly
6 speak against this proposal. If I can just take
7 a moment to review my notes. I think it was
8 actually mentioned earlier, but this is a
9 difficult marketing order. We're told that by
10 USDA.

11 Our marketing order's one of the more
12 difficult ones. So for us to learn it -- and
13 eight years is really a short time. We have
14 maybe six meetings a year, so for a new member to
15 come in, he wouldn't really be contributing much
16 until maybe the third or fourth year, and then
17 you lose all this continuity and the experience
18 from the people that have served. We do get
19 attrition. We do get turnovers within our
20 respective -- between Sun-Maid, the Raisin
21 Bargaining Association, and the independents, so
22 there are new faces, maybe not at quite the rate

1 that the USDA would like to see, but there's -- I
2 know at least four or five new faces just this
3 past year. So I think we are rotating in younger
4 minds and younger ideas. I think without having
5 a chance to review Mike's -- I think that
6 concludes my testimony.

7 JUDGE MCCARTNEY: We'll go off the
8 record for a moment.

9 (Whereupon, the above-entitled hearing
10 went off the record at 11:44 a.m. and went back
11 on the record at 11:44 a.m.)

12 JUDGE MCCARTNEY: We're back on the
13 record. You had an opportunity to review the
14 statement at Exhibit 44, specifically with
15 respect to Proposal 7. Did you have anything
16 else you wished to add?

17 MR. SCHUTZ: No, I do not.

18 JUDGE MCCARTNEY: Are there any
19 questions for this witness?

20 MS. SCHMAEDICK: USDA, Melissa
21 Schmaedick.

22 BY MS. SCHMAEDICK:

1 Q Thank you, Mr. Schutz, for your
2 testimony. Were you present yesterday when Mr.
3 Kalem gave his testimony?

4 A No, I was not.

5 Q Okay. How long have you served on the
6 RAC?

7 A I think since 2002, as a member.

8 Q In your experience, is there a
9 difference in the level of participation when it
10 comes to members and alternate members? For
11 example, are alternate members able to vote?

12 A Yes, when the member's not there.

13 Q When the member's not there --

14 A The alternate sits in.

15 Q -- the alternate sits in.

16 A Correct.

17 Q But if an alternate is participating
18 at the same meeting where their member is
19 present, does that alternate vote?

20 A No.

21 Q Oh, okay.

22 A That's more of a question -- I'm

1 looking at Maria, but I --

2 Q Is there a difference, then -- the
3 alternate may be present, and the alternate may
4 be able to convey their experience, but are they
5 able to operate as a full member in the event
6 that their full member is present?

7 A No.

8 Q No? Okay.

9 A Only if the member is not there, then
10 they -- we actually physically ask them --
11 because they kind of sit to one side. We usually
12 ask them to move over to the main part of the
13 room. So you physically almost get moved, if
14 you're an alternate, over to the member side.

15 Q In the past several years that you've
16 been on the RAC, have there been situations where
17 you have had member positions vacant?

18 A I don't believe so.

19 MR. SCHUTZ: We have?

20 PARTICIPANT: (Off mic comment)

21 MR. SCHUTZ: Again, these --

22 JUDGE MCCARTNEY: It's a lifeline

1 question.

2 MR. SCHUTZ: (Off mic comment)

3 JUDGE MCCARTNEY: You're at risk of
4 being recalled, Ms. Powell.

5 MR. SCHUTZ: My support group.

6 BY MS. SCHMAEDICK:

7 Q If you're not able to answer this
8 question, we may need to recall another witness.
9 In your experience, when there are vacancies on
10 the RAC for member positions, what is the
11 priority? Is it a priority to fill the member
12 seat, or is it a priority to fill the alternate
13 seat?

14 A I can only speak from the -- because
15 I serve as a Raisin Bargaining member, so we fill
16 all of our member seats first, and then we really
17 scramble to fill the alternate seat. Now, I know
18 there is a proposal that Kalem brought forth
19 about how to fill the independents. I'm not sure
20 how that's going to affect -- because I believe
21 he's requesting to fill the member seats first --
22 or that they could run for one particular or the

1 other. I don't know if that answered your
2 question.

