

UNITED STATES DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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PROPOSED MARKETING ORDER AND AGREEMENT
FOR PECANS GROWN IN
ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA,
GEORGIA, KANSAS, LOUISIANA, MISSOURI,
MISSISSIPPI, NORTH CAROLINA, NEW MEXICO,
OKLAHOMA, SOUTH CAROLINA, AND TEXAS

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MONDAY,
JULY 20, 2015

The hearing came to order at 8:00 a.m. in the Rio Hondo Room and Auditorium at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico, Clay G. Guthridge, Administrative Law Judge, presiding.

BEFORE:

CLAY G. GUTHRIDGE
Chief Administrative Law Judge
Federal Maritime Commission

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MELISSA SCHMAEDICK, USDA

JENNIE M. VARELA, USDA

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Exhibit Nos.	Document	ID	Rec'd
1	Federal Register Vol. 80, N. 127 Thursday, July 2, 2015		11/13
2	Notice of Hearing		11/13
3	Press Release		11/13
4	Certificate of Officials Notified		11/13
5	Pecan Hearing Testimony of Donald L. Hinman		17/24
6	Pecan Data Tables: Crop Value, Production, and Price for 1994-2014		17/24
7	Curriculum Vitae, B. Michael "Mike" Adams.		28/34
8	Copy of Photo of Native Pecan Tree		30/34
9	Association of Nut Consumption with Total Cause-Specific Monthly		30/39
10	American Pecan Board Regional Divisions		30/37
11	Copy of Photo of Living Native		30/41
12	Copy of Photo of Improved Variety Tree		30/41
13	Crop Size of Fluctuations - U.S. Pecan Crop 1960 through 2014 with Exponential Trend Line		30/48
14	50-Year Crop History (Supply)		30/54
15	50-Year History of Farm Value (Crop Value of Pecans in		30/54

16	Comparison to Almonds) List/Photos of Board of Directors	71/71
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20	California Agriculture, Volume 55, Number 1 - Almond Advertising Yield Net Benefits to Growers	143/143
21	NICPRE Quarterly	143/143
22	Demand Enhancement Through Food-Safety Regulations	143/143
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1 P-R-O-C-E-E-D-I-N-G-S

2 (8:01 a.m.)

3 JUDGE GUTHRIDGE: Good morning. My
4 name is Clay Guthridge. I am a Chief
5 Administrative Law Judge in the Federal Maritime
6 Commission and I've been detailed to the U.S.
7 Department of Agriculture to preside over this
8 rulemaking hearing. First thing, let me ask you,
9 if you would please, if you have cellphones,
10 other electronic devices such as that, either
11 turn it off or at least put it on silent.

12 Can I have the appearances of the
13 counsel, please?

14 MR. HILL: My name is Brian Hill from
15 the United States Department of Agriculture's
16 Office of General Counsel. I'm representing the
17 Department of Agriculture in this matter.

18 JUDGE GUTHRIDGE: One is missing, so
19 counsel for --

20 MR. DAVIS: Dwight Davis, counsel for
21 the Proponent.

22 MR. QUIROS: Paul Quiros, counsel for

1 Proponent.

2 MS. MYERS: Regina Myers, counsel for
3 Proponent.

4 JUDGE GUTHRIDGE: Thank you. We're
5 here today on a proposal to promulgate a
6 marketing agreement covering 15 states, a
7 marketing agreement for pecans pursuant to the
8 requirement of the Agricultural Marketing
9 Agreement Act of 1937. The Act is codified as 7
10 United States Code Section 601-674, and the
11 proposal is Docket No. 15-0139AO-FV, and the
12 proposal itself was published in the Federal
13 Register on July 2, 2015, 80 Federal Register,
14 Page 38021 to 38032.

15 The proposal was submitted on behalf
16 of the pecan industry by the American Pecan
17 Board, the Proponent group which is comprised of
18 pecan growers and handlers from across the
19 production area. And the production area is
20 defined as the Carolinas, south to Florida, and
21 then across the Southern United States, all the
22 way to California.

1 The proposed order would provide
2 authority to collect industry data and to conduct
3 research and promotion activities. In addition,
4 the order would provide authority for the
5 industry to recommend grade, quality, and size
6 regulation as well as pack and container
7 regulation, subject to approval by the Department
8 of Agriculture.

9 The program would be financed by
10 assessments on pecan handlers and would be
11 locally administered under USDA oversight by a
12 council of 17 growers and shellers, also known as
13 handlers, nominated by the industry and appointed
14 by the USDA.

15 Hearing sessions will be held here in
16 Las Cruces today, July 20th and 21st, and with a
17 carryover, possibly, until Wednesday the 22nd,
18 then the hearing will continue in Dallas, Texas
19 on July 23rd and 24, with a possible carryover to
20 July 25th, and then Tifton, Georgia from July
21 27th through the 29th, with a possible carryover
22 to July 30th.

1 The purpose of the hearing is to
2 receive information relating to the proposal and
3 it is my function and responsibility to conduct
4 the hearing and to ensure that all persons who
5 want to present relevant evidence or otherwise
6 participate in the public hearing have an
7 opportunity to do so.

8 The information presented at the
9 hearing will be compiled into a written record
10 and used by the Secretary of Agriculture to make
11 a decision on the record. The decision will be
12 based on the record made in the hearing
13 consisting of the testimony and statements of the
14 witnesses and any exhibits submitted and entered
15 into the record.

16 Any interested person may testify. If
17 you're here and not already on a witness list, if
18 you'd let one of these U.S. Department of
19 Agriculture personnel know that you want to
20 testify, and they'll see to it that I get notice
21 of that.

22 The testimony may be admitted as long

1 as it's not immaterial, irrelevant, or
2 repetitious. Interested persons may also submit
3 a written statement instead of or in addition to
4 testifying. A written statement should identify
5 the person who is making the statement, including
6 name, address, and other contact information, and
7 occupation.

8 If you submit it, please send in five
9 copies, either give it to the court reporter if
10 you're here, or send it to the Department of
11 Agriculture in Washington. The written statement
12 will become an exhibit and given to the reporter
13 to transmit to the Secretary's office.

14 Representatives of the Department of Agriculture
15 are available to give you assistance on that.

16 Any interested person may ask
17 questions of witnesses who present testimony. If
18 you want to ask questions of a witness, please
19 respond when I ask you at the conclusion of the
20 witnesses prepared testimony.

21 Deborah Gonzalez, who's seated stage
22 left over there, is the court reporter and she'll

1 record everything said at the hearing and then
2 prepare a written transcript of this testimony,
3 which will become part of the record. I'm sure
4 that she'll appreciate that if you are testifying
5 or asking questions, you speak clearly into the
6 microphone and make sure she can understand.

7 After you testify, I may ask you to
8 consult with her to clarify any words that she
9 might not have clearly understood. If you want a
10 copy of the transcript, you would need to make
11 your own arrangements. There'll be one via copy
12 on file with the Department of Agriculture in
13 Washington.

14 Now, Mr. Hill, there are four
15 foundational exhibits that I understand need to
16 go into the record right at the beginning. Do
17 you have those?

18 MR. HILL: That is correct. Rupa will
19 be handling this one.

20 MS. CHILUKURI: Yes, Your Honor. So
21 we --

22 JUDGE GUTHRIDGE: Is that on?

1 MS. CHILUKURI: Okay. Yes, Your
2 Honor, so we'd like to mark some exhibits for
3 addition to the record, and as you said, these
4 four exhibits are required by the regulation in
5 this proceeding. So Exhibit 1 is a copy of the
6 Federal Register Notice of this proceeding and it
7 was published on Thursday, July 2, 2015. Exhibit
8 2 is a true copy of the Notice of Hearing to
9 interested persons.

10 Exhibit Number 3 is a press release
11 regarding this hearing, and it's also a
12 certificate of the press release. And Exhibit
13 Number 4 is a certificate of officials notified
14 concerning this hearing. And here, there are 15
15 states in the proposed production area, so the
16 Governors of those 15 states were notified.

17 And I would like those four exhibits
18 to be admitted to the record, Your Honor, and
19 I'll pass them off to the court reporter.

20 (Whereupon, the documents referred to
21 were marked as Exhibits 1 through 4 for
22 identification.)

1 JUDGE GUTHRIDGE: Is there any
2 objection to the admission of those four
3 exhibits?

4 MR. QUIROS: Your Honor, we don't have
5 any objection. I just want a clarification. As
6 part of the Exhibit Number 1, the copy of the
7 Federal Register Notice of this proceeding, it
8 includes a copy -- does it include a copy of the
9 proposed federal marketing order for pecans?

10 MS. CHILUKURI: Yes, the Notice of
11 Hearing, what was published would be the, I
12 guess, preamble, but it also is a proposed
13 regulatory text.

14 MR. QUIROS: Thank you very much.

15 MS. CHILUKURI: I'm sorry, Your Honor,
16 I didn't have a chance to identify myself before.
17 I'm Rupa Chilukuri. So that's R-U-P-A, C-H-I-L-
18 U-K-U-R-I, and I'm representing the Department
19 here.

20 JUDGE GUTHRIDGE: Okay. Thank you.
21 So if there's no objection, then those four
22 exhibits are admitted into the record. Ms.

1 Gonzalez, let me know when you're ready. You
2 ready? Mr. Hill, would you call your first
3 witness, please.

4 (Whereupon, the documents previously
5 marked as Exhibits 1 through 4 for identification
6 were received into evidence.)

7 MR. HILL: We'd like to call Don
8 Hinman.

9 JUDGE GUTHRIDGE: Please raise your
10 right hand.

11 WHEREUPON,

12 DON HINMAN

13 was called as a witness by Counsel for the
14 Department and, having been first duly sworn,
15 assumed the witness stand, was examined and
16 testified as follows:

17 JUDGE GUTHRIDGE: Please state your
18 name, address, and occupation for the record.

19 THE WITNESS: My name is Donald
20 Hinman, spelled D-O-N-A-L-D, H-I-N-M-A-N, and my
21 profession is economist, and my home address is
22 [REDACTED] Alexandria,

1 Virginia [REDACTED].

2 JUDGE GUTHRIDGE: Mr. Hill?

3 MR. HILL: Mr. Hinman, could you
4 please tell us a little bit about your
5 educational background?

6 THE WITNESS: Yes, I have a Master's
7 and Doctorate in Agricultural Economics from
8 Michigan State University. I have worked for the
9 Promotion and Economics Division and its
10 predecessor divisions for 13 years, and prior to
11 that, I was a teacher of economics in the
12 University of Wisconsin system.

13 DIRECT EXAMINATION

14 BY MR. HILL:

15 Q And how long have you been with the
16 USDA, you said?

17 A Thirteen years.

18 Q And have you participated in hearings
19 like this before? In rulemakings like this.

20 A Yes, I have.

21 Q And how many times would you estimate
22 you've done so?

1 A In rulemaking, more than a dozen
2 times, and this is the third promulgation I've
3 been involved with.

4 Q So in this particular case, you have
5 prepared two different documents, is that
6 correct?

7 A That is correct.

8 Q And you have personally prepared those
9 documents.

10 A Prepared them in collaboration with my
11 colleague in motion economics division, Catherine
12 Loft, spelled L-O-F-T.

13 Q And what was the purpose of preparing
14 these documents?

15 A The purpose of these tables is that
16 the data could serve as a reference document for
17 the hearing record and could be used by any other
18 witness during the hearing.

19 Q So this was not prepared in order to
20 take a side in this hearing?

21 A That's correct. A neutral position.
22 It is meant to serve as a reference document

1 only.

2 Q Okay. Now, I see that one of the
3 documents you prepared is a statement, is that
4 correct?

5 A That's correct.

6 Q And do you intend to read this into
7 the record?

8 A Yes.

9 Q Okay. And the second document is
10 what?

11 A The second document, the documents are
12 in two parts, there's the pecan data tables,
13 consisting of 26 tables, and a second Part II
14 document of three additional tables, plus the
15 witness statement itself.

16 Q So the Part II document is part of
17 that pecan data table's crop value, production,
18 and price for 1994 through 2014, is that correct?

19 A That's correct.

20 MR. HILL: Your Honor, I would like to
21 mark these for evidence, his statement as Exhibit
22 Number 5, and the two remaining tables as Exhibit

1 Number 6.

2 (Whereupon, the documents referred to
3 were marked as Exhibits 5 and 6 for
4 identification.)

5 JUDGE GUTHRIDGE: All right.

6 MR. HILL: Okay, Mr. Hinman, it seems
7 like you're ready. You can proceed with reading
8 your statement.

9 THE WITNESS: My name is Donald
10 Hinman, spelled H-I-N-M-A-N, the last name. I'm
11 a senior economist in the Promotion and Economics
12 Division, also known by its acronym PED, Fruit
13 and Vegetable Program, Agricultural Marketing
14 Service, U.S. Department of Agriculture.

15 And the purpose of my testimony is to
16 present and submit into evidence a set of tables
17 representing pecan market conditions, and the
18 title of the document is "Pecan Data Tables: Crop
19 Value, Production, and Price for 1994-2014." The
20 source of this data is the National Agricultural
21 Statistics Service of the USDA, also known by its
22 acronym NASS, N-A-S-S.

1 In the main document, there are 26
2 tables covering 7 categories, and there's a Part
3 II document with three additional tables. Crop
4 values represented in units of \$1000 and
5 production is represented in units of 1000
6 pounds, and all tables represent utilized in-
7 shell pecans.

8 I want to define the word utilized, it
9 means that the crop is harvested and sold into
10 commercial channels, and it's important to
11 mention this terminology because there are many
12 commodities for which NASS publishes data, for
13 which all the crop may not be utilized;
14 harvested, but not utilized.

15 And presenting the data in this way
16 from utilized crop ensures that the crop, value,
17 production, and price data are presented on a
18 consistent basis. And now I'm going to refer you
19 to tables and page numbers.

20 On Pages 1 and 2, Tables 1 through 3
21 represent the crop value for each state and for
22 the U.S. Separate tables are presented for two

1 broad categories of pecan varieties. Table 2
2 covers improved varieties and Table 3 covers
3 native and seedling varieties, and Table 1
4 combines them both to represent all pecans.

5 The NASS definition of improved
6 varieties is budded, grafted, or topworked. The
7 production variety category of the table consists
8 of three tables organized in the same way as crop
9 value. On Page 3, Table 4 covers all pecan
10 varieties. Tables 5 and 6 on Page 4 represent
11 production of improved varieties and seedling
12 varieties, respectively.

13 Table 4 shows that 2014 U.S.
14 production was 265 million pounds. The last row
15 in Tables 5 and 6 represent production of
16 improved varieties and native and seedling
17 varieties, respectively, and percentages of total
18 U.S. production.

19 Now, Table 5 shows an improved variety
20 production of 222 million pounds in 2014,
21 representing 84 percent of U.S. production.
22 Table 6 shows that 2014 native and seedling

1 production of 44 million pounds represented 16
2 percent of U.S. production.

3 It should be noted that all production
4 tables represent the states in declining order of
5 magnitude by level of 2014 production. For
6 tables categorized by region, that pattern is
7 followed within each region. The final columns
8 in those tables present percentages by state and
9 then cumulative percentages by state. And the
10 crop value tables are also presented in declining
11 order of magnitude.

12 The cumulative percentage column of
13 Table 4, on Page 3, shows that the top three
14 producing states, Georgia, New Mexico, and Texas,
15 representing 75 percent of 2014 U.S. production.
16 On Page 4, Table 5 shows that the same three
17 states represented 83 percent of the U.S.
18 improved variety production. Table 6 on Page 5
19 shows that the top three states in terms of
20 native and seedling production, Oklahoma, Texas,
21 and Louisiana, represented 88 percent of U.S.
22 native and seedling production.

1 The next section in the document is
2 production by region. NASS publishes pecan data
3 for three distinct regions. On Pages 6 and 7,
4 Tables 7, 8, and 9 present production data for
5 each state in the East, Central, and West
6 regions, respectively. Table 11 presents data
7 for the entire U.S., covering all three regions.

8 The second to the last row in each of
9 those tables shows that 2014 production in the
10 East, Central, and West regions was 75 million,
11 99 million, and 91 million pounds, respectively.

12 When I'm referring to here, for particular
13 numbers, I'm rounding the numbers rather than
14 stating the decimals, which is in the document.

15 Out of total 2014 production of 265
16 million pounds, the respective regional
17 percentages were 28, 37, and 34.

18 Although data is published for each
19 state, there are some years in which data from
20 particular states is not published by NASS for
21 confidentiality reasons to avoid disclosing data
22 for individual operations. On Page 7, Table 10

1 combines into a category called Other States,
2 data from several states, for which
3 confidentiality was an issue in particular years.
4 The years to which this applies are 1994, 1995,
5 and 2013.

6 The production data in Tables 7
7 through 11, representing all varieties by state
8 and region, is then broken out by the two variety
9 categories. On Pages 8 and 9, Tables 12 through
10 15 present improved variety production by region.
11 On Pages 10 and 11, Tables 16 through 19 present
12 native and seedling production by region.

13 The last two categories of the tables
14 present grower price data. On Page 12, Tables 20
15 through 22 present annual grower prices per pound
16 of improve varieties for each state, categorized
17 by three regions. On Page 13, Table 23 presents
18 U.S. annual average grower prices for improved
19 varieties, cover all states combined.

20 On Page 14, Tables 24 and 25 present
21 annual grower prices for native and seedling
22 varieties for each state in the Eastern and

1 Central regions. Table 26 presents U.S. annual
2 average grower prices for native and seedling
3 varieties, covering all states combined.

4 Data for 2014 in Tables 1 through 26
5 was prepared using what NASS refers to as
6 preliminary 2014 data, published in January of
7 2015. It should be noted that NASS issued its
8 final 2014 production data this past Friday
9 afternoon, July 17, too late to be included in
10 the printing of these tables.

11 And therefore, in Part II of the
12 "Pecan data tables", including this Table 27, a
13 page of pecan data excerpted from the July 2015
14 report known as Non-Citrus Fruits and Nuts.
15 Table 28 in Part II compares the parity price for
16 pecans published annually by NASS to the season
17 average grower price for improved variety of
18 pecans.