3 Q Yes, it does tie into where I'm going.
4 But I guess my question is if you were in a
5 situation where you had a significant number of
6 RAC members that termed out, and if the proposal
7 for term limits were implemented, those members
8 could serve as alternates, but based on what
9 you're stating, you may have a hard time filling
10 the member positions.

11 A I believe so.

12 Q I'm wondering if that, then, creates
13 a situation where you may -- and I would have to
14 maybe ask this question of Ms. Powell, but I
15 believe that there are priorities set on trying
16 to fill a full RAC membership because you're
17 required to have those members in order to, let's
18 say, make a quorum, for example. Is that
19 correct?

20 A Correct.

21 Q Right. You gave the example of having
22 36 alternates and seven members. I'm wondering

1 if that's even a realistic situation, given that
2 USDA may compel you to fill those board member
3 seats prior to filling your alternate seats.
4 Therefore, would a term limit make that
5 difficult?

6 A Yes.

7 Q Okay, thank you. Mr. Kalem, yesterday

8 --

9 MS. SCHMAEDICK: Your Honor, may I use
10 his --

11 JUDGE MCCARTNEY: I can't speak for --
12 I would prefer to designate him Mr. Barserian.
13 Kalem is his first name, is that correct?

14 MS. SCHMAEDICK: Oh, my apologies.

15 JUDGE MCCARTNEY: That's where I was
16 confused.

17 (Simultaneous speaking).

18 MS. SCHMAEDICK: Oh, my apologies,
19 yes, Mr. Barserian.

20 BY MS. SCHMAEDICK:

21 Q In his testimony yesterday, he
22 indicated that --

1 JUDGE MCCARTNEY: I think, Counsel, if
2 you'll pardon me, I think you should state it as
3 a hypothetical because we don't have the
4 testimony before us. Assuming that the record
5 reflects the testimony, and then continue with
6 the question.

7 MS. SCHMAEDICK: Thank you.

8 BY MS. SCHMAEDICK:

9 Q Are you aware of the proposal -- I
10 believe you just stated that you're aware of the
11 proposal to allow for a separate nomination for
12 independent grower members and independent
13 alternate members, is that correct?

14 A Correct.

15 Q If that proposal were implemented and
16 the proposal were successful in recruiting more
17 alternate independent grower members, would that
18 enable those alternate members to become
19 acquainted with the operations of the RAC and, in
20 effect, create a bit of a training program for
21 those members?

22 A I believe that's the intent. A lot of

1 them are nervous to just jump right into the
2 member seat, so that's why they would prefer to
3 run as an alternate, the way I understand it.
4 But they have such lack of participation, if they
5 show up and put their name in the hat, "I just
6 want to be an alternate." If there's not enough,
7 then they'll get shifted over, as you said
8 earlier, to priority to the member. So his
9 proposal, I believe, is to designate, "I want to
10 run as a member, or only as an alternate."

11 Q Okay, thank you. You mentioned -- are
12 you with RBA?

13 A Yes.

14 Q You mentioned that you are a member
15 serving as an RBA representative?

16 A Correct.

17 Q In your experience in working with the
18 RBA, is there a process within the RBA to
19 identify, perhaps, junior members and start to
20 feed them into the alternate member seats as a
21 sort of, again, training track? Does that happen
22 in the RBA?

1 A Yes, absolutely. At our board
2 meeting, we designate -- we ask for volunteers
3 for the members first, and then we pretty much
4 are begging, by the time we get down to those
5 alternate seats, to be quite honest. It's,
6 "Would you please do it?" Someone like myself,
7 as chairman, they know my attendance is going to
8 be probably 95 percent, so if somebody really
9 doesn't want to be it, but they will put their
10 name as the alternate behind me because they know
11 they maybe will only have to show up at one
12 meeting a year.