19 And Table 29, the final table, is a
20 table of pecan supply and utilization prepared by
21 the Economic Research Service of the USDA. And
22 that concludes my statement.

1 MR. HILL: I would ask that Tables 5
2 and -- excuse me, Exhibits 5 and 6 be admitted
3 into evidence, Your Honor.

4 JUDGE GUTHRIDGE: Is there any
5 objection with admitting Exhibit 5, Mr. Hinman's
6 statement, into the record?

7 MR. QUIROS: No objection by the
8 Proponent.

9 JUDGE GUTHRIDGE: Hearing no
10 objection, Exhibit 5 is admitted. Is there any
11 objection to admitting Exhibit 6 into the record,
12 the tables; pecan data tables?

13 (Whereupon, the document previously
14 marked as Exhibit 5 for identification was
15 received into evidence.)

16 MR. QUIROS: No objection, Your Honor.

17 JUDGE GUTHRIDGE: Hearing no
18 objection, Exhibit 6 is admitted into the record.
19 Anything further, Mr. Hill?

20 (Whereupon, the document previously
21 marked as Exhibit 6 for identification was
22 received into evidence.)

1 MR. HILL: We have no questions, Your
2 Honor.

3 JUDGE GUTHRIDGE: Mr. Quiros, any
4 questions?

5 MR. QUIROS: No, sir. You covered
6 parity pricing in your last statement, is that
7 correct?

8 THE WITNESS: That's correct. That's
9 the last table of Part II, the five-year
10 comparison of the improved grower price compared
11 to the published parity price.

12 MR. QUIROS: Thank you, Mr. Hinman.
13 No further questions.

14 JUDGE GUTHRIDGE: Does anyone in the
15 audience have any questions of Mr. Hinman? Then,
16 Mr. Hinman, you're excused. Please see Ms.
17 Gonzalez, see if there's any words that she needs
18 some help with. Any other witnesses, Mr. Hill?

19 MR. HILL: We have none, Your Honor.

20 JUDGE GUTHRIDGE: All right. Mr.
21 Quiros, Mr. Davis?

22 MR. QUIROS: Yes, Your Honor. The

1 Proponent group calls as its first witness, Mr.
2 Mike Adams. Mr. Adams, would you take a seat?

3 MR. DAVIS: Give me one second to turn
4 it on again.

5 JUDGE GUTHRIDGE: Please raise your
6 right hand.

7 WHEREUPON,

8 MIKE ADAMS

9 was called as a witness by Counsel for the
10 Proponent and, having been first duly sworn,
11 assumed the witness stand, was examined and
12 testified as follows:

13 JUDGE GUTHRIDGE: Please state your
14 name, and address, and occupation for the record.

15 THE WITNESS: My name is Mike Adams,
16 spelled M-I-K-E, A-D-A-M-S. My occupation is a
17 pecan grower and farmer.

18 JUDGE GUTHRIDGE: Okay. Mr. Davis,
19 you may proceed.

20 MR. DAVIS: Good morning, Mr. Adams.
21 Do you have a prepared statement you'd like to
22 begin your testimony with?

1 THE WITNESS: I do. Yes.

2 MR. DAVIS: Please proceed.

3 MR. DAVIS: I'm going to part a little
4 bit and take a cue from my 4-year-old grandson,
5 who's into colors, I'm color-coded. The farmer's
6 the guy in the tan suit, so just to keep things
7 straight. And Mr. Durando told me I was a pecan
8 man this morning because of my green tie. Your
9 Honor, distinguished guests, and everyone present
10 today who have worked so diligently, and I'll
11 emphasize diligently, for so long to promulgate a
12 federal marketing order for pecans, I'm honored
13 to be here as President of the American Pecan
14 Board, which is a proponent organization.

15 I'm also President of the Texas Pecan
16 Board and I'm a pecan farmer. I've been
17 authorized by my boards to testify both in my
18 capacity as the President of the American Pecan
19 Board and as President of the Texas Pecan Board.
20 I also appear in my capacity as the owner of
21 Royalty Pecan Farms in Caldwell.

22 In live in Henderson, Texas. I have

1 a Bachelor's Degree in Mathematics and Education
2 from Texas Christian University and a Master's
3 Degree in Anything Economics from Texas A & M.
4 By training, I'm an educator, mathematician, and
5 economist. I've had a diverse professional
6 career, which has included some happy years as a
7 college football coach. I got into pecans to get
8 at something less risky though.

9 I'm an executive in an oil and gas
10 company and I grew up in the cattle business,
11 cattle and timber business, so for a while, I was
12 a cattleman in my younger days. But by far, the
13 most intellectually and physically fulfilling
14 work I've done has been in the pecan business.
15 And I'll tend my CV.

16 MR. DAVIS: Your Honor, we tender what
17 has marked, I believe, as Exhibit 7, now?

18 (Whereupon, the document referred to
19 was marked as Exhibit 7 for identification.)

20 JUDGE GUTHRIDGE: Exhibit 7 is the
21 next number. Yes.

22 MR. DAVIS: Can we hold just one

1 second? Mr. Hill, in order to not interrupt the
2 testimony, can we give you the copies after his
3 testimony is concluded?

4 MR. HILL: We prefer to have them
5 before than after.

6 MR. DAVIS: Okay. I think you can go
7 ahead and proceed, Mr. Adams.

8 MS. CHILUKURI: One other question, is
9 it possible to have all the exhibits that you
10 intend to enter, including Mr. Adams testimony?

11 MR. DAVIS: We have those, but we just
12 intended to do them as we introduce them. Would
13 you like to take a moment and us get you copies
14 of all of them?

15 MR. HILL: Well, I guess we're talking
16 about --

17 JUDGE GUTHRIDGE: Mr. Davis, I think
18 that might be easier if you take all the
19 documents, all the exhibits, for any one witness
20 and then just pass them over at the beginning.

21 MR. DAVIS: Let's get a set of all of
22 them.

1 (Whereupon, the documents referred to
2 were marked as Exhibits 8 through 16 for
3 identification.)

4 MR. HILL: Correct.

5 MR. DAVIS: All right. Your Honor, I
6 believe we have all of our exhibits ready to go
7 for Mr. Adams' testimony.

8 JUDGE GUTHRIDGE: Thank you. I think
9 it might helpful if the other witnesses, if you
10 have all the exhibits ready to just handout like
11 that. I'm thinking it might be a little more
12 conducive.

13 MR. DAVIS: We'll do that in the
14 future. For some reason we had thought that the
15 witness had to authenticate them in the fact as
16 to what they were, but if we can get them in with
17 -- I guess you shouldn't ask any objections to
18 these. Can we proceed then?

19 JUDGE GUTHRIDGE: Well, I think after
20 they've been authenticated and we can go to
21 admission.

22 MR. DAVIS: And tender them. All

1 right. Mr. Adams, please.

2 THE WITNESS: Your Honor, I plan to
3 attend and participate in all three of the
4 administrative law hearings on the pecan
5 proposal, I believe the one in Dallas, and two
6 for the Georgia. We've got a full agenda today
7 and tomorrow and have several witnesses scheduled
8 to testify here in Las Cruces, and they've made
9 extraordinary efforts to be here, but are only
10 available for these two days.

11 In order that everyone with a more
12 restricted schedule can be heard, with the
13 Court's permission, this morning, I'd like to
14 give an overview of the pecan industry and the
15 reasons why the industry needs a federal
16 marketing order.

17 I will address the specific structure
18 of the proposed Pecan Council, nomination of its
19 members, and other topics in the other hearings
20 in Texas and Georgia. Other members of our
21 American Pecan Board, the proponent organization,
22 will testify about other parts of the proposed

1 order and will give advanced notice of that
2 testimony.

3 I'd like to begin by providing a brief
4 history of the pecan industry. The pecan is the
5 only commercially sold tree nut indigenous to
6 America. Early recorded history chronicled the
7 Spanish and French explorers to the New World
8 encountering what they called the hard shell
9 walnut, not being familiar with the pecan, and it
10 was favored by the native inhabitants of the New
11 World.

12 In the fall and winter months, the
13 Native Americans followed the bounty of the trees
14 bearing this so-called nut with a hard shell
15 along rivers of the Southeast and Southwest. It
16 was valued not only as a nutritious, staple food
17 for the Native Americans, but it was also used as
18 a barter commodity because of its value.

19 Some authorities even believe the fact
20 the pecan trees tend to produce large crops only
21 every other year, the so-called alternate year
22 bearing phenomenon, heavily influenced the

1 migration patterns of the Native Americans for
2 thousands of years. And that was noted in a
3 book, The Pecan, by Dr. James McWilliams.

4 The scientific name for pecan trees,
5 *Carya illinoensis*, in honor of Illinois, where
6 the scientific community found the first native
7 trees. Pecan trees were hardy and long
8 producing. There are many active pecan farms
9 that have been producing trees that are over 90
10 years old. Some even older than that.

11 And when you tender Exhibit --

12 MR. DAVIS: 8.

13 THE WITNESS: 8, which is the
14 photograph of the native tree.

15 JUDGE GUTHRIDGE: Is the original,
16 it's going to be in the record, is it an actual
17 color photo?

18 MR. DAVIS: Yes, color photo.

19 JUDGE GUTHRIDGE: The copies we have
20 our photocopies?

21 MR. DAVIS: Yes, Your Honor.

22 JUDGE GUTHRIDGE: All right. Is there

1 any objection to admission of Exhibit 8?

2 MR. HILL: No, Your Honor.

3 JUDGE GUTHRIDGE: Hearing no
4 objection, Exhibit 8 is admitted. Was Exhibit 7
5 admitted, the CV?

6 (Whereupon, the document previously
7 marked as Exhibit 8 for identification was
8 received into evidence.)

9 MR. DAVIS: We had tendered it, but --

10 MR. HILL: I don't think it was
11 admitted, but I have no objection to it.

12 MR. DAVIS: It wasn't admitted.

13 JUDGE GUTHRIDGE: All right. Any
14 objection to Exhibit 7, the CV? Hearing no
15 objection, 7 is admitted.

16 (Whereupon, the document previously
17 marked as Exhibit 7 for identification was
18 received into evidence.)

19 MR. DAVIS: Well, I guess I'll leave
20 that out to the next one.

21 THE WITNESS: This native pecan tree
22 in this photograph is several hundred years old.

1 It's over 48 feet in diameter and it still
2 produces 985 pounds of nuts. That was its
3 production in 2003. There's even a grand pecan
4 tree planted by George Washington overlooking the
5 Potomac on the grounds of Mount Vernon, which was
6 removed recently in March of 2015 due to wind
7 damage.

8 As an aside, I took my wife to Mount
9 Vernon this past few months to show her this
10 pecan tree that George Washington had planted.
11 Little did I know that the wind had blown it
12 down, so I had to show her pictures for her to
13 believe me.

14 Pecans have a great story to tell.
15 The pecan is healthful, nutritious, taste
16 preferred, diverse as a food ingredient, and is
17 American. Tremendous market potential exists in
18 the United States. Pecan stakeholders recognize
19 that their industry is rapidly changing from
20 realities within and market forces without.

21 Pecan stakeholders want to play a
22 proactive role in our future through strategic

1 marketing, accurate data collection, research and
2 development, and uniform and greater organization
3 within the industry. Through conversations and
4 meetings with all stakeholders, many proposals
5 were considered.

6 However, the industry has concluded
7 that a federal marketing order is the most
8 appropriate vehicle to assist the industry in
9 effecting positive and measurable change.

10 The overreaching purpose of the
11 Agricultural Marketing Agreement Act of 1937 is
12 to stabilize the market. The Federal Marketing
13 Order for pecans we are proposing will certainly
14 further and effectuate that purpose and, thereby,
15 assist the pecan industry to reach its full
16 potential.

17 To give you an overview of the
18 industry, let me talk a little bit about the
19 geography. Currently, pecans are grown
20 commercially in three regions of the United
21 States. The East region, which consists of the
22 states of North Carolina, South Carolina,

1 Georgia, Florida, and Alabama; the Central
2 region, which is made up of Texas, Oklahoma,
3 Louisiana, Arkansas, Mississippi, Missouri, and
4 Kansas; and the Western region, which is made up
5 of New Mexico, Arizona, and California.

6 It comprises of 15 states, all the way
7 from the Carolinas to California, where pecans
8 are produced commercially. And I think we've got
9 an exhibit to indicate that.

10 MR. DAVIS: Exhibit 10, Your Honor.

11 JUDGE GUTHRIDGE: Are you moving that
12 in now?

13 MR. DAVIS: Yes. We tender Exhibit
14 10.

15 JUDGE GUTHRIDGE: Any objection?

16 MR. HILL: No objections.

17 JUDGE GUTHRIDGE: Hearing no
18 objection, Exhibit 10 is admitted.

19 (Whereupon, the document previously
20 marked as Exhibit 10 for identification was
21 received into evidence.)

22 MR. DAVIS: Go ahead, Mr. Adams.

1 THE WITNESS: Georgia, New Mexico, and
2 Texas --

3 MR. HILL: Excuse me a minute, Mr.
4 Adams. There's an Exhibit 9, is that going to be
5 taken later? The article?

6 MR. DAVIS: It is coming later, Your
7 Honor. It'll be the next one.

8 THE WITNESS: Georgia, New Mexico, and
9 Texas are, and have historically been, the
10 largest producing states. The 15 states shown on
11 the diagram here represent the proposed
12 production area to which the Pecan Marketing
13 Order will be applicable. The entire industry is
14 interconnected and although a smaller production
15 area was considered, the entire production area
16 must be covered by the proposed order to make it
17 truly effective.

18 Pecans are really a, I said it was
19 American, and is a truly healthy and natural food
20 commodity. The health benefits of pecans have
21 been researched and proven scientifically. The
22 widely publicized tree nut study released in

1 November of 2013 by the New England Journal of
2 Medicine brought much needed publicity of the
3 health benefits of all tree nuts, by including
4 pecans. And that's Exhibit 9.

5 MR. DAVIS: Exhibit 9, Your Honor,
6 tendered.

7 JUDGE GUTHRIDGE: Any objection?

8 MR. HILL: No objection.

9 JUDGE GUTHRIDGE: Hearing no
10 objection, Exhibit 9 is admitted.

11 (Whereupon, the document previously
12 marked as Exhibit 9 for identification was
13 received into evidence.)

14 MR. DAVIS: Continue, Mr. Adams.

15 THE WITNESS: Pecans are high in
16 antioxidants, healthy oils, minerals, and
17 micronutrients. The literal translation for the
18 Chinese word for pecans is American Health Nut.
19 Unfortunately, the health benefits of pecans is
20 better known in China than in the U.S. A
21 coordinate marketing effort resulting from the
22 proposed federal marketing order can help correct

1 this situation.

2 The general categories of pecans are
3 important to understand. Pecans are described in
4 two broad categories, native and seedling pecans
5 is one, and improved variety of pecans is the
6 second. Native and seedling pecans are pecan
7 varieties that are harvested and sold from non-
8 grafted or naturally propagated trees.

9 Native and seedling groves are
10 typically found along rivers and alluvial
11 bottomlands. And Exhibit 10?

12 MR. DAVIS: No, sorry. That's 11.

13 THE WITNESS: And this photograph is
14 really indicative of trees along the river, and
15 the root systems, and it speaks to the longevity
16 of the pecan tree.

17 MR. DAVIS: We tender Exhibit 11, Your
18 Honor.

19 JUDGE GUTHRIDGE: Any objection?

20 MR. HILL: No objection.

21 JUDGE GUTHRIDGE: Hearing no
22 objection, Exhibit 11 is admitted.

1 (Whereupon, the document previously
2 marked as Exhibit 11 for identification was
3 received into evidence.)

4 MR. DAVIS: Go ahead.

5 THE WITNESS: Improved pecans, the
6 second broad category, are a pecan variety bread
7 and selected for superior traits, nut size, easy
8 shelling, production characteristics, and
9 resistance of certain insects and diseases. And
10 I think we have a photograph of native --

11 MR. DAVIS: Improved.

12 THE WITNESS: Improved.

13 MR. DAVIS: Exhibit 12, photograph of
14 an improved orchard.

15 MR. HILL: No objections, Your Honor.

16 JUDGE GUTHRIDGE: Any objection?

17 Hearing no objection, 12 is admitted.

18 (Whereupon, the document previously
19 marked as Exhibit 12 for identification was
20 received into evidence.)

21 THE WITNESS: Improved orchards are
22 intentionally planting trees grafted to rootstock

1 in rows with uniform tree spacing. In our
2 proposed order, we have provided a list of the
3 most popular improved varieties. We did not,
4 however, include an exhaustive list because there
5 are currently, approximately, 400 known improved
6 varieties and the list will continue to grow as
7 new experimental varieties under development in
8 nurseries, universities, and the USDA Pecan
9 Breeding Station come on the market. Instead, we
10 have chosen to define improve varieties as those
11 that are grafted.

12 Both categories of pecans contribute
13 to the overall U.S. crop. In the 1960s, the
14 native and seedlings averaged over 50 percent of
15 the crop. Today, improved pecans average
16 approximately 82 percent of the crop. And I
17 know, Mr. Hinman, you had 83 somewhere in there.
18 We're close. Because of the new plantings of
19 improved varieties, this ratio will only increase
20 in favor of improved pecans.

21 Although the native seedling nut still
22 occupies a significant and niche position in the

1 industry, the pecan market is much more driven
2 today by improved variety orchards with improved
3 varieties selling at a premium to the native and
4 seedling nuts.

5 We've recognized this market price de
6 in the proposed marketing order by providing a
7 higher assessment for improved varieties and a
8 lower assessment for natives and seedlings. A
9 coordinate marketing strategy under a federal
10 marketing order that addresses and targets demand
11 for both categories of pecans is not only
12 feasible, but advisable to move the crop in a
13 balanced approach, benefitting the native and
14 seedling growers, as well as the improved
15 growers.

16 Most commercial orchards grow
17 primarily improved varieties, and new plantings
18 are virtually all improved varieties. All three
19 regions produce improved varieties. Whereas, the
20 native and seedling growers of pecans are mostly
21 found in the Central region, which is the Texas,
22 Oklahoma, Louisiana, Arkansas, Mississippi,

1 Missouri, and Kansas. The number of individual
2 growers and the size of each operation vary
3 widely.

4 The larger orchards can reach 5000 to
5 7000 acres and you seldom find that in a
6 contiguous single tract. Most commercial farms
7 range between 250 acres and 2000 acres. Native
8 and seedling growers, they're a different story.
9 They're found along the rivers and bottomlands
10 and are randomly spaced depending upon soils and
11 the topography.

12 An improved orchard can have as many
13 as 70 trees per acre, although, the average is 20
14 to 50 trees an acre. Whereas, a native and
15 seedling grower, they may only have one tree to
16 the acre. A pecan acre is not representative
17 description of the native and seedling grower.

18 In the proposed order, we have
19 addressed this difference by setting grower
20 participation thresholds in both acreage and in
21 poundage. Horticultural practices, as they apply
22 to improved orchards compared to native and

1 seedling growth, are quite different. The
2 improved trees require a much higher level of
3 management and input costs.

4 Management of the native and seedling
5 grove varies widely, from none to regular
6 fertilization and pest management. Irrigation is
7 rarely found in the native and seedling grove,
8 whereas, it's found most often in the improved
9 orchards.

10 Addressing the pecan tree's natural
11 propensity to alternate bear is an ongoing
12 management consideration, particularly in
13 improved orchards. Commercial pecan farmers
14 struggle to mitigate the wide swings in
15 production with site-specific practices,
16 including crop thinning in the on years, taking
17 some of the crop off, hedging and pruning
18 programs, which keeps the tree size manageable
19 and stimulates new growth, and sunlight
20 management.

21 Also, selection of varieties which do
22 no alternate bear, and precise water management

1 are just a few of the ways that the improved
2 grower manages the alternate bear.

3 Since the available and timing of
4 water is a critical input, virtually all improved
5 orchards are irrigated. As compared to irrigated
6 row crops, however, irrigated pecan farms are
7 much more efficient in using water.

8 Despite the differences in geography,
9 cost structure and agricultural practices in the
10 production of native and improved variety, both
11 improved and native/seedling pecan farmers need
12 this proposed order. As Dr. Palma will explain
13 in more detail in his testimony, the proposed
14 order will help both the growers of
15 native/seedling and the grower of improved
16 pecans.

17 I want to speak now, somewhat to the
18 estimated annual crop size and price, and the
19 need for accurate data. Although there is
20 relatively little comprehensive data on industry
21 production and participation, and that's in
22 difference to Dr. Hinman. I mean, he pulled the

1 best out of that, but we're going to be talking
2 about the lack of good data, and that's not
3 reflection on what you pulled. You did a good
4 job with what you had.

5 But a 2012 Census of Agriculture by
6 the U.S. Department of Agriculture, the National
7 Agricultural Statistics Service indicates that
8 the total acres of all pecans in the U.S. are
9 543, 486 acres. Industry grower organizations
10 estimate approximately 2500 commercial growers
11 where commercial is defined by a minimum of 30
12 acres or an average of 50,000 pounds of product
13 harvested over the past four years for a business
14 to be considered commercially viable.

15 Therefore, the estimate of commercial
16 growers does not include backyard production, if
17 you got a yard tree, or part-time farmers. It's
18 where their entire livelihood depends on
19 marketing of pecans.

20 I'm going to go into some exhibits
21 now, which I'll explain. This exhibit shows the
22 crop size fluctuation of --

1 MR. DAVIS: This exhibit is Exhibit
2 13, yes.

3 MR. QUIROS: Exhibit 13. Yes.

4 THE WITNESS: Exhibit 13 indicates the
5 crop size fluctuation over the past 50 years and
6 we show here a two-year moving average. In a
7 moving average, the intent of moving averages is
8 to smooth things out, and you can see here, it
9 doesn't smooth things out that much. We just
10 have a wide swing in supply.

11 MR. DAVIS: Let me interrupt you. We
12 tender Exhibit 13.

13 JUDGE GUTHRIDGE: Any objection.

14 MR. HILL: No objections.

15 JUDGE GUTHRIDGE: Any objection?
16 Hearing no objection, Exhibit 13 is admitted.

17 (Whereupon, the document previously
18 marked as Exhibit 13 for identification was
19 received into evidence.)

20 MR. DAVIS: Proceed, Mr. Adams.

21 THE WITNESS: The other significant
22 point on this exhibit, it indicates a relatively

1 stagnant growth. Anecdotally, the crop in 1963
2 was larger -- 1963, 50 years ago, was larger than
3 any of the crop sizes of the last eight years.
4 The 1963 crop, and again, it was somewhat of an
5 anomaly, but 365 million pounds was produced, and
6 that's 100 million pounds more than was produced
7 in the U.S. last year.

8 The reality is not positive for pecan
9 handlers. Our handling and our shelling
10 community that we are attempting to maintain
11 and/or add new customers and consistently supply
12 a market with wide swings in supply does not
13 facilitate our shellers being able to contract.

14 As I mentioned earlier, most, but not
15 all, pecan trees are alternate bearing plants.
16 Therefore, the size of the annual crop can vary
17 greatly from year to year. Thus, the analysis of
18 pecan production is best viewed as an annual
19 average over a number of years rather than over
20 any single year.

21 U.S. pecan production, when analyzed
22 as a continuum, has been relatively flat since

1 the 1960s. Interestingly, as I've already
2 mentioned, over 50 years ago the crop was 100
3 million pounds more than it was last year. The
4 average annual crop size domestically is plus or
5 minus 300 million pounds. And there was only one
6 year, in 1999, where the U.S. crop exceeded 400
7 million pounds.

8 Pecan prices in the last few years
9 have also seen little increase when adjusted for
10 inflation. Nevertheless, production costs for
11 growers have gone up. The one constant from year
12 to year has been the wide swings in crop sizes
13 and prices.

14 The prices for growers has fallen as
15 much as 35 percent in a single year. Price
16 instability is currently a given in the pecan
17 industry, and the other witnesses will explain
18 later this price instability has caused havoc
19 within the industry. We'll tender the next
20 exhibit.

21 MR. DAVIS: Exhibit 14, Your Honor.
22 Explain what it is, Mr. Adams.

1 JUDGE GUTHRIDGE: What is Exhibit 14?

2 THE WITNESS: Exhibit 14 is actually
3 a graph of the crop, crop size, in the last 50
4 years, on the top, and the bottom is a comparison
5 to the crop size of almonds in the last 50 years.

6 MR. DAVIS: There's a term used on
7 this that perhaps you should explain. Farm value
8 is what the --

9 THE WITNESS: Farm value is a simple
10 calculation of crop size times price. And this
11 particular exhibit will give you -- is kind of a
12 precursor to the next exhibit. This is crop size
13 and we're going to show farm value in the next
14 exhibit. But again, what we're growing here is a
15 comparison between almonds, which has had a
16 marketing order in place for a number of years
17 and pecans has not.

18 The farm value, as I've described it,
19 is really just a simple calculation.

20 JUDGE GUTHRIDGE: Mr. Adams, let me
21 ask you one thing, who prepared the graphs,
22 Exhibit 13 and 14?

1 THE WITNESS: I did.

2 JUDGE GUTHRIDGE: You did.

3 THE WITNESS: Yes. Based on USDA's
4 statistics.

5 JUDGE GUTHRIDGE: Okay.

6 THE WITNESS: The farm value of pecans
7 peaked in 2010 and 2011 at just over \$600
8 million, but it's declined since then, in spite
9 of shorter crops. The farm value in 2014 was
10 \$506 million. The U.S. Farm Value of the Pecan
11 Crop Chart indicates an up-trending value,
12 however, the picture is much less favorable when
13 adjusted for inflation. I want to tender the
14 next exhibit.

15 MR. DAVIS: Explain what Exhibit 15
16 is.

17 THE WITNESS: This is, again, the
18 other one's crop size, farm value, where you make
19 the calculation of the price times supply. And
20 the top chart is the Farm Value of Pecans, and
21 this is not adjusted for inflation, it's just
22 showing the -- that's an exponential trend line

1 on the top chart. Now, superimpose that top
2 chart to the lower level of the bottom chart,
3 bring this chart down to here, you understand?

4 And then you can see a comparison of
5 what almonds have done in the same period of
6 time. And what's interesting -- this is actually
7 an amazing fact that I looked at in the data. In
8 1960, the pecan crop in the U.S. was larger than
9 the almond crop. And under a well-organized,
10 well-funded, comprehensive strategic marketing
11 program, almonds has increased their crop size by
12 33 times, while at the same time, quadrupling
13 their price, which is pretty dramatic when you
14 look at -- I mean, the demand curve has shifted
15 what's happened.

16 MR. DAVIS: Sir, let's tender Exhibit
17 15.

18 JUDGE GUTHRIDGE: I think 14 also.

19 MR. DAVIS: I thought I did 14. We'll
20 tender 14 and 15 then.

21 MR. HILL: No objections.

22 JUDGE GUTHRIDGE: All right. Mr.

1 Adams, let me just ask you one question about
2 farm value again. Could you define that again
3 for me?

4 THE WITNESS: Farm value is a
5 calculation of crop size times average price.

6 JUDGE GUTHRIDGE: Is that a generally
7 accepted term in farming economics?

8 THE WITNESS: Yes, sir.

9 JUDGE GUTHRIDGE: All right. Hearing
10 no objection to 14 and 15, they're both admitted.

11 (Whereupon, the documents previously
12 marked as Exhibits 14 and 15 for identification
13 were received into evidence.)

14 THE WITNESS: As I mentioned earlier,
15 almonds, through a well-funded marketing
16 campaign, have increased supply and price within
17 the same period of time when the pecan supply and
18 price are relatively flat. The farm value of
19 pecan and almond crops chart, which is here,
20 superimposes the almond data with pecan data on
21 the same schedule.

22 A federal marketing order for pecans

1 can enable the pecan industry to more
2 strategically market its product domestically.
3 The industry also is hobbled by incomplete and
4 inaccurate data within the industry. The
5 estimates I have provided have been collected in
6 good faith, but they are just estimates.

7 There's simply no reliable data of
8 accurate information on annual crop size, number
9 of growers and handlers to assist buyers and
10 sellers to arrive a reasonable price for the
11 market. A proposed federal marketing order will
12 facilitate the gathering, compilation, and
13 publication of reliable data that will be a much-
14 needed benefit to the industry.

15 And let me add here, most of our
16 numbers are after-the-fact numbers rather than --
17 we have very poor data on crop estimates going
18 in. We've got better data once the crop is
19 produce as to what size it is. But we don't have
20 good data on this other tree nut, neither do
21 other food commodities, for that matter.

22 Let me speak now to the recent

1 marketing development and increase planning. In
2 the last decade, an interesting thing happened to
3 pecans. It was heretofore, a regional, seasonal,
4 rather laid-back commodity. The world discovered
5 the good taste and healthfulness of the pecan,
6 with China leading the way. The initial impact
7 on prices was positive, indicated by the
8 historically high prices for pecans in 2010 and
9 2011.

10 Pecan prices were not sustained at
11 those levels, however, and they fluctuated widely
12 since then, caused by, in large part, a dramatic
13 drop in domestic consumption, which offset the
14 increase in foreign sales. As I will discuss
15 later, one obvious, and potential disruptive
16 long-term effect of these two years of high
17 prices was a substantial increase in new tree
18 plantings, right after those two years of high
19 prices.

20 Let me move now to talk about
21 competitive pricing. In addition to these
22 internal challenges, the pecan faces competition

1 from sister tree nuts, namely almonds, walnuts,
2 and pistachios, which enjoy a much more favorable
3 marketing environment. For instance, the almond
4 industry in the U.S. has grown its crop size from
5 162 million pounds in 1960 to over 2 billion
6 pounds in recent years. Now, those are kernels.
7 Keep that in mind.

8 Even more noteworthy is the fact that
9 the almond farm price more than quadrupled during
10 the same period of time. The simple economic
11 conclusion is that supply and demand for almonds
12 has increased. Pistachios and walnuts have had a
13 similar story for both dramatic supply and
14 increased -- dramatic increased supply and price.

15 Why the marked difference to the other
16 tree nuts? One word, marketing, because walnuts,
17 almonds, and pistachios do have marketing
18 campaigns where they spend a good portion of
19 their budget on generic promotion of their
20 product.

21 The almond and walnut industry are
22 each conducting well-know, well-funded,

1 comprehensive, sustainable marketing campaigns,
2 assisted in part by federal marketing orders.

3 And the Texas state check off for pecans has run
4 a state marketing campaign similar to the one we
5 now see, as is the case also in Georgia.

6 The geographic differences in pecan
7 production practice is also noteworthy to
8 mention. A general farm description of each --
9 or a general description of the farm differences
10 in each region, let me go into it, because that's
11 important. The single unit that we're talking
12 about across the 15 production states is an in-
13 shell pecan. However, the farms differ from
14 region to region.

15 In the East, the East region, there
16 are large and small improved variety orchards.
17 The trees per acre range from 20 to 40 trees an
18 acre. Native and seedling groves in the East are
19 present, but not predominantly. There's a
20 sizable number of non-commercial plantings,
21 including yard trees, that can contribute 10 to
22 20 percent of the annual supply.

1 So in the East, you've got mostly
2 improved farms, you've got a few native and
3 seedling growers, and then you've got a
4 significant part that are considered yard trees
5 that are native trees, some improved trees, that
6 individuals that may have one in their front yard
7 collect and they don't eat them all because they
8 can sell them.

9 In the Central region, large and small
10 improved variety orchards are present. In the
11 Eastern Central region, the average trees per
12 acre are 20 to 40, and if you go to the Western
13 Central region, and that's in El Paso Valley and
14 Fort Stockton, Van Horn area, you'll find the 30
15 to 50 trees to the acre; more dense plantings.

16 In the Central region, which is where
17 most of the native and seedling groves are found,
18 and that's Texas, Oklahoma, Louisiana, Arkansas.
19 That's where the primary natives are found in the
20 Central region. There are yard trees that
21 contribute, again, 10 to 20 percent of the supply
22 on an annual basis, depending upon what those

1 trees make, but those pecans do come into the
2 market when the yard trees produce.

3 The Western region is very different.
4 California, Arizona, and New Mexico is almost all
5 improved variety of trees. They range from 30 to
6 50 trees to the acre. There are some small
7 improved varieties in the West region. There are
8 no native and seedling groves and if there are
9 any yard trees, I'm not aware of them.

10 Horticultural differences differ from
11 East to West. Generally, in the East and the
12 Eastern Central region, insect and fungicide
13 management are factors and irrigation water is
14 supplemental. In the West and the West Central
15 region, pest management is a factor, but less of
16 one, and fungicide management is not yet
17 necessary.

18 Irrigation water is essential to make
19 a crop, but many orchards use flood irrigation by
20 diverting rivers and streams. And you guys out
21 there, you know your water situation. Again,
22 despite these differences, Dr. Palma and Dr.

1 Wells estimates that all sections of the industry
2 will benefit from the proposed order. And Dr.
3 Palma will testify to that.

4 The entrance of pecans into the stream
5 of commerce takes place in one of two ways,
6 either as in-shell nuts or as pecan meats, or
7 kernels. Domestic consumers purchase some in-
8 shell nuts, mostly during the winter holiday
9 season, to be cracked and eaten as snacks. The
10 vast majority of the domestic market, however, is
11 out-of-the-shell pecan meats.

12 Handlers, which are buyers,
13 accumulators, shellers, and exporters, purchase
14 the nuts from growers. There's estimated to be
15 250 handlers in the United States. Shellers,
16 which are a subcategory of handlers, as the name
17 infers, removes the meat from the shell.

18 And shellers sell the meat and handle
19 the majority of the product sold in the domestic
20 market. The meats and kernels enter the stream
21 of commerce to retail meat or kernel
22 distributors, ingredient users, food outlets,

1 like restaurants and bakeries, and value-added
2 users, such as ice cream makers and snack
3 packagers.

4 Over the years, terms have been
5 developed to describe particular types and
6 quality of pecan meats. Descriptive names such
7 as halves or pieces are self-evident. Graduation
8 within these broad categories, however, does not
9 have uniform meaning in all areas of the market.

10 One important goal of the proposed
11 marketing order is to empower the pecan industry
12 to set uniform standards which will better inform
13 buyers, sellers, and consumers of the quality of
14 the product that's being sold. There are
15 estimated to be 50 commercially viable sellers
16 with production of over 1 million pounds of in-
17 shell nuts currently operating. That's 1 million
18 pounds within a year; production year.

19 Of these 50, 14 meet the Small
20 Business Administration's definition for a large
21 business entity, that is equal to more than \$7-
22 1/2 million in annual revenue from pecans. Thus,

1 the vast majority are small business entities
2 using the same definition. We are not aware of
3 any commercial sheller currently operating which
4 shells less than 1 million pounds of in-shell
5 pecans a year that's considered a commercially
6 viable entity.

7 The majority of pecans sold in the
8 export market are in-shell. In recent years, the
9 export market for pecans has burgeoned to
10 approximately 1/3 of the annual crop, with the
11 largest customer being China. Most of the export
12 sales are made through brokers and by direct
13 sales to customers in those markets.

14 The American Pecan Council, which
15 would be created by the proposed federal
16 marketing order, will focus little of this effort
17 in promoting the export market for pecans. The
18 lion's share will be directed to the domestic
19 market. And let me clarify, the American Pecan
20 Council in the order is the eventual
21 administrative body of the order, as opposed to
22 the American Pecan Board, which is the proponent.

1 As diverse as the uses of pecans are,
2 much research is needed for product development
3 and packaging in the domestic market. The
4 presentation of pecans by retailers today is
5 rather mundane, usually clear cellophane bags in
6 sizes from 1 to 10 pounds. Pecans are rarely
7 found in individual package sizes to compete with
8 almonds, pistachios, walnuts, and pecan snacks on
9 the retail shelf.

10 A federal marketing order that funds
11 product development, presentation innovation, and
12 upscale preservative packaging is direly needed
13 for this.