13 Q But within the RBA, would it be
14 correct to say that you do have a process for
15 identifying and essentially grooming or educating
16 raisin growers to then eventually take the
17 position as a board member?

18 A Yes. We are actually elected, too, by
19 our constituents. So we do, in my opinion, have
20 term limits, at least to the constituents.
21 Because every two years, we get re-elected from
22 our specific areas, as far as the RBA. I know

1 Sun-Maid has something similar. We are
2 constantly re-elected by our peers, our growers,
3 neighbors, and friends, to serve as the RBA, and
4 then, therefore, being on the board, then,
5 therefore, qualified for the RAC, or picked for
6 the RAC.

7 Q Do you feel that there's a process in
8 place that, then, allows for sort of routine
9 opportunities for change?

10 A Yes.

11 Q Yes? Okay. Were you present for Mr.
12 Durando's testimony?

13 A Yes.

14 Q He alluded to a program that is in
15 place under the California Almond Marketing
16 Order, essentially a recruitment program.

17 A Yes.

18 Q Do you feel that with the potential
19 implementation of the separate grower and
20 alternate independent -- sorry, separate
21 independent grower member and independent grower
22 alternate member nominations -- I believe you

1 stated that would allow for some training.

2 A Yes.

3 Q In your opinion, does the raisin
4 industry already have in house this training
5 process happening, whether it's within RBA or
6 within Sun-Maid?

7 A I would say yes, within the individual
8 groups. We don't have anything industry wide, as
9 he referred to, but yes, I think it's -- and I
10 wouldn't want to speak to Sun-Maid, but RBA does.
11 Because even when we're recruiting directors for
12 our own board, as older people get off of the
13 board and don't want to run or the time
14 commitment, then we are constantly recruiting new
15 growers in that specific area, so that is our
16 form of recruitment.

17 Q In your opinion, would a more
18 formalized recruitment program like almonds,
19 would that be helpful?

20 A I don't think so. I think we're
21 tapping the well as best we can.

22 Q I think that concludes my questions.

1 Thank you.

2 JUDGE MCCARTNEY: Any further
3 questions for this witness? There being none,
4 you're hereby excused.

5 MR. SCHUTZ: Thank you.

6 JUDGE MCCARTNEY: Thank you for your
7 testimony. Are there any individuals who wish to
8 provide testimony? Do we have any other
9 witnesses? I believe you've been up here three
10 times now, Barry. Do you have something new to
11 add to your previous testimony?

12 MR. KRIEBEL: Yes.

13 JUDGE MCCARTNEY: I'm going to give
14 you 15 minutes.

15 MR. KRIEBEL: It should not be that
16 long.

17 JUDGE MCCARTNEY: Let the record
18 reflect you've been previously sworn. Please
19 identify yourself.

20 MR. KRIEBEL: Barry Franklin Kriebel.
21 I just wanted the record to reflect that the
22 working group considered the modification that

1 the department is proposing on the term limits on
2 the alternates, and we dismissed it after a full
3 discussion within the workgroup for many of the
4 reasons that Monte Schutz discussed. Because we
5 believe that we have good representation with the
6 size of the committee. We also considered
7 reducing the size of the committee. Part of this
8 is a holistic view as to what's the right size,
9 should there be term limits, and to some extent,
10 we believe that the current system works best for
11 our unique industry because it allows many people
12 to come into the industry as either alternates or
13 members and stay participating.

14 We also considered the idea of members
15 moving to alternates for a one-year time period
16 as somewhat as a charade because -- and I think
17 the record should reflect that because we
18 considered this a charade because the member
19 would go to an alternate, but then when it came
20 for a time to vote, the person would essentially
21 ask the member to leave, so they could vote,
22 which is kind of common reverse practice in the

1 industry today.