14 I want to speak to another issue that
15 is kind of coming down the pipe. Compared to
16 other agricultural commodities, a pecan tree is
17 an unusual plant in that it takes five to seven
18 years to bear a crop after planting them. And
19 it's up to 10 to 15 years to cover the capital
20 cost and the variable costs to make a profit.

21 After pecan prices in 2010 and 2011
22 reached historically high levels, many pecan

1 farmers began planting more trees in anticipation
2 of increasing demand and higher pecan prices.

3 For example, in Georgia, where we have the most
4 accurate data, from 2010 to 2014, over 360,00 new
5 trees were planted.

6 This is a significant increase in the
7 number of trees under management in Georgia,
8 which is our largest producing state. Other
9 states did not have as accurate estimates,
10 however, anecdotal evidence indicate similar new
11 planters. I mean, as growers, we know that for a
12 fact. In the Western region there's 1000 new
13 trees being planted.

14 So it's safe to say 1000s of these new
15 trees are now in the ground and will be coming
16 into production in the next few years. Some
17 prognosticators have projected the U.S. crop will
18 nearly double in the next ten years. Increased
19 supply is a good thing to assure availability.

20 If nothing is done to increase demand,
21 however, competitive market fundamental will
22 emerge and pecan prices will be affected. They

1 could collapse with this new supply. This can
2 lead to a death spiral in the industry as farmers
3 are unable to cover the cost of fixed expenses,
4 convert fields to other crops, or, as occurred
5 during the housing bubble, convert to residential
6 real estate.

7 So there's a need for a marketing
8 order. I hope that I've begun to outline that.
9 And, Your Honor, that's what I want to move to
10 now, the need for the order. I mean, it's why
11 we're here. We need the order to stabilize the
12 market, to reduce volatility, and to address the
13 pending disruption based on this increased supply
14 that's coming down the pipe.

15 We also need an industry-wide
16 commitment to domestic marketing, to domestic
17 marketing, and we feel like that's essential.
18 And we only have to take a lesson from the other
19 tree nuts to see what it can do for your
20 industry. A federal marketing order for pecans
21 give the industry its best chance to accomplish
22 this objective.

1 The desired results are consistently
2 profitable prices for growers, attractive,
3 sustainable markets for handlers, and an assured
4 supply of quality, healthful pecans for
5 consumers. So we think this is a win-win. We
6 think growers will benefit, handlers will
7 benefit, and we think consumers will benefit.

8 Dr. Palma is going to address, in
9 economic terms, the public good which can flow
10 from a unified marketing order. As a pecan
11 farmer, however, I can also testify that there is
12 little incentive for an individual grower or
13 handler to increase demand for pecans since
14 others, who do not contribute to the cost of
15 efforts, will merely be free riders.

16 A funding mechanism that will apply
17 fairly to everyone in the industry will eliminate
18 this free rider issue and provide adequate
19 funding or increased marketing and research.
20 There has developed over the years, a number of
21 organizations which represent various segments or
22 geographic portions of the industry.

1 For example, there are national pecan
2 growers associations, and the national pecan
3 sheller organizations, there are three regional
4 pecan organizations, and there are 14 single-
5 state organizations. There are two pecan
6 commissions. Texas and Georgia have pecan
7 commissions that oversee programs in their state.
8 So we're fractured in terms of representation.

9 There's not, however, one organization
10 that can coordinate marketing and research
11 efforts for the entire industry. In the coming
12 days, you will hear testimony from
13 representatives of many of the existing
14 organizations in favor of the coordinated
15 marketing and research efforts that's envisioned
16 by a federal marketing order.

17 These organizations believe correctly
18 that a federal marketing order will not duplicate
19 or frustrate their efforts, but will instead,
20 complement their efforts, and I think that's a
21 key point. We have championed that that idea as
22 we've been to the industry, that all of the

1 organizations that are in place now, can only be
2 enhanced by a federal marketing order.

3 And their buy-in is evidence by the
4 letters that they've written in favor. The
5 industry, led by the American Pecan Board, has
6 awakened to the fact that the status quo could
7 lead to disaster for both pecan stakeholders and
8 pecan consumers. A summary of the challenges
9 currently facing the pecan industry outlined
10 above includes a lack, of organized
11 representation of industry-wide interest into a
12 single organization.

13 A lack of accurate data to assist the
14 industry in its analysis of production, demand,
15 and prices; a lack of uniform size and quality
16 standards; a lack of coordinate domestic
17 promotion or research; and a dramatic increase in
18 production in the near future as a result of
19 these new planters.

20 So those are issues that are happening
21 now and the marketing order is the way to deal
22 with it in a measured way. These factors

1 combined have resulted in under performance of
2 the pecan industry vis a vis its sibling domestic
3 tree nut industry.

4 The American Pecan Board was formed to
5 represent all segments of the industry, from
6 producers to processors, large and small. The
7 American Pecan Board has representatives from
8 small and large growers and small and large
9 shellers. And the Board has representatives from
10 all three producing regions.

11 The pecan industry is also remarkably
12 diverse demographically. There are Hispanic
13 pecan growers, Native American pecan growers,
14 African-American pecan growers, and of course,
15 male and female pecan growers. The American
16 Pecan Board is committing to representation to
17 all segments of this wonderfully diverse
18 industry.

19 The Board of Directors of the American
20 Pecan Board consists of the following industry
21 representatives, and we will tender the next
22 exhibit.

1 MR. DAVIS: We tender Exhibit 16,
2 which is just the identity of the Pecan Board.

3 JUDGE GUTHRIDGE: Is there any
4 objection?

5 MR. HILL: No, Your Honor.

6 JUDGE GUTHRIDGE: Any objection?
7 Hearing no objection, Exhibit 16 is admitted.

8 (Whereupon, the document previously
9 marked as Exhibit 16 for identification was
10 received into evidence.)

11 THE WITNESS: I think you'll see that
12 this is representative of what I'm describing,
13 because we're dealing with a production area of
14 15 states, the horticultural practices change
15 across the region, and so the American Pecan
16 Board would be reflective of that representation.
17 Dan York is a York Pecan Company out of Foreman,
18 Arkansas. He's a small sheller.

19 Helen Watts, with Young Pecan Company
20 out of Florence, South Carolina, and she is a
21 sheller representative also. Boyd Bulger, who is
22 one of our public members. He's a retired

1 executive from Tyson Farms. Boyd, for personal
2 reasons, has taken a less active role on the
3 board.

4 Bruce Caris from Green Valley Pecan
5 Company out Sahuarita, Arizona. Bruce represents
6 Green Valley, who is a large grower and a large
7 sheller. Homer Henson, Louisville Pecan Company
8 in Louisville, Alabama is a small sheller. Dr.
9 Randy Hudson with the Hudson Pecan Company out of
10 Oscilla, Georgia. He's primarily a grower.

11 Scott Landgraf out of Landgraf Farms
12 in Madill, Oklahoma is a small grower. Louis
13 Salopek, with Tom Salopek Farms here in Las
14 Cruces, New Mexico is a large grower. And Larry
15 Willson, Sunnyland Farms out of Albany, Georgia.
16 Larry is a grower and a sheller.

17 You'll hear testimony from most, if
18 not all, of these board members in the coming
19 days in support of the federal marketing order.
20 What I want to try to do next is really a key
21 issue when we began this whole effort. At the
22 outset, the American Pecan Board was convinced

1 that a federal marketing order for pecans had to
2 be designed by input from pecan people, from
3 stakeholders, who had a vested interest in what
4 was going on within the industry.

5 Therefore, the American Pecan Board
6 has spent the past 26 months reaching out to
7 pecan stakeholders to listen and to hear the
8 ideas of how to customize a federal marketing
9 order for our industry. Since May of 2013, the
10 American Pecan Board members have made, my
11 written, it says 40 presentations, it's up to 44
12 presentations now, that I've made, to pecan
13 grower and sheller conferences, pecan boards,
14 which is growers and shellers, state conventions,
15 pecan field days, and local pecan meetings.

16 And you add to that, other board
17 members have made similar presentations across
18 the country over the last two years. We have
19 reached out to the industry to hear what they've
20 had to say. Hundreds of individual conversations
21 have taken place at these meetings, and outside
22 of these meetings, has the American Pecan Board

1 listened to all segments of the pecan industry.

2 The most recent meeting for small
3 groups of growers in Alexandria, Louisiana; San
4 Saba, Texas; New Roads, Louisiana; Ardmore,
5 Oklahoma; and Natchez, Mississippi. Three
6 regional information sessions were held in 2014
7 with pecan stakeholders and with USDA personnel
8 in attendance.

9 The USDA/AMS staff have attended and
10 spoken at pecan industry programs at Southeastern
11 Pecan Growers Association and conference, the
12 National Pecan Shellers Association and
13 conference, Western Pecan Growers Association and
14 conference, Georgia Pecan Growers Association and
15 conference, and the Texas Pecan -- so the
16 USDA/AMS staff have been well-represented in
17 front of pecan growers.

18 The purpose of these efforts was to
19 compose a marketing order designed by pecan
20 people for the benefit of pecan people.
21 Moreover, the ten-member board and board council
22 have volunteered their time and contributed their

1 out-of-pocket expenses, amounting to over
2 \$600,000.

3 A show of financial support from
4 grower associations, sheller associations,
5 accumulated vendors, and individuals have
6 amounted to cash contributions of almost,
7 actually, it's over this now, \$170,000 that
8 they've contributed in donations to fund the
9 expenses of this effort over the last two years.

10 These monies were to be spent for the
11 necessary expenses that are obviously incurred.
12 The most significant contributions, though, by
13 members of the American Pecan Board, including
14 its attorneys, I'll say that again, including its
15 attorneys, has been the unselfish commitment of
16 time. I mean, I have been gratified by
17 volunteers and the way our board and council has
18 contributed their time.

19 For some members of the board, the 40
20 presentations since May of 2013 involved over 90
21 work days of travel, meeting, and speaking, and
22 over 120 hours of preparation time in addition.

1 Multiply those numbers by the ten board members
2 and two board attorneys, working pro bono, and
3 the time and equivalent, and all our
4 contributions, are well into the thousands of
5 hours and hundreds of thousands of dollars.

6 We've got a number of board members in
7 the audience and this going in the record, so I
8 want to say thank you, guys. You know who you
9 are. This will conclude my remarks today, Judge.
10 I plan to address more specific elements of the
11 proposed order, particularly the nomination,
12 selection, and functioning of the American Pecan
13 Council in my presentation in Dallas, and I will
14 conclude with remarks in Tifton. And now I'll be
15 glad to answer any questions.

16 JUDGE GUTHRIDGE: Mr. Davis.

17 MR. DAVIS: Your Honor, before we
18 tender the witness for questions, we would like
19 to tender Exhibit 17, which is just written
20 remarks that Mr. Adams has just delivered.

21 (Whereupon, the document referred to
22 was marked as Exhibit 17 for identification.)

1 MR. HILL: Would this be the remarks
2 that he was just speaking?

3 MR. DAVIS: Just given. Yes.

4 JUDGE GUTHRIDGE: Is there any
5 objection?

6 MR. HILL: No objections, Your Honor.

7 JUDGE GUTHRIDGE: Any objection?
8 Hearing no objection, Exhibit 17 is admitted.

9 (Whereupon, the document previously
10 marked as Exhibit 17 for identification was
11 received into evidence.)

12 MR. DAVIS: Your Honor, would you
13 prefer that we tender the witness for questions
14 now or take our morning break?

15 JUDGE GUTHRIDGE: Well, let's find out
16 -- I mean, do you have more questions?

17 MR. DAVIS: We will have no questions
18 for the witness at this time.

19 JUDGE GUTHRIDGE: Mr. Hill, do you
20 have questions of the witness?

21 MR. HILL: Yes, we'd like to move
22 forward with questioning now.

1 JUDGE GUTHRIDGE: I think, given the
2 constraints on your other witness that we were
3 talking about --

4 MR. DAVIS: Thank you. We appreciate
5 it.

6 JUDGE GUTHRIDGE: -- I think, let's go
7 forward with Mr. Adams at this time.

8 MR. DAVIS: Let's do that. We tender
9 the witness for questions.

10 JUDGE GUTHRIDGE: All right.

11 CROSS EXAMINATION

12 BY MS. SCHMAEDICK:

13 Q Good morning. My name is Melissa
14 Schmaedick. I work for the U.S. Department of
15 Agriculture. Good morning, Mr. Adams. Thank you
16 for your testimony. So I'd like to ask some
17 questions about the history of the industry and
18 try to get some clarification on the work that's
19 been done up to this point.

20 A Can you speak up, ma'am?

21 Q Sure. Can you explain to us why a
22 program such as the marketing order has not been

1 attempted prior to this point?

2 A Well, there have been attempts at
3 programs, not a rule, that I'm aware of, federal
4 marketing order. There have been attempts at a
5 check off and it has to do with the history of
6 the industry, quite honestly, and there are
7 processors in this audiences that I hope agree
8 with me, but there has not been as cordial a
9 relationship between growers and shellers that
10 lent itself to cooperation.

11 And so I think I mentioned that there
12 are forces within the industry and market forces
13 without have brought a consciousness to all
14 segments of the industry that we need to do
15 something. And so I think the timing is right
16 and I think other efforts that have failed prior
17 to this one had to do with a somewhat adversarial
18 relationship within the industry.

19 And so I think bringing the industry
20 together with a single purpose has been
21 significant.

22 Q Thank you. You also mentioned that

1 there are 15 states in the proposed production
2 area. And I think, briefly, you might have
3 stated that you thought about smaller production
4 areas, but you decided that this larger
5 production area was important. Can you speak to
6 that issue a little bit further?

7 A Why are there 15 states?

8 Q Yes, sir.

9 A Well, as diverse as we are as an
10 industry, and I spoke to that, East and West,
11 horticultural practices, varieties, native, et
12 cetera, to have an inclusion of all 15 states
13 that grow the pecan, that single pecan goes into
14 a single market, essentially, and so to prevent
15 this free rider issue where some participate and
16 some don't, is the reason we felt like we needed
17 to include the 15 states that commercially grow.

18 And one of the issues as we spoke to
19 various pecan groups in all them conferences to
20 individuals, was the issue of compliance. And I
21 heard a number of times, I'm for this, and I'll
22 do it, if everybody else will do it. And so I

1 think the compliance issue and inclusion to make
2 the program work is the reason.

3 Q Thank you. Are you aware of any
4 production outside of these 15 states that you've
5 mentioned?

6 A I'm not.

7 MR. DAVIS: Well, clarify that. You
8 mean within the United States, correct?

9 MS. SCHMAEDICK: Correct, within the
10 United States.

11 MR. DAVIS: Within the United States.

12 THE WITNESS: I'm not aware of any
13 commercial production outside the 15 states of
14 the production area in the United States.

15 BY MS. SCHMAEDICK:

16 Q When you were describing the profile
17 of production in the different regions, you
18 mentioned yard trees in the Central and Eastern
19 region. You mentioned that yard trees represent
20 10 to 20 percent of the production, is that
21 correct?

22 A That's a close guess. That was on my

1 testimony. And again, that's a hard number to
2 come up with, but that's our best guess.

3 Q How are those pecans entered into the
4 market?

5 A In tow sacks. It's any number of ways
6 where someone will go up -- literally, there are
7 grocery bags of pecans. They're taken to the
8 local feed store, who is a buyer, and they go
9 into the market that way. And then that local
10 buying point will collect small quantities of
11 pecans and aggregate them together, and then
12 they'll go to an accumulator or a buyer.

13 So that's why you got hundreds,
14 thousands, of small quantities that are collected
15 by individuals, and literally, can be in the
16 backyard or front yard, and they take them to a
17 buyer, up to a buying station, and then that's
18 the way they're entered into the stream of
19 commerce. I mean, it just goes up the chain.
20 And those pecans, at some point, will go to a
21 cleaning plant, which processes them to eliminate
22 the inferior nuts.

1 And then, eventually, they'll go to a
2 sheller, primarily, where that sheller will turn
3 the in-shell nuts into kernels.

4 Q Thank you. And the individuals that
5 present yard tree production, are they considered
6 growers?

7 A The yard trees?

8 Q Under the proposed marketing order,
9 would they be considered growers?

10 A No.

11 Q Why?

12 A Well, one of the first things I did
13 was to read the Agriculture Marketing Agreement
14 Act from 1937, and my take-away from that was
15 that this was intended, by Congress, when they
16 passed the act, for the commercial grower; for
17 the someone that was making a living with that
18 commodity. And so I think that that yard tree
19 person is not -- they don't make their living
20 taking the grocery bag of pecans to the feed
21 store.

22 So this order was written for the

1 commercial grower.

2 Q Thank you. And are the yard trees, I
3 can't remember if you included this in your
4 testimony, are they predominantly native or
5 improved pecans?

6 A I think they can be both. Again, in
7 Texas, they're mostly native. I think in
8 Georgia, you will see more improved yard trees,
9 but again, that's -- they would be both.

10 Q Thank you. You briefly mentioned
11 marketing campaigns in Texas and Georgia, can you
12 speak to those just a little bit more?

13 A The marketing campaign?

14 Q I believe that's what you said, yes.

15 A Texas and Georgia have a state check
16 off. And in Georgia, the Georgia Pecan
17 Commission is the administrative body over the
18 Georgia check off. In Texas, which has a pecan
19 check off, it's administered by the Texas Pecan
20 Board. And again, those are state organizations
21 that oversee check offs in those two states, and
22 they do conduct promotion and research with those

1 funds.

2 Q Are those marketing campaigns state-
3 specific, or generic promotion?

4 A Say that again, and I'm having
5 difficulty hearing you.

6 Q Yes, I apologize. I think the
7 speakers are pointing to the audience and not to
8 us. So in terms of the marketing that is
9 conducted by the Texas and Georgia Commissions,
10 what are their marketing campaigns focused on?
11 Is it the state product or generic? Can you
12 explain that?

13 A I can speak more to Texas than I can
14 in Georgia, but in Texas, and again, understand
15 that these are limited funds. I mean, they're
16 not record numbers, but in Texas, we sponsor a
17 pecan recipe contest in a pullout magazine. And
18 again, it's less generic Texas pecan. I mean,
19 we've got a Texas pecan label, but we also
20 sponsor some research from proposals that are
21 sent to us.

22 And really, and I'm from Texas, we've

1 done a good job with extending those funds and
2 Dr. Palma actually did a study ten years ago on
3 the Texas pecan check off and I recall we were
4 getting about 11:1 return on the few dollars we
5 were actually spending. And some of the research
6 that we have supported is really -- it is
7 significant.

8 We had a proposal presented at the
9 latest conference. When it's done, it'll mean a
10 lot to the health of the U.S., so those monies
11 are spent primarily on research and some
12 promotion in Texas. Georgia --

13 MR. DAVIS: Let me -- Thomas Mason,
14 who's the Chairman of the Georgia Pecan
15 Commission will be testifying in Tifton, so
16 perhaps we could reserve those questions for him
17 and he can address that if it's all right.

18 MS. SCHMAEDICK: Thank you, but it is
19 important to hear from multiple witnesses on
20 these questions.

21 MR. DAVIS: All right. Well, I just
22 wanted you to know that we are going to address

1 that when we get to Tifton.

2 THE WITNESS: Now, to the extent that
3 I know what Georgia did, I think it's similar.

4 MS. SCHMAEDICK: Thank you.

5 JUDGE GUTHRIDGE: If I could ask a
6 question, Mr. Adams. You've used the term check
7 off a number of times. I'm not sure that that
8 was defined. What do you mean by a check off
9 programs?

10 THE WITNESS: Well, from my education
11 in this process, I use it -- and the industry,
12 too, still uses those check off and marketing are
13 interchangeable, and they're very different.
14 They're under two different orders and I think,
15 Michelle, when we were there in November of 2013,
16 that's where we really learned about the
17 difference, but the check off is under the
18 Promotion of Information and Research Act, is
19 that right?

20 And it has very different provisions
21 within the law. And the marketing order is under
22 --

1 JUDGE GUTHRIDGE: Is that a federal
2 statute?

3 THE WITNESS: Yes. And just to
4 elaborate a bit on that, when the American Pecan
5 Board chose the federal marketing order after the
6 meeting with the USDA staff in November of 2013,
7 the Board left with a consensus that because you
8 can customize the marketing order to the
9 commodity, it would fit our diverse industry much
10 better than the check off, which is, more or
11 less, one-size-fits-all in a short description.

12 So those are two different programs.
13 Now, understanding too, in each state, we use the
14 term check off, but it's under, for instance,
15 Texas is under the Texas Commodity Law, which is
16 very different from the federal law and very
17 different from the Georgia law, so those are
18 terms that have wide-ranging meanings that
19 someone has to understand the usage of them.

20 JUDGE GUTHRIDGE: So earlier, a couple
21 minutes ago, when you were talking about the
22 program in Texas, that was under the Texas

1 statute and not the federal statute --

2 THE WITNESS: That's correct.

3 JUDGE GUTHRIDGE: -- of check off.

4 THE WITNESS: Yes, sir.

5 JUDGE GUTHRIDGE: Thank you.

6 MS. SCHMAEDICK: Thank you. You
7 mentioned that there's been extensive outreach
8 that's taken place, can you give any examples
9 where an individual was able to raise a concern
10 about the proposal and that concern was fully
11 vetted and address by the board?

12 THE WITNESS: I can give more examples
13 that we've got time for, but let me mention two
14 or three. I think at one I was on, and I see a
15 gentleman out, he was involved in that
16 conversation, we met with a large grower and
17 sheller, and they expressed concerns. And again,
18 this was, literally, a listening tour by the
19 board and by members of the board, and they
20 expressed concerns about pecans that were
21 inferior in quality.

22 When you process pecans through a

1 cleaning plant, you will blowout lighter weight
2 pecans that don't have as fully developed a
3 kernel, a wafer, blowout a light one, a crack, a
4 nut that's already cracked, a stick type, where
5 the hull is still -- so those nuts have
6 commercial value, but they're not the premium
7 ones.

8 And so this particular grower
9 expressed a concern, how are you going to handle
10 that? Well, we had not considered a category
11 beyond native, seedling, and improved, but
12 because of that single conversation, we go back
13 to the board and we introduce and write into the
14 order, a substandard category that is assessed
15 for a pecan that has commercial value but it
16 doesn't have it as the number one.

17 So that particular provision came
18 about from a conversation. I can tell you of
19 another conversation that took place in Georgia
20 where a sheller indicated he was concerned about
21 compliance and just how everyone complied, how it
22 would be handled at the handler level, and so we

1 went back and we wrote into the order, comments,
2 suggestions, that that one sheller had, okay?

3 I can go on, but literally, some of
4 the terms in the order were discussed for hours
5 and based on what feedback and input we got from
6 the industry.

7 MS. SCHMAEDICK: So would it be
8 correct to say that, in your opinion, the process
9 has been inclusive of all 15 states and
10 individuals that have wanted to participate?

11 THE WITNESS: Yes, it has been
12 inclusive. The fact that we spent two years and
13 all these meetings that we've been to, and every
14 invitation, and I've still got a couple of them
15 that I'm attending from invitations of grower
16 groups and sheller groups that want to hear about
17 the marketing order, we've accepted all those
18 invitations.

19 My personal cell number is on the Web
20 site, and so we've tried -- I think the thing
21 that the board felt would be most damaging is, if
22 in the process, someone said, well, I didn't know

1 anything about it. And we've tried to address
2 that with the constraints of no full-time staff
3 and no paid-for bodies. All us guys still got an
4 orchard to take care of or shelling plant to run,
5 and that's why we've committed to spend the time
6 and the effort to go out to the industry and hear
7 what the industry says.

8 So yes, we have attempted in every way
9 we knew to be inclusive.

10 MS. SCHMAEDICK: Thank you. And my
11 last question is, are you aware of any either
12 producer or handler cooperatives that operate in
13 any of the states?

14 THE WITNESS: In Texas, in the Central
15 region, pecan producers, I think, is a
16 cooperative and has been in place for a while.
17 But again, I don't know the specific workings of
18 that, but that's the only one I'm aware of.

19 MS. SCHMAEDICK: Thank you. No
20 further questions.

21 JUDGE GUTHRIDGE: Does anyone in the
22 audience have any questions of Mr. Adams?

1 MS. CHILUKURI: Your Honor, I have a
2 few questions.

3 JUDGE GUTHRIDGE: Oh, I'm sorry. I
4 apologize.

5 MS. CHILUKURI: No problem. Mr.
6 Adams, thank you for your testimony. You
7 mentioned processors, I don't know that that's a
8 defined term in the proposed order. Can you
9 describe what that is?

10 THE WITNESS: What a processor is?
11 Let me begin by giving you some of the specific
12 nomenclature that goes with the industry. Here's
13 one, in the Central region, we call them native
14 growers. Primarily they're called seedling
15 growers in the East, but it's the same thing,
16 okay?

17 Within the industry processors are
18 what we call shellers. So I know in the act, it
19 refers to processors, and so we have tried to be
20 careful to call our shellers, processors, but
21 those terms are synonymous. And then in the
22 grower, what the act calls producer, we call

1 growers.

2 BY MS. CHILUKURI:

3 Q Thank you. You also talked about the
4 free rider issue. Could you talk a little bit
5 more about how you anticipate the proposed
6 marketing order will address that?

7 A Again, ask the question. I'm --

8 Q Sorry. You mentioned the free rider
9 issue. Can you talk a little bit more about how
10 the proposed marketing order will address that
11 issue?

12 A The?

13 JUDGE GUTHRIDGE: Free rider.

14 THE WITNESS: Free rider. Just
15 compliance. Having someone who is meets the
16 provision in the order would be addressed in the
17 compliance area, and I will assume that the
18 eventual American Pecan Council, the governing
19 body, will have compliance staff.

20 BY MS. CHILUKURI:

21 Q Thank you. Building on a question
22 that Melissa had asked that relates to yard

1 supply. I think you had mentioned that 10 to 20
2 percent of the East and Central annual supply is
3 from yard trees. So 20 to 40 percent would be --

4 A I think 10 to 20 is where I testified
5 to.

6 Q Oh, just the East or Central?

7 A Yes.

8 Q So combined, would it be 20 to 40
9 percent?

10 A I don't think that's -- no, I don't
11 think that's right.

12 Q Okay.

13 A Depending upon the supply from that
14 region, you couldn't just combine those
15 percentages. You'd have to do it on an
16 individual regional basis.

17 JUDGE GUTHRIDGE: I understood his
18 testimony that 10 to 20 percent in the East, 10
19 to 20 percent in the middle, and if you add it
20 all together, it's still going to be 10 to 20
21 percent.

22 MS. CHILUKURI: Okay. And would those

1 pecans be assessed anywhere in the chain as they
2 enter?

3 THE WITNESS: Yes.

4 MS. CHILUKURI: Okay. Thank you very
5 much. Those were my questions.

6 JUDGE GUTHRIDGE: More questions from
7 USDA? How many are going to be asking from the
8 USDA?

9 MR. DAVIS: Well, Your Honor, before
10 they move on, we wanted to do a follow-up
11 question about a question that was just posed.
12 Could we do that before the next questioner comes
13 up?

14 JUDGE GUTHRIDGE: I think that's --

15 MR. DAVIS: Is that all right with
16 you, Mr. Hill? Because I think it would help.
17 To go back to that processor question. I don't
18 know if you misspoke or I misheard, but although
19 the term processor is used in our proposed FMO,
20 we use the word, handler, correct, to be a
21 broader term of everybody that would process the
22 nut, is that correct, Mr. Adams?

1 THE WITNESS: That's correct. That's
2 one thing I think the chain kind of labeled. And
3 again, that's one of those situations where we
4 understand what we're talking about, but if we're
5 communicating it, we change it to handler,
6 because a handler is a term that's well
7 understood within the whole industry.

8 MR. DAVIS: Thank you. We have
9 nothing further.

10 JUDGE GUTHRIDGE: Next?

11 MS. VARELA: Jen Varela, USDA. I just
12 have one other quick follow-up question for you,
13 Mr. Adams, on the yard trees. What are some of
14 the factors that might lead to that variation in
15 the percentage? You talked about alternate
16 bearing trees. Is it mostly weather, the cycle,
17 or are prices involved?

18 THE WITNESS: The variation of the
19 crop.

20 JUDGE GUTHRIDGE: I'm sorry, were you
21 talking about the variation in the crop or that -

22 -

1 MS. VARELA: Specifically in that
2 range for yard supply, are there any factors in
3 particular that contribute to the fact that it
4 varies a lot more than the rest of the supply?

5 THE WITNESS: I'm not sure I
6 understand the question.

7 JUDGE GUTHRIDGE: Ms. Varela, are you
8 asking why it varies from 10 to 20 percent?

9 MS. VARELA: Correct. What are some
10 of the major factors that create that wide range
11 of variation?

12 THE WITNESS: It's just whether or not
13 their trees -- I mean, there are nuts on the tree
14 that year, and so that can be anything from
15 whether or not the crop was set in those trees.
16 Understand, these are trees that are not managed.
17 They make a crop, and it may be every other year,
18 or every third year, or every fourth year, and if
19 they make it through the crop, the make it in --
20 well, where the yard trees are particularly
21 prevalent is the East.

22 Okay. And so if they make it to

1 October and fall off the tree, they're picked up,
2 but it depends upon the crop set, whether it was
3 set initially, whether or not disease or bugs got
4 them, whether a hurricane blew them away, and so
5 there's any number of things.

6 And so come October, the resident of
7 that home where the tree's in the front yard, and
8 walks out there, and sees nuts on the ground,
9 they'll pick them up, but beyond that -- and so
10 the years that there are big yard crops, you'll
11 see that come in. And years, they're just not
12 there, and they vary.

13 And for instance, in Texas this year,
14 we don't have a yard crop. I know in Georgia,
15 they say they've got a yard crop this year.

16 JUDGE GUTHRIDGE: Mr. Adams, in your
17 original testimony about that, I understood also
18 that part of the problems of having a range, 10
19 to 20 percent, is just one of the reasons you
20 want the marketing order to begin with is
21 collecting industry data. There's just not much
22 data or the data on it is anecdotal, and so it's,

1 to a certain extent, an educated guess on how
2 much --

3 THE WITNESS: That is exactly true.
4 And I think, you know, we've talked about the
5 urgencies, the reasons, being marketing and
6 promotion, but I'm telling you, a close second is
7 accurate data. When we in the industry make
8 dollars and cents decisions every day with that.

9 MR. DAVIS: Ms. Varela, with your
10 permission, could I ask one follow-up question?

11 MS. VARELA: Sure.

12 MR. DAVIS: You used a term, you say
13 they're not managed, by that, are you referring
14 to the lack of trimming, fertilizer, insecticide
15 --

16 THE WITNESS: They're not trimmed,
17 they're not fertilized, they're certainly not
18 pruned --

19 MR. DAVIS: Not irrigated.

20 THE WITNESS: -- they're not
21 irrigated. It's just what nuts show up in
22 October.

1 MR. HINMAN: Yes. Good morning, Mr.
2 Adams. Don Hinman, USDA. Just want to ask you a
3 few follow-up questions. In your statement you
4 said that irrigated pecan crops are more
5 efficient than the row crops in using water. Can
6 you just briefly explain that?

7 THE WITNESS: Tell me again.

8 MR. HINMAN: In referring to irrigated
9 pecan crops, you said that they are more
10 efficient than row crops. Could you just briefly
11 explain the irrigation process that makes that
12 more efficient?

13 THE WITNESS: The more efficient use
14 of the water? Yes. Understand that -- and let
15 me draw a comparison between a pecan tree and a
16 row crop, okay? A pecan tree, once you establish
17 the factory, and a pecan tree is a factory, and
18 once you establish that and building an incentive
19 production producing state, then you water it
20 just to give it energy and produce nuts, okay?
21 But that factory is going to be there.

22 A corn crop, cotton crop, or whatever,

1 you plant that every year, so you tear down the
2 factory and you build it back, annually, tear the
3 factory down and build it back. In the pecan
4 industry, we build the factory and then we just
5 water it, because it'll contain it easily, and so
6 that's where the more efficient use of water; we
7 don't have to build a factory every year.

8 MR. HINMAN: Thank you. In reference
9 to your comments about the new plantings, you say
10 that Georgia has the most accurate data. Could
11 you explain why that is?

12 THE WITNESS: The data on new
13 plantings?

14 MR. HINMAN: Yes, you say that Georgia
15 has the most accurate data.

16 THE WITNESS: Now again, we don't have
17 good data. All we've got is to go outside and
18 drive around the rows and see all those little
19 trees out there, and you know how many trees the
20 nurseries are selling, okay? And so we've taken,
21 kind of, third-party data, and our observation,
22 and realized that there are thousands of trees

1 that are in the ground now.

2 And quite honestly, our numbers, what
3 do they say, two years makes a trend? We had two
4 years of high prices in '10 and '11, so we
5 thought it was a trend, and we started planting.
6 And what we found out is that we didn't see the
7 continuing high prices. And so once you plant a
8 pecan tree, I mean, it's generational and
9 seasonal.

10 And so that's what speaks to the new
11 plantings. It's just observation, farmers
12 reacting naturally to the high prices, and then
13 what the nursery companies are selling in terms
14 of trees.

15 MR. HINMAN: Thank you. Could they
16 put up Exhibit 14? I have a question related to
17 Exhibit 14? And, Mr. Adams, I'm going to bring
18 you the USDA table because I want to ask you a
19 question about those types, those two sources of
20 data.

21 What you have before you there is the
22 first table of the USDA tables put into evidence

1 there. The bottom row is the U.S. crop size, and
2 to the best of your knowledge --

3 JUDGE GUTHRIDGE: Excuse me, Mr.
4 Hinman, are you talking about Exhibit 6?

5 MR. HINMAN: The --

6 MR. DAVIS: What is your exhibit?

7 MR. HINMAN: Yes.

8 JUDGE GUTHRIDGE: Your pecan data --

9 MR. HINMAN: Pecan data tables. Table
10 1 on Exhibit 6, yes.

11 JUDGE GUTHRIDGE: Table 1.

12 MR. HINMAN: Right. And on the bottom
13 row of that is the U.S. production for all pecan
14 varieties; all states. Is that the same data --
15 we refer to that as crop value, is that the same
16 data that you used in preparing your table here
17 on the farm value?

18 JUDGE GUTHRIDGE: Let's make sure
19 we're talking about the -- we're you're saying --

20 MR. HINMAN: Maybe I have the wrong
21 number, the 50-year history of farm value.

22 JUDGE GUTHRIDGE: Is this crop value,

1 Tables 1 to 3? Is that the one --

2 MR. HINMAN: Yes, the first one. Yes.

3 JUDGE GUTHRIDGE: Okay.

4 MR. HINMAN: Yes, Table 1 on Page 1,
5 and then comparing that to the 50-year crop
6 history, and I just want to make sure that, you
7 know, ours is a shorter timeframe, that is the
8 same data that you used in preparing your farm --

9 THE WITNESS: Are you talking about
10 the 2015 --

11 MR. HINMAN: I'm sorry. I'm wrong.

12 JUDGE GUTHRIDGE: Mr. Hinman --

13 MR. HINMAN: 15 is the crop value.
14 Could you put up Exhibit 15? Yes, I was mistaken
15 in the numbers of the exhibits. So now talking
16 about Exhibit 15 is your table on the farm value
17 and I'm comparing that to our Table 1 on crop
18 value, a shorter timeframe.

19 MR. DAVIS: And, Mr. Adams, you have
20 a copy of Exhibit 15 there in front of you too.
21 You might be able to see it better than the
22 screen.

1 THE WITNESS: Okay.

2 MR. HINMAN: So make sure we're using
3 the same here, we have a shorter timeframe that
4 has appeared in the same data source of farm
5 value and crop value, that is the same NASS data
6 that we were both using, is that correct?