2 Because within the independents, they
3 typically have had a process of reversing terms,
4 so that there's a practice where if an issue is
5 very important to one of the alternates or
6 members, as a matter of just politeness in the
7 industry, they'll let the person participate who
8 has the greatest interest between the member and
9 the alternate. That's kind of not a really
10 well-written or understood practice, but that's
11 kind of why we thought that the -- one reason why
12 we thought the department's proposal would,
13 long-term, appear to the constituency of the
14 members at large as if we were doing something
15 inappropriate by alternates playing a larger role
16 at the committee meetings, when they were really
17 only alternates because the members were not
18 attending.

19 The second thing I'd like to point out
20 is I thought there was some misunderstanding as
21 to the quorum rules. Maybe there wasn't on the
22 record. But the quorum rules are roll calls

1 taken at the beginning of the meeting. If a
2 member's not there, the alternate is seated
3 immediately, so that the alternate qualifies for
4 fulfilling the quorum rules.

5 JUDGE MCCARTNEY: Are there any
6 questions from this follow-up testimony? There
7 being none, you're hereby excused. Thank you.
8 All right, are there any other witnesses wishing
9 to give testimony today before we close? There
10 being none, the record is closed with respect to
11 the taking of testimony. Off the record for a
12 moment.

13 (Whereupon, the above-entitled hearing
14 went off the record at 12:00 p.m. and went back
15 on the record at 12:31 p.m.)

16 JUDGE MCCARTNEY: We're back on the
17 record now. The parties have had an opportunity
18 to confer regarding the transcript correction
19 protocol and the briefing schedule, and I would
20 like that to be read into the record at this
21 time.

22 MS. CHILUKURI: From the receipt of

1 the transcript, USDA will have --

2 JUDGE MCCARTNEY: Please identify
3 yourself for the record.

4 MS. CHILUKURI: Rupa Chilukuri, USDA.
5 From the receipt of the transcript, USDA will
6 have 45 calendar days for corrections. Those
7 corrections will be emailed to the judge and the
8 industry. The industry will then have ten
9 business days from the filing of USDA's
10 corrections to review and either object to those
11 corrections or issue supplemental corrections.
12 Then USDA will have five business days to react
13 to that, and if there are any disputes or
14 conflicts, the Judge obviously will step in.

15 JUDGE MCCARTNEY: Within three
16 business days of any indicated conflict, after
17 the conclusion of that cycling process, I will be
18 holding a telephone conference, wherein I will
19 entertain oral argument with respect to the
20 proposed transcript corrections, and I will issue
21 a ruling, so that we can move forward with
22 certification of the transcript in a timely

1 manner.

2 MS. CHILUKURI: Rupa Chilukuri, USDA.

3 Upon certification of the transcript, parties
4 will have 30 days to file briefs, and that will
5 happen concurrently.

6 JUDGE MCCARTNEY: Is that agreeable to
7 all parties?

8 PARTICIPANT: Yes, it is.

9 JUDGE MCCARTNEY: The other ancillary
10 point is with respect to exhibits. Fortunately,
11 due to the efficiency of our court reporter, we
12 have been able to review the exhibit list that
13 she has generated, and Exhibits 1 through 48 have
14 been identified, offered, and have been admitted
15 into the record, and all parties have had an
16 opportunity to review the court reporter's
17 exhibit list. Does anyone have any objections,
18 issues, or concerns with that?

19 PARTICIPANT: No.

20 PARTICIPANT: No, Your Honor.

21 JUDGE MCCARTNEY: That exhibit list
22 will be adopted by the Court as the official

1 exhibit list for purposes of my certification to
2 the secretary. Any other questions, issues, or
3 concerns before we adjourn? All right, we're
4 adjourned, thank you very much for your time,
5 effort, and energy.

6 (Whereupon, the above-entitled hearing
7 was concluded at 12:34 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Amendments to the Marketing Order
Regulating Raisins

Before: United States Department of Agriculture

Date: 05-04-16

Place: Clovis, California

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my direction; further, that said transcript is a
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Court Reporter

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