7 THE WITNESS: That's correct.
8 Understand that this chart and this exhibit is
9 just an example.

10 JUDGE GUTHRIDGE: This exhibit, being
11 Exhibit 15.

12 THE WITNESS: Exhibit 15, is just for
13 2012. 2013 and '14 are not on this particular
14 chart.

15 MR. HINMAN: Correct. Yes, thank you.
16 I'm just trying to draw the connection between
17 our use of crop value and your use of farm value.
18 That was the purpose of the question.

19 JUDGE GUTHRIDGE: Yes, Mr. Adams, the
20 reason I keep doing that, interrupting, when
21 somebody is reading this transcript and you say,
22 this exhibit, they're not going to know what

1 exhibit you're talking about, so I want to make
2 sure that Exhibit 15 was in the record for
3 somebody who's reading this later on. And same
4 with you, Mr. Hinman, you know, making sure I
5 knew the right page that you were talking about,
6 of your exhibit you were talking about.

7 THE WITNESS: You've been to this
8 rodeo before, Judge.

9 MR. HINMAN: Thank you, Your Honor.

10 JUDGE GUTHRIDGE: Not this one, but
11 I've been to other similar ones.

12 MR. HINMAN: You used the term small
13 and large growers, small and large sheller, are
14 there particular industry standards that you use
15 commonly to identify, say, small, medium, and
16 large, are there certain cutoff points in small
17 versus medium versus large, as a typical industry
18 standard.

19 THE WITNESS: As far as?

20 MR. HINMAN: Growers and for shellers.

21 THE WITNESS: How we determine what's
22 a small sheller and a small grower, is that what

1 you're asking?

2 MR. HINMAN: Yes.

3 THE WITNESS: understand first, we
4 came up with what we considered a commercial
5 grower, and that was average of 50,000 pounds
6 over the last four years, or 30 acres, again,
7 that's inclusive of the various regional
8 differences.

9 And then to be inclusive of the small
10 grower on the eventual American Pecan Council,
11 board, we defined a small grower as 175 acres or
12 less. And that's not an arbitrary number. We
13 had to pick a number, though, that we thought --
14 and that was really a compilation of a discussion
15 among experienced growers and shellers as who was
16 small and who was large.

17 And so that accommodation was made to
18 be inclusive of the small grower on the
19 administrative body. So that was where we
20 decided the 175 acres. On the sheller category,
21 to be inclusive of a small sheller, vis-a-vis,
22 the large sheller, we came up with a million

1 pounds. And that was more of an economic
2 calculation, realizing that if sheller shells a
3 million pounds of pecans, he's going to get about
4 a half million pounds of kernels and let's say
5 the margin, or his return, for his added value
6 process was 50 to 60 cents, then he's going to
7 gross about \$300,000 annually.

8 And we felt like anyone below that
9 would have trouble having a viable business, even
10 though that was below the Small Business
11 guidelines. That's how we came up with that
12 number, more an economic calculation. Same thing
13 with the grower side, but the inclusion of a
14 small sheller and a small grower was very
15 important in the administrative body.

16 MR. HINMAN: Thank you. And then my
17 final question is, we asked every witness to
18 self-identify themselves in terms of small and
19 large. And the Small Business Administration
20 definition grower, \$750,000 per year in typical
21 annual sales, and you categorized yourself as a
22 large grower in that definition.

1 THE WITNESS: I apologize. I'm having
2 trouble hearing.

3 MR. HINMAN: Small Business
4 Administration definition, I'm just asking you,
5 as we'll be asking every witness to self-identify
6 themselves in terms of, for example, a small
7 versus large grower, and the threshold is
8 \$750,000 per year in annual sales of pecans from
9 your growing operation, and would you identify
10 yourself as being a small or large grower in that
11 SBA definition as distinct from your industry
12 definitions?

13 THE WITNESS: Again, can you --

14 JUDGE GUTHRIDGE: Yes, he's asking,
15 using -- if I understand correctly --

16 THE WITNESS: This is not you, Don.
17 I mean --

18 JUDGE GUTHRIDGE: I'm having trouble
19 hearing.

20 THE WITNESS: -- I wear hearing aids
21 and I'm having difficulty hearing you.

22 JUDGE GUTHRIDGE: Let me see if I got

1 it. He is using the definition used by the Small
2 Business Administration for whether something is
3 small or large, and it sounds like the cutoff is
4 \$750,000 a year in sales, is that what you said?

5 MR. HINMAN: Yes. \$750,000 in annual
6 sales, you know, in a recent typical year, and do
7 you, you know, how would you classify your
8 farming operation in that definition?

9 JUDGE GUTHRIDGE: And are you above or
10 below that?

11 THE WITNESS: Am I?

12 JUDGE GUTHRIDGE: Yes.

13 MR. HINMAN: Yes.

14 THE WITNESS: Oh, I'm above that.

15 MR. HINMAN: Okay.

16 THE WITNESS: Yes, I fall into the
17 large grower category. Yes.

18 MR. HINMAN: Just asking that because
19 the last time we were here --

20 THE WITNESS: That was an easy
21 question, easy answer, just having trouble
22 getting to it.

1 MR. HINMAN: Thank you very much.
2 Those are all of my questions.

3 THE WITNESS: All right. Thank you.

4 MR. DAVIS: We have no follow-up
5 questions.

6 MR. HILL: I have a couple of
7 questions I'll ask.

8 JUDGE GUTHRIDGE: All right.

9 MR. HILL: You did mention, you have
10 a couple of charts in which you discuss pecan
11 production and compared it to almond production,
12 and if I'm correct, you mentioned that pecan
13 production has remained "flat" in your opinion
14 over the last 50 years. Can you tell me what
15 your opinion is on why it's remained flat and how
16 this order would specifically address that?

17 THE WITNESS: I think it's remained
18 flat because of a number -- well, let's address
19 the economic reasons first. It takes \$1500 an
20 acre to establish -- let's say you already owned
21 the land, it takes \$1500 an acre to establish.
22 It takes probably \$1200 an acre for the first

1 seven years before you ever get anything back.

2 And so then it takes another 15, or up to 15,

3 years to get your capital costs back.

4 So the ease of entry was difficult,
5 okay, and particularly where you have an unstable
6 -- in other words, it was hard to write a
7 business plan that would project steady prices,
8 or even predictable prices, and so with that kind
9 of vision of going into the business, being risky
10 at best, I think there were fewer and fewer
11 persons that were willing to take that risk.

12 And so they couldn't see a profit, you
13 know? Now, where the marketing order will help
14 us, if we can predict stable prices, stable
15 supply, and give some stability to the business,
16 you'll have more people that will choose to take
17 that risk. And so I think that's one of the
18 reasons that you see that flat supply.

19 And the other thing, I think it has to
20 do just with the horticultural nature of the
21 crop. You see more and more improved pecans
22 coming in and more and more native growers going

1 out. Sometimes native groves have been out
2 because a housing development poured concrete
3 over good river soil. And so you just didn't
4 have any kind of economic incentive to go into
5 the pecan business.

6 And I think now, we've seen not only
7 the development of the export market with the
8 development of a possible stable industry
9 situation that we can bring more people, or bring
10 more farmers into the business.

11 MR. HILL: Okay. You also said that
12 there was some new planting recently. Is there a
13 reason for that that you are aware of?

14 THE WITNESS: Well, I spoke to that
15 earlier. In 2010/2011 time period, we had
16 historically high prices. I mean, you got some
17 New Mexico growers out there that in 2010/2011,
18 they were grinning all day long, okay? And I was
19 too. But those high prices were not sustained.
20 We saw 2012 go down. But anyway, again, two
21 years makes a trend. We had a bunch of
22 optimistic growers that said, gosh, this things

1 looking good. I'm going to plant more.

2 And so that's why we've seen the new
3 planters. And so not only has the export market
4 made a difference, but I think just -- you know,
5 there's a real effort now in the health market
6 for natural protein, and pecans are natural
7 protein. And I think people see an opportunity
8 that this is the way not only to make a profit in
9 farming, but it's also a way to make a difference
10 in our production of health food.

11 So I think all those factors lent
12 themselves and will be enhanced by a federal
13 marketing order.

14 MR. HILL: I have no other questions.

15 JUDGE GUTHRIDGE: Any follow-up?

16 MR. DAVIS: No follow-up. Thank you.

17 JUDGE GUTHRIDGE: Anymore USDA
18 questions? None. All right. Now, is there
19 anyone from the audience who has any questions
20 for Mr. Adams? I see no response, so Mr. Adams,
21 I believe you can be excused, and I'll see you in
22 Dallas, it sounds like. Would you check with Ms.

1 Gonzalez and see if there's anything that she
2 needs to clarify?

3 It's now 10:18. Let's take a -- how
4 many bathroom stalls do we have here?

5 MR. HILL: I haven't seen them. Mr.
6 Davis, he'd know about that.

7 MR. DAVIS: I'll recon that for you,
8 Your Honor. It's small restrooms. How about a
9 12-minute break.

10 JUDGE GUTHRIDGE: Twelve minutes.
11 Okay. Well, it's 10:18, let's make it 13
12 minutes, 10:31, we'll come back.

13 MR. DAVIS: 10:31.

14 (Whereupon, the foregoing matter went
15 off the record at 10:18 a.m. and went back on the
16 record at 10:33 a.m.)

17 JUDGE GUTHRIDGE: The hearing will
18 come to order. It's 10:33, so I didn't make my
19 mark. I've been advised that seated in the back
20 corner there is Ms. Ray from the Department of
21 Agriculture. She's the person to see if you want
22 to testify. The next witness has already been

1 identified as Marco Palma. He's already up here,
2 so we'll just proceed with him. Mr. Palma, raise
3 your right hand.

4 MS. CHILUKURI: Your Honor, if I could
5 interject just very quickly. I apologize. One
6 thing that we want to make clear is that ex parte
7 communications are prohibited. So the notice of
8 hearing made clear that all the USDA employees
9 involved in the decision-making process are
10 prohibited from ex parte communications regarding
11 the merits of the proposal with any interested
12 party.

13 So we cannot discuss the substance or
14 the merits of the proposal, but if anybody has
15 procedural questions, feel free to ask us, and as
16 you stated, there's a sign-up sheet with Ms. Ray,
17 so if anybody would like to testify, feel free to
18 sign-up and you can do that.

19 JUDGE GUTHRIDGE: Okay. So what she's
20 saying is that if you want to talk about
21 substantive matters with these USDA
22 representatives, it's prohibited by the

1 regulation, so I ask you not to try. Mr. Palma,
2 you ready? Please raise your right hand.

3 WHEREUPON,

4 MARCO PALMA

5 was called as a witness by Counsel for the
6 Proponent and, having been first duly sworn,
7 assumed the witness stand, was examined and
8 testified as follows:

9 JUDGE GUTHRIDGE: Proceed.

10 MR. QUIROS: Thank you. Dr. Palma, I
11 understand you have testimony for us. Would you
12 please begin, sir?

13 THE WITNESS: Yes. Good morning. My
14 name is Marco Palma. It's spelled M-A-R-C-O, P-
15 A-L-M-A. My current address is [REDACTED]
16 [REDACTED] College Station, Texas [REDACTED]. I have a
17 PhD in Agricultural Economics from the University
18 of Florida and I'm an Associate Professor and
19 Extension Economist in the Department of
20 Agricultural Economics at Texas A&M University.

21 I am the horticulture marketing
22 specialist with responsibility for leadership and

1 coordination for extension educational programs
2 and applied research in horticultural marketing
3 by providing technical expertise and educational
4 program development for industry audiences in the
5 horticulture industry, such as producers,
6 packers, and shippers, wholesale and retail
7 trade.

8 My major areas of research expertise
9 are experimental and behavioral economics,
10 discrete choice methods, and consumer
11 preferences. I have worked in many different
12 areas of consumer research, including promotion
13 programs, as evidenced in the attached CV, which
14 will be introduced as Exhibit 18.

15 MR. QUIROS: Your Honor, we tender
16 Exhibit 18.

17 (Whereupon, the document referred to
18 was marked as Exhibit 18 for identification.)

19 JUDGE GUTHRIDGE: Exhibit 18 is the
20 curricula vitae of Dr. Palma. Is there any
21 objection?

22 MR. HILL: No objections, Your Honor.

1 JUDGE GUTHRIDGE: Any objection from
2 the audience.

3 MR. QUIROS: I thought you --

4 MR. HILL: I don't have an objection.

5 MR. QUIROS: I didn't think you had a
6 copy.

7 MR. HILL: I just had a question. I
8 don't object. I just have a question. Does he
9 have a statement that he's --

10 MR. QUIROS: He is, and he's going to
11 tender it at the end of his comments, after we
12 support the evidentiary documents.

13 MR. HILL: Would it be a problem if we
14 had it so we could read along at the time that
15 he's reading it?

16 MR. QUIROS: No. We'll be glad to
17 tender it at this point. It would be, I believe
18 --

19 JUDGE GUTHRIDGE: His CV is 18.

20 MR. QUIROS: This would be 24.

21 MR. HILL: It just makes it a little
22 bit easier for us to follow along.

1 MR. QUIROS: Okay.

2 JUDGE GUTHRIDGE: And then Mr. Palma's
3 CV, for members of the audience, is 50 pages
4 long, so we will not ask him to read that. And
5 with no objection, Exhibit 18 is admitted.

6 (Whereupon, the document previously
7 marked as Exhibit 18 for identification was
8 received into evidence.)

9 MR. QUIROS: Proceed ahead, Dr. Palma.

10 THE WITNESS: As you can see, the
11 attached CV, I have made numerous presentations
12 related to the pecan marketing and economics, as
13 well as publications related to consumer
14 economics and promotion programs for many
15 agricultural products, including pecans. Most
16 recently, and for the benefit of this public
17 hearing, and in support of the proponent group, I
18 have prepared a report that is relevant to this
19 hearing today.

20 The report is entitled, "Economic
21 Analysis of the Implementation of a Federal
22 Marketing Order for Pecans", referred to as the

1 report, a copy of which has been delivered for
2 inclusion in the record of this hearing, and it
3 will be marked as Exhibit 19.

4 MR. QUIROS: Your Honor, we are
5 tendering Exhibit 19 at this time.

6 (Whereupon, the document referred to
7 was marked as Exhibit 19 for identification.)

8 JUDGE GUTHRIDGE: And this report was
9 prepared by you in anticipation --

10 THE WITNESS: Yes, sir.

11 JUDGE GUTHRIDGE: Any objection?

12 MR. HILL: No objections, Your Honor.

13 JUDGE GUTHRIDGE: Any objection from
14 the audience? No objection to Exhibit 19, it's
15 admitted into evidence.

16 (Whereupon, the document previously
17 marked as Exhibit 19 for identification was
18 received into evidence.)

19 THE WITNESS: My education and
20 experience give me the necessary tools to make an
21 expert assessment of the economics of
22 establishing a federal marketing order for

1 pecans. I will provide you with a summary of the
2 report and then open it up for questions. When I
3 refer to a Table or a Figure, I am referring to
4 them as shown in the report, Exhibit 19.

5 This report has been compiled to
6 provide an economic assessment of the proposed
7 federal marketing order for pecans. For clarity
8 purposes the narrative is arranged into two main
9 sections. Section I describes the current
10 economic and marketing state of the pecan
11 industry using available secondary data sources
12 mainly from USDA and the proponent group, and
13 Section II describes the costs and benefits of
14 the proposed federal marketing order based on the
15 data presented in Section I and additional input
16 from the key industry stakeholders.

17 I am skipping the Executive Summary,
18 since it's a summary of Section II, which I'm
19 going to be covering later on.

20 Section I, Economic Framework of the
21 Pecan Supply and Demand, beginning on Page 10 of
22 the report. The pecan, *Carya illinoensis*, is a

1 perennial tree native to North American and
2 produced extensively in the southern region of
3 the United States and the northern portion of
4 Mexico.

5 There are hundreds of pecan varieties
6 around the world which can be classified as
7 either native and seedling or improved varieties.
8 The majority of the improved varieties have been
9 developed by grafting, with the first grafted
10 trees being sold in the 1880s, and a large growth
11 in the commercial planting in the early 1900s.

12 The pecan tree can produce for over
13 300 years once it passes the first six to seven
14 years to initiate production in the case of
15 grafted trees, or 10 to 12 years for
16 native/seedling varieties. Native and seedling
17 varieties are those that occur in natural
18 propagated or seed-planted orchards on trees that
19 have not been grafted.

20 Improved varieties are grafted trees.
21 Pecan trees exhibit a peculiar production
22 behavior know in horticulture as masting. This

1 condition entails that the plant will produce a
2 very high yield one year, usually referred to as
3 an on year, followed by a low yield the next
4 year, commonly referred to as an off year.

5 This alternate bearing nature in pecan
6 production has naturally produced a cyclical
7 behavior as well in the pecan trees and pricing,
8 with an inverse relationship, high prices with
9 low supply in off years and low prices in on
10 years.

11 The entire production of pecans in the
12 world is not exactly known. In the past, it has
13 been estimated that the U.S. production comprise
14 over 80 percent of the world's supply. However,
15 based on current trade and consumption of pecans
16 in the world from the International Nut and Dried
17 Fruit Council, the U.S. production is roughly
18 about 59 percent of the entire world production.

19 The second largest producer of pecans
20 is Mexico, with over 30 percent of the world
21 production. Minor pecan production takes place
22 in Australia, South Africa, and South America,

1 including, but not limited to Argentina and Peru,
2 as shown in the Figure 2 of the report.

3 International trade of pecans is done
4 in-shell and in the kernel, or shell. The U.S.
5 is the world leader of in-shell pecan exports,
6 exporting mainly to China, with an average of
7 23.7 million pounds a year from 2009 until 2013.
8 The other leading importers of U.S. pecans in the
9 shell are Vietnam and Mexico, with 5.87 million
10 pounds, and 7.47 million pounds over the same
11 period of time, from 2009 until 2013.

12 China, Vietnam, and Mexico together,
13 comprise roughly 95 percent of the total pecan
14 exports in the shell from the U.S. In the shell
15 pecan market, the main importers of U.S. pecans
16 are Canada, the Netherlands, the United Kingdom,
17 Israel, and Mexico, who have importer an
18 aggregate 57.7 million pounds in average over
19 2009 to 2013.

20 Pecan imports into the U.S. are coming
21 almost exclusively from Mexico, with over 99
22 percent of total imports, with an average of 50

1 million pounds per year in the period between
2 2010 and 2014. The U.S. remains a net exporter
3 of pecans with the rest of the world, although
4 the breakdowns in pecans is negative with Mexico.

5 The production of pecans in the U.S.
6 can be evaluated separately for native varieties,
7 or seedling varieties, and improve varieties.

8 Over the past eight years, there has been a trend
9 to increase the production of improved varieties,
10 while the production of native varieties has
11 remained stagnant.

12 Production for the improved varieties
13 was 235 million pounds per year in the period of
14 2009 to 2013. The native/seedling production of
15 pecans in the same period was 51.5 million
16 pounds, which represents less than 20 percent of
17 total production.

18 The cyclical patter and the trends in
19 pecan production are shown in Figure 6.

20 Agricultural practices have been implemented in
21 recent years by some growers to try to reduce the
22 variation in yields, which has attenuated the

1 effect of on and off years in production.

2 The commercial pecan production in the
3 U.S. takes place in 15 states, which can be
4 grouped into three different regions, described
5 in Figure 7. These three regions are the Western
6 region, consisting of New Mexico, Arizona, and
7 California. The Central region consisting of
8 Texas, Oklahoma, Louisiana, Mississippi,
9 Arkansas, Missouri, and Kansas.

10 And the Eastern region, consisting of
11 Georgia, Florida, Alabama, North Carolina, and
12 South Carolina. The production of pecans is
13 distributed across all three regions, with most
14 of the harvest in the period between 2002 and
15 2014 coming from three states, one in each
16 region, Georgia, New Mexico, and Texas, with 32,
17 22, and 18 percent of the total production of
18 pecans, respectively.

19 All three regions have production of
20 improved varieties. The native production,
21 however, is heavily concentrated in the region of
22 origin of the pecan tree, the Central region. In

1 native and seedling production, Oklahoma, Texas,
2 and Louisiana have the lead with 70 percent of
3 the entire country's native and seedling
4 production.

5 In terms of number of acres in
6 production, around 40 percent of the total
7 acreage of pecans are native varieties, but this
8 varies by region of production. According to the
9 2012 Agricultural Census data, in the Central
10 region, acreage for native varieties is 60
11 percent of the total acres under production. In
12 the East, only 16 percent in seedlings, and
13 almost no native acreage exists in the West.

14 The variety being grown is highly
15 relevant to any type of analysis, since
16 production practices, farm sizes, costs, and
17 prices are very different for improved or native
18 varieties. Most of the horticulture advances
19 have taken place in commercial orchards producing
20 mostly improved varieties.

21 According to the American Pecan Board
22 Group, commercial farms in production using

1 improved varieties range between 20 to 50 trees
2 per acre. The native production, on the other
3 hand, may have as little as only one tree per
4 acre in some cases.

5 Farm sizes also differ by region.
6 Across all regions, more than 70 percent of the
7 reported farms have 50 or more acres under
8 production. In the Central and West regions,
9 almost half of the farms between 50 and 499 acres
10 under production, but less than 30 percent of the
11 farms are these size in the East.

12 The very large farms of 500 acres or
13 more represent 23, 28, and 44 percent of the
14 acreage in the Central, Western, and Eastern
15 regions, respectively, showing a higher
16 concentration in large producers in the Eastern
17 region.

18 As was previously mentioned and
19 described in Figure 6, there has been a positive
20 trend in pecan production in the past decade,
21 however, the production of pecans is still only
22 between 1 and 2 percent of the total tree-nut

1 production in the U.S., while other nuts have had
2 a stronger growth, as seen in Figure 8.

3 Wood, Payne, and Grauke point out that
4 the lack of appropriate marketing in pecans may
5 be one of the reasons for the industry not to
6 continue the development rate that it had in the
7 20th century. The new plantings are almost
8 entirely improved varieties and the cyclical
9 nature of production and prices has generated a
10 response in supply, especially in high years.

11 Changing land use in pecan farms under
12 production to a different use is highly
13 impractical, thus, exit from the market is not
14 very common. On the other hand, a particular
15 reaction that can have consequences is the
16 planting in low yield or high price years.

17 Improve variety trees planted begin
18 production six to seven years later. As a
19 reaction to high prices of pecans behaving, as
20 shown in Figure 9, considerable planting activity
21 took place in 2010 and 2011, which will come into
22 production around 2016 through 2018. This added

1 production could put some pressure in prices,
2 bringing them down, and being a challenge for the
3 pecan industry in the coming years if no new
4 market development and promotion takes place.

5 The U.S. also leads the world
6 consumption with an average 288.5 million pounds
7 per year in the period between 2008 and 2012,
8 yielding the highest per capita consumption with
9 about 0.45 pounds per individual per year, on
10 average. As shown in Figure 10, the consumption
11 has remained relatively stable, or flat,
12 throughout the years, until recently, when it has
13 a decreasing trend.

14 This decrease in domestic consumption
15 does not match the increasing production
16 described in Figure 6. The increased production
17 has been recently fueled by on the export number
18 that has been growing at a faster rate than the
19 domestic market.

20 Another component of the explanation
21 of the gap between production and utilization
22 figures is the held inventories by handlers.

1 Given the cyclical nature of pecan trees,
2 production handlers of pecans, which include
3 buyers and also shellers, hold on to stocks of
4 production in some years, a process usually
5 referred to as accumulation.

6 Figures 12 and 13 describe the
7 behavior of beginning and ending stocks, and
8 their interaction with the domestic use and
9 international trade. Pecans, like any other
10 fruit and vegetable in the U.S., are not exempted
11 from the trends amongst U.S. consumers. The most
12 pertinent of these trends is the decline in
13 consumption of fruits and vegetables in the diet,
14 in spite of the revisions to the U.S. dietary
15 guidelines.

16 A clear illustration of this is given
17 by Figure 14, that describes the per capita
18 consumption decline of fruits and nuts in the
19 U.S. over the last decade. Another challenge is
20 the competition of pecans in the fruits sector,
21 in general, with less expensive imports.
22 Furthermore, the biggest challenge in this regard

1 is competition within the other nuts sector,
2 where some of these industries have invested more
3 in marketing efforts than pecans for stimulating
4 demand.

5 As you can see in Figure 15, tree-nut
6 prices have an increasing trend. A simple time
7 series regression analysis of prices reveals that
8 the slopes of the present ratios for each tree
9 nut, which indicate, basically, the speed at
10 which the prices are increasing, is higher for
11 all the nuts depicted in the graph, which
12 includes almonds, walnuts, and pistachios,
13 compared to pecans.

14 When reducing the span in years of the
15 regression analysis to more recent years, the
16 difference in the rate of increase of the prices
17 are stronger in the last five years, from 2009 to
18 2014.

19 Not all is gloom and doom in the pecan
20 marketing trends. Palma, Ribera, and Bessler
21 2013, show that as income level increases, so
22 does the consumption of fruits and vegetables,

1 including nuts. This information can be used to
2 target market segments that will react to
3 promotion activities. Onozaka and McFadden
4 showed the production claims, such as, for
5 example, fair trade, local, organic, et cetera,
6 have an effect in the price consumers are willing
7 to pay for fruits and vegetables.

8 Furthermore, Palma, Ness, and Anderson
9 suggest that some consumers react to key
10 attributes of fruit products that even provide
11 consumers with status. These consumers have a
12 tendency to pay higher prices for food with
13 attributes that they find satisfying for their
14 needs when those are status or other functions of
15 the food products, including local, organic, or
16 healthy.

17 For pecans in particular, Palma,
18 Collart, and Chammoun found in a discrete choice
19 experiment that if no additional information,
20 other than the type of varieties provided by
21 other products, individuals were willing to pay a
22 price premium of 13 cents, on average, at the

1 retail level for the native variety of pecans
2 compared to no information at all.

3 The price premium can be linked to the
4 connection of the native attribute with the
5 perception of natives being a natural product.
6 This could be used to plan targeted marketing
7 strategies in the native and seedling pecans,
8 increasing the potential benefits of the federal
9 marketing order for this particular group.

10 However, this type of analysis is not
11 considered in the price differential shown later
12 on in the report, as this is a route the
13 proponent group may or may not take, it is merely
14 to show an example of the capability the
15 marketing promotion may have in increasing the
16 net prices for pecans.

17 The increasing trends in production of
18 tree nuts and in the prices, especially in
19 almonds, have increased the value of the tree-nut
20 production in the U.S. Figure 16 shows how the
21 non-production value has increased since the year
22 2000. In this figure, it can also be seen that

1 the growth in crop value in nuts has come mostly
2 from almonds, pistachios, and walnuts.

3 In the graph, a line showing the share
4 of pecans in the value of total nut production is
5 plotted on the right axis. It is clear to see
6 that in this period, the market share of pecan
7 sectors, relative to all the nut industry, has
8 experienced a precipitous decline, from over 20
9 percent of the total nut market in the year 2000,
10 to around 5 percent of the entire crop value of
11 tree nuts in the year 2014.

12 If anything at all, this relationship
13 shift can serve as an illustration of how other
14 tree nuts have exploited their growth potential
15 and the pecan industry has lagged behind other
16 nuts. Interestingly, the three nuts driving the
17 increase in crop value are almonds, walnuts, and
18 pistachios, all of which have marketing programs,
19 federal regulated marketing programs, in place.

20 The first two have marketing programs
21 as part of their federal marketing orders, and
22 the latter has benefitted from increased quality

1 standards. Both of these aspects are properties
2 of the proposed federal marketing order for
3 pecans.

4 Of course, this correlation structure
5 does not imply causation, two events being
6 related does not mean that one causes the other.
7 However, the data seems to point in that
8 direction, but it should be recognized that there
9 are other factors at play in the market.

10 Nevertheless, several studies have
11 shown there's a positive effect of promotion on
12 demand of agricultural products in general, and
13 specifically in the tree nut. The methods across
14 the studies in the literature for analyzing it,
15 variety, they differ, but the unequivocal effect
16 has been that having a marketing program funded
17 by the federal marketing order in the case of the
18 literature cited above, increases the demand for
19 the products.

20 A list of this studies can be found as
21 Appendix A of the report. With that in mind, and
22 for more illustrative purposes, the plots in

1 Figure 17 draw attention. In the graph, one of
2 the series drawn is the share of the total crop
3 value of tree nuts in the U.S. for pecans. The
4 other series in Figure 17 is the share of that
5 same total for walnut production.

6 A vertical line indicates the year in
7 which the marketing program for walnuts under the
8 marketing order that regulates grown in
9 California was implemented. It can be seen that
10 though the walnut value share from all tree nut
11 market was coming from a decreasing trend, the
12 positive momentum is enhanced by the
13 implementation of the marketing program.

14 The story in Figure 18 is quite
15 similar. Again, one of the plotted series is the
16 pecan share of the total value of tree nuts and
17 the other one is the market value share of
18 pistachios. A federal marketing order for
19 pistachios was implemented in 2005, which called
20 for quality assurance and testing. The trend in
21 the share of the value is positive from that
22 point onward.

1 In Section II of the report, I'm going
2 to look at the costs and benefits of the proposed
3 federal marketing order and other relevant
4 economic considerations. Generic promotion
5 increases the demand in prices. We have reviewed
6 the literature of a number of agricultural
7 studies to determine the effect of generic
8 promotion campaigns on agricultural produce
9 demand and prices.

10 Generic promotion over a wide variety
11 of agricultural stimulates product demand that
12 translates into higher prices for growers than
13 would have been the case without promotion, as
14 shown in the table taken from Williams and Welch,
15 as Appendix A in the report.

16 Examples of agricultural products
17 include almonds, cotton, dairy, dried prunes,
18 eggs, Hass avocados, blueberries, honey, beef,
19 pork, lamb, mushrooms, orange juice, potatoes,
20 raisins, rice, sorghum, soybeans, strawberries,
21 table grapes, walnuts, watermelons, and wheat.

22 Effectiveness of the tree nut

1 promotions costs and benefits to growers. The
2 estimates of the effectiveness of marketing
3 programs used for this report are based on
4 analysis of post-implementation data of marketing
5 orders in tree nuts, almonds and walnuts, and on
6 ex-post-implementation data from Texas pecan
7 promotion programs.

8 These studies find that demand for the
9 products increases generic promotion programs.

10 These studies would be marked Exhibit 20 through
11 22.

12 MR. QUIROS: Your Honor, we're
13 tendering Exhibit 20, almond advertising yields,
14 nets benefits to growers, as 21, the domestic
15 impacts of the walnut marketing board's marketing
16 program.

17 JUDGE GUTHRIDGE: Wait, 21? I'm
18 sorry, 21 or 20?

19 MR. QUIROS: 21. Yes, 20 is almonds,
20 21 is walnuts, and 22 is pistachios, entitled,
21 demand enhancement through food safety
22 regulation, a case study of the marketing order

1 for California pistachios. Dr. Palma, did you
2 use and review these materials in preparation of
3 the report?

4 THE WITNESS: Yes, I did.

5 MR. QUIROS: Your Honor, we're
6 tendering these at this time.

7 JUDGE GUTHRIDGE: Let me just make
8 sure I understand it. Number 20 is an article,
9 almond advertising yields net benefits to
10 growers?

11 MR. QUIROS: Yes, sir.

12 JUDGE GUTHRIDGE: 21 is economic
13 analysis of the implementation of the federal
14 marketing order for pecans?

15 MR. QUIROS: No, sir, 21 is the
16 domestic impacts of the walnut marketing board's
17 marketing programs.

18 JUDGE GUTHRIDGE: Maybe I didn't get
19 that one. I have economic analysis --

20 MR. QUIROS: That's the last one.

21 JUDGE GUTHRIDGE: Okay. All right.

22 MR. QUIROS: And finally, Your Honor,

1 and 22 is for pistachios, and article entitled,
2 demand enhancement through food safety
3 regulation, a case study of the marketing order
4 for California pistachios.

5 (Whereupon, the documents referred to
6 were marked as Exhibits 20, 21, and 22 for
7 identification.)

8 JUDGE GUTHRIDGE: I'm sorry. I did
9 have that other one. It was stuck to the back of
10 it. Okay. So I have all three of them. Any
11 objection?

12 MR. HILL: No objection, Your Honor.

13 JUDGE GUTHRIDGE: Any objection from
14 the audience? Hearing no objection, Exhibit 20,
15 21, and 22 are admitted.

16 (Whereupon, the documents previously
17 marked as Exhibits 20, 21, and 22 for
18 identification were received into evidence.)

19 MR. QUIROS: Dr. Palma, are there any
20 other articles that you relied on as part of the
21 preparation that were not reported in the report?

22 THE WITNESS: I relied on another

1 article, but it is reported in the report, and
2 that's the evaluation of the Texas promotion
3 program for pecans, which kind of co-authorized.

4 MR. QUIROS: Thank you.

5 THE WITNESS: The increased demand
6 results in increase in prices that could not be
7 achieved without the promotion programs. Demand
8 increases in those studies have been as high as 6
9 percent. Our analysis allow for the mean point
10 of these studies, between 0 and 3 percent in the
11 tree nut studies, to be the representative
12 scenarios and we have used the average potential
13 demand, or approximately 1.5 percent in our
14 evaluation for benefits of the federal marketing
15 order promotion authority.

16 These marketing programs reviewed are
17 well-established programs, so our report assumes
18 that the proposed federal marketing order for
19 pecans would be less effective, at least at
20 first. The cost of the assessment as a
21 percentage is calculated by the mean point
22 assessment value for improved and native

1 varieties and dividing it by the average price
2 for an in-shell pound of pecans for each year
3 described in the tables.

4 With season average prices of \$1.73,
5 \$1.90, and \$2.12 per in-shell pound in 2012,
6 2013, and 2014, respectively, assessment as a
7 percentage of U.S. season average prices are in
8 the range of 1.2 to 1.4 percent for improved
9 varieties. Similarly, with average in-shell per
10 pound prices of \$0.88, \$0.92, and \$0.88 in 2012,
11 2013, and 2014, the assessment as percentage of
12 grower price was between 1.6 and 1.7 percent.

13 Although handlers pay the assessments
14 in federal marketing orders, such as this federal
15 marketing order, for analytical purposes and take
16 the most conservative case, we're assuming that
17 100 percent of the assessments will be reflected
18 in the prices paid to growers. In other words,
19 the growers would bear the cost, at least
20 initially.

21 As you note from Table ES3, the
22 assessment and costs are a small percentage of

1 the grower prices, even if the grower bears all
2 the assessment costs. Using historical data and
3 information provided by farmers in the different
4 production regions, and NASS, National
5 Agriculture Statistics Services from the U.S.
6 Department of Agriculture, and using price per
7 pound data from 1997 to 2014, a mathematical
8 simulation model was created.

9 We used Monte Carlo simulation methods
10 for the distributions of key output variables
11 crucial for analyzing feasibility of future
12 business decisions under risk. The simulation
13 model is programmed in SIMETAR, a simulation and
14 risk analysis software embedded as an add-in in
15 Excel, but you can see a description by
16 Richardson, Schumann, and Feldman.

17 The framework of creating a
18 representative farm to analyze risk is a widely
19 used framework in policy analysis, including
20 potential impacts of the Farm Bill. This avoids
21 using averages, which can be misleading, and
22 instead, use data from the entire distribution of

1 historical data or other possible data.

2 We then apply the 1.5 percent average
3 generic promotion demand increase to the
4 calculations related to pecans and obtain the
5 following results. The procedure that we used
6 involves taking the historical prices per year
7 from 1997 to 2014, and using the full
8 distribution over those prices to obtain Monte
9 Carlo simulation for 500 possible prices to
10 obtain expected average price without the federal
11 marketing order intervention.

12 We then adjusted the prices with a
13 demand increase of 1.4 percent to simulate the
14 possible prices with the marketing promotion
15 effort due to the federal marketing order to get
16 an expected price increase of 6.3 cents with the
17 federal marketing order for improved pecans, as
18 shown in Table ES4.

19 In a similar fashion, for native and
20 seedling, the valuation is done using the
21 historical price from Monte Carlo simulation
22 before or without the intervention and after the

1 marketing program, or with the simulated federal
2 marketing order. The result is a 3.6 cent
3 increase in prices for native and seedling
4 varieties.

5 The low and high bound were calculated
6 using a simulation with a low, or 0.5 percent,
7 and a high of 3 percent price increase scenarios.
8 The potential benefits due to promotion through
9 the federal marketing order are between 4 and 9.6
10 cents, with an average of 6.3 cents per pound for
11 improved varieties, and between 2.7 to 4.2, with
12 an average of 3.6 cents per pound for native and
13 seedling varieties.

14 Comparing Table ES1 and Table ES3 to
15 Table ES4, it is apparent that the benefits of
16 generic promotion outweigh the cost to growers.
17 Effectiveness of stimulating demand through
18 increased quality standards. One of the
19 authorities of the Council in the federal
20 marketing order, 986.69, is the authority to make
21 improvements in production handling.

22 Specifically increasing the quality of

1 pecans in terms of freshness, safety, grade,
2 size, packaging, et cetera, delivered to the
3 market that can stimulate demand increase prices.

4 If the Council is able to establish minimum
5 quality standards for handling the future for
6 pecans, this can lead to a relatively more
7 inelastic demand and more consumer confidence in
8 the product, which will lead to higher prices to
9 growers.

10 The cost of implementing product
11 handling improvements has always been low
12 compared to the benefit to growers. This would
13 be illustrated by the case of pistachios where
14 Alston et al show that improving quality
15 assurance in the pistachio market resulted in a
16 benefit to cost ratio of at least 5:1.

17 The costs and benefit across various
18 farm sizes. With the costs and benefits per
19 pound described in Tables ES3 and ES4, we have
20 estimated the costs and benefits of the federal
21 marketing order promotion authority by farm size
22 as shown in Table ES5. Table ES5 is shown for 30

1 acres, 175 acres, and 500 acres at 1666.67 pounds
2 of in-shell pecans per acre of yield, the average
3 yield per acre over all three regions, as
4 representative for small, medium, and large farms
5 in the production area.

6 Production assumes 78 percent
7 production improved varieties and 22 percent of
8 native and seedling split in that acreage. In
9 all cases, benefits of the federal marketing
10 order outweigh the costs across a range of farm
11 sizes. The cost of the federal marketing order
12 is calculated at the average as total pounds
13 times the cost.

14 For example, in the medium size farms,
15 of the total 291,667 pounds, 227,500 pounds are
16 in improved variety, or 78 percent of that share,
17 at an average cost of 2.5 cents, we obtain a
18 total cost of \$5688 in improved varieties. The
19 production of native and seedling is 64,167
20 pounds, or 22 percent of the production share, at
21 an average cost of 1.5 cents, we obtain a cost of
22 \$963.

1 The total costs are then the sum of
2 the costs for improved varieties, or \$5688, and
3 native and seedling varieties of \$963, for a
4 total of \$6650. The benefit is calculated using
5 the total number of pounds times the estimated
6 average increase in price.

7 For improved varieties, 227,500 pounds
8 times the average price increase of 6.3 cents, we
9 obtain \$14,333, and for the native variety, we
10 obtain benefits of \$2310. Total benefits are the
11 sum of the improved varieties with the native
12 varieties, or \$16,643.

13 The benefit cost ratio is then the
14 additional benefits generated by the program per
15 dollar of cost. Dividing the estimated benefits
16 by the cost, we obtain 2.5 of a benefit cost
17 ratio, which implies that a \$1 cost will result
18 in \$2.5 of benefits.

19 These are in the low range of the
20 benefit cost ratios reported in the Williams and
21 Welch study. The range of benefits for a medium
22 size farm using the low scenario, is \$10,833 to a

1 high scenario of \$24,535. The associated range
2 of the cost for the medium size farm is \$5192 and
3 \$8108, respectively.

4 For a small farm, the costs are in the
5 range of \$890 for the low scenario to \$1190 for
6 the high scenario, with benefits of \$1857 to
7 \$4206 for the low and high scenarios
8 respectively. For a large farm, the costs are in
9 the range of \$14,833 to \$23,167 for the low and
10 high scenarios, and the benefits in the range of
11 \$30,950 to \$70,100 for the low and high
12 scenarios.

13 In all the cases, the benefits
14 outweigh the costs and the benefit/cost ratio
15 ranges from 2.08 in the low scenario to 3.02 in
16 the high scenario, which are on the low side of
17 the studies reviewed by Williams and Welch. In
18 reality, the model for estimating the stochastic
19 prices is much more complicated, but this is a
20 simple representation of the costs and benefits
21 by farm size.

22 Minimum size of farm/crop for

1 commercial growers as used in the FMO. The full
2 input costs for an acre of pecans across the
3 production area requires a certain minimum land
4 size for minimum annual production to be
5 maintained in order for the farm to become
6 economically viable over a period of four years
7 or more.

8 Failure to have a farm of a certain
9 size or with yields above a certain size will
10 result in either an economically unprofitable
11 farm operation or will require the grower to
12 reduce the necessary inputs on the farm to grow
13 quality pecans over a period of time. For
14 example, reducing watering, mowing, spreading,
15 fertilizing, hedging, pruning, or other inputs
16 that are normally required by commercial pecan
17 producers.

18 We believe that it is highly unlikely,
19 perhaps even remote, that a pecan grower can be
20 financially viable over a period of four years if
21 the grower is averaging less than 50,000 pounds
22 of pecans per year over that period, and is

1 applying all inputs associated with a commercial
2 pecan grower. Said another way, pecan farmers
3 growing less than 50,000 pounds of pecans on
4 average per year are hobby farmers, experimental
5 farmers, farmers not intending to make a profit,
6 or farmers not intending to maintain a farm with
7 the normal inputs required for a commercial pecan
8 farmer.

9 We use the yield of 1667 in-shell
10 pounds per acre over 30 acres for the small
11 acreage, which is the average yield across the
12 production area, as calculated by the proponent
13 group, with input from Dr. Lenny Wells, the
14 University of Georgia Pecan Research Scientist.

15 Handler considerations, costs and
16 benefits. The benefits to handlers outweigh the
17 costs of implementing the federal marketing
18 order. It is evidence at the handler level,
19 there is the same magnitude of positive price
20 change as there is with grower analysis, Table
21 ES4, but a smaller proportion of cost due to the
22 greater prices paid to handlers, Table ES8 as

1 compared to Table ES3.

2 With a typical handler margin of 57.5
3 cents, the cost estimate of average handler price
4 received was about \$2.31 in 2012, \$2.48 in 2013,
5 and \$2.70 in 2014 for improved varieties. The
6 cost estimate for average handler prices received
7 for native varieties was \$1.46, \$1.50, and \$1.46
8 in 2012, 2013, and 2014, respectively.

9 The cost as a percentage of U.S. pecan
10 handler prices is low and in the range of 0.93
11 percent to 1.08 percent over the last three years
12 for native varieties, and between 1 percent to
13 1.03 percent for native varieties.

14 The anticipated increase in pecan
15 prices from promotion and handling authorities in
16 the federal marketing order should cause pecan
17 prices to move towards parity pricing, as stated
18 by the USDA, the parity price should be \$5.11 per
19 in-shell pound in 2014, but the implemented FMO
20 should not cause pecan prices to be anywhere near
21 equal to or exceed pecan parity prices.

22 Better information will benefit

1 growers, handlers, and consumers. The pecan
2 market today is inefficient in part because of
3 the lack of reliable, timely data on the domestic
4 pecan crop. Most of the data in the industry at
5 this time is gathered voluntarily. The FMO
6 proposes handler reports to the Council and
7 requires the Council to make crop reports to the
8 USDA at least yearly.

9 These reports should provide all
10 parties with more reliable and timely production
11 data. Increased confidence in the data on pecans
12 should benefit all participants, including
13 growers, handlers, and of course, consumers, and
14 lead to more accurate product pricing and better
15 information regarding product supply and demand.

16 Thank you. This ends my formal review
17 of the economic analysis of the implementation of
18 the federal marketing order, and then I will open
19 it up for any questions.

20 MR. QUIROS: Your Honor, before
21 questions, we would like to tender two documents.
22 The first is the Executive Summary of the

1 Economic Analysis of the Implementation of the
2 Federal Marketing Order for Pecans, Exhibit 23.

3 Dr. Palma, did you prepare this exhibit?

4 (Whereupon, the document referred to
5 was marked as Exhibit 23 for identification.)

6 THE WITNESS: Yes, sir.

7 MR. QUIROS: And was this prepared as
8 a summary of Section II of your report for review
9 by growers and handlers?

10 THE WITNESS: That is correct.

11 MR. QUIROS: Thank you. The second
12 document we'd like to tender is the complete
13 written testimony of Dr. Marco Palma, which has
14 been marked as Exhibit 24, and we tender those at
15 this time, and that was prepared by you as well,
16 is that correct?

17 (Whereupon, the document referred to
18 was marked as Exhibit 24 for identification.)

19 THE WITNESS: That is correct.

20 MR. QUIROS: Thank you.

21 JUDGE GUTHRIDGE: Start with Exhibit
22 23, any objection?

1 MR. HILL: No objection.

2 JUDGE GUTHRIDGE: Any objection from
3 the audience? Hearing no objection, Exhibit 23
4 is admitted. Exhibit 24, any objection from the
5 Agriculture Department?

6 (Whereupon, the document previously
7 marked as Exhibit 23 for identification was
8 received into evidence.)

9 MR. HILL: No objection.

10 JUDGE GUTHRIDGE: Any objection from
11 the audience? Hearing no objection, 24 is
12 admitted. I believe, Mr. Quiros, do you have any
13 questions of your witness?

14 (Whereupon, the document previously
15 marked as Exhibit 24 for identification was
16 received into evidence.)

17 MR. QUIROS: No, Your Honor.

18 JUDGE GUTHRIDGE: All right.

19 MR. HILL: Can we have the actual 23?
20 Is this the summary?

21 MR. QUIROS: You have it as Exhibit
22 23. It was handed out in the large group. It's

1 in your materials.

2 MS. CHILUKURI: I think we might be
3 missing 23, but we will check again. Can you put
4 it on the screen just so we can figure out
5 whether or not we have it?

6 MR. QUIROS: Sure. This is it on the
7 screen. It was not used as part of his
8 testimony, but he prepared it. It was sent to
9 growers and handlers for their review, and is
10 technically part of the first section of the
11 report.

12 MS. CHILUKURI: Exhibit 19?

13 MR. QUIROS: Yes, I'm sorry. Before
14 Part I, there is an Executive Summary of the
15 report which summarizes Section II, but we
16 prepared it separately so that we could deliver
17 it to growers and handlers, and I wanted Dr.
18 Palma to authenticate it, so after he leaves, and
19 we use it with subsequent witnesses, it would be
20 well identified. We'll take a look and find --

21 MS. CHILUKURI: Okay. So we have it
22 embedded in 19?

1 MR. QUIROS: You have it embedded in
2 19, but that's also at Exhibit 23.

3 THE WITNESS: Page 4 through 9 of
4 Exhibit 19.

5 MR. QUIROS: Do the rest of you all --
6 are you all missing it at USDA or do you all have
7 it?

8 MS. CHILUKURI: We're missing it.

9 MR. QUIROS: Still missing.

10 MR. HILL: I got it, but --

11 MR. QUIROS: Yes, here's some extra
12 copies.

13 MS. CHILUKURI: We're missing it as a
14 standalone, so we have it as part of 19, but --

15 MR. QUIROS: It's coming to you right
16 now as Exhibit 23.

17 MS. CHILUKURI: Thank you.

18 JUDGE GUTHRIDGE: I'm sorry, Mr.
19 Quiros, you said you have no questions?

20 MR. QUIROS: Not at this time. I'd
21 reserve them for clarification after any
22 questions for Dr. Palma.

1 JUDGE GUTHRIDGE: Sure. All right.
2 Department of Agriculture, who's going to start?

3 MR. HILL: One I do have, if you look
4 at Page Number 4, well, I'm not sure where it is
5 on yours, if it's the same --

6 THE WITNESS: Which exhibit?

7 MR. HILL: It's on Exhibit 24 of your
8 testimony. Right before B, it's under A, under
9 World Pecan Supply, you read a sentence that said
10 the second largest producer of pecans is Mexico,
11 and on the testimony it says with over 35
12 percent, I believe you said over 30 percent,
13 which one is the correct one? It's under Section
14 I, Economic Framework of Pecan Supply and Demand,
15 A, at the very end of A.

16 JUDGE GUTHRIDGE: Are you talking
17 about Exhibit 24?

18 MR. HILL: Yes.

19 JUDGE GUTHRIDGE: His testimony.

20 MR. HILL: His testimony, correct.

21 THE WITNESS: So it should be 35
22 percent.

1 MR. HILL: 35. Okay. I just wanted
2 to make sure. Okay. That's fine. Just
3 clarifying that, because I thought I heard 30.

4 THE WITNESS: Okay.

5 MR. HILL: Go ahead.

6 CROSS EXAMINATION

7 BY MS. SCHMAEDICK:

8 Q Thank you, Dr. Palma. This is Melissa
9 Schmaedick with the USDA. So I'll just apologize
10 in advance, I do have a lot of questions, let's
11 start with some of your comments about production
12 in Mexico. Is the Mexican production increasing
13 as well?

14 A I believe so.

15 Q Is that something that you looked at
16 in your analysis?

17 A We have some data from the world
18 production markets that is included as part of
19 the review in terms of the world production, so
20 it should be in one of the figures.

21 Q Okay. Also referring to your
22 analysis, do we have --

1 A That is Figure 3, by the way.

2 Q Okay. Do we have an idea of what
3 percent of U.S. exports are re-imported, U.S.
4 exports to Mexico, are re-imported? Do we have
5 that data?

6 A You mean exported to Mexico and then
7 imported back as a processed product?

8 Q Correct.

9 A I don't think hear, we're just looking
10 at the column over --

11 Q I'm trying to get a sense of what
12 percentage of Mexican production comes into the
13 United States, is that something that you looked
14 at?

15 A Well, when the Mexican production
16 comes to the U.S., it comes with the Mexican
17 delineation of origin in the fresh market.

18 Q Okay. Is that included in your study?

19 A Everything that we have included here
20 is just the fresh market as defined with packer
21 definition, so no additional processing.

22 Q Okay. So no trans-shipments.

1 A No, what we have here is mainly in-
2 shell pecans.

3 Q Okay. Thank you. One of the concepts
4 that you've touched on several times throughout
5 your study is this threshold of a farm at 50
6 acres. And if I understood you correctly, that
7 50 acres establishes the commercially viable
8 demarcation, is that correct?

9 A Yes, that is correct.

10 Q So in your testimony, you indicated
11 that 70 percent of all farms have 50 acres or
12 more, is that correct?

13 A If you say so, yes.

14 Q It's on Page 7.

15 A Okay. Yes.

16 Q So by default, does that mean that 30
17 percent of all farms are not commercially viable?

18 A So on the one hand, we have a number
19 of farms, and on the other hand, we have
20 production, right? So if we have -- the figure
21 that we have including the benefit and cost
22 analysis, includes only those, the percentage of

1 those would be over 30 acres, so yes.

2 Q I'm sorry. Did you mean to say 50
3 acres?

4 A 30 acres.

5 Q 30 acres?

6 A Yes.

7 MR. QUIROS: I might point out that
8 that was his testimony in the executive summary
9 on Page 8 of the minimum size was 30 acres. I
10 think he just may have misspoke with regard to
11 the 50, Ms. Schmaedick, and again, in his
12 testimony, he, on Page 19, it was 30 acres and
13 50,000 pounds of production per year.

14 THE WITNESS: It's 50,000 pounds, 30
15 acres, yes.

16 BY MS. SCHMAEDICK:

17 Q Okay. Thank you. So the 30 percent
18 of farms, are you then indicating that within
19 that 30 percent, that captures yard production?
20 Is yard production considered a farm in that 30
21 percent?

22 A So we've done an analysis where we

1 have the profit relating to the farms overall in
2 the U.S., and we included everybody in that
3 profitability analysis, and essentially, that's
4 where the breakdown comes from. And if you look
5 at the full report, which is Exhibit 19, there
6 are two figures that pretty much summarizes the
7 likelihood of profitability in this case of a
8 representative farm that uses data from everybody
9 in the U.S., not just the ones presented.

10 And what you can see here is, on the
11 different scenarios of different assessment
12 grades, with the likelihood of profitability
13 doesn't really change that much with or without
14 the order. Furthermore, when you look at
15 differences across the type of assessments within
16 the range, that profitability doesn't change.

17 What you see there is what we
18 typically refer to in policy analysis as a
19 stoplight chart, and this is a type of chart that
20 are used in Congress to make decisions by farm --

21 JUDGE GUTHRIDGE: Which chart is that
22 you're talking about right now?

1 THE WITNESS: This is Chart 19 on Page
2 30 of Exhibit 19. It's a very easy
3 representation of the probability of a farm
4 generating profits. And the reason we use it is
5 because it's a simply concept. Unfortunately,
6 the copies are not in color, but in a similar
7 fashion to a stoplight, green is good, yellow,
8 not so good, and red is bad.

9 So what we have represented here is
10 the probability that a farm would generate some
11 profits in case of the red categories,
12 unfavorable category, the second one, which would
13 be the cautionary, or the mid-level category,
14 that's around 50,000, and then a healthy profit
15 level, which includes returns to all of the
16 inputs associated in production, including
17 capital, so in that breakdown that we've done
18 here, we include everybody in the country, not
19 just the commercially produce growers, because
20 we're interested in seeing how the order will
21 affect potential profitability of farms across
22 the U.S.

1 So in this analysis, like I said, I'm
2 going to repeat again, we used every farm size
3 consideration, in fact, the yield that we used
4 there were smaller, reflect a smaller yield
5 potential, because it includes all of those farms
6 that were excluded from the ones that would be
7 assessed in the federal marketing order.

8 So as you can see there, even when we
9 included everybody, those farms that were not
10 included because they will not be collecting
11 assessments from those farms, the likelihood of
12 making profits was about the same as reflected in
13 those charts with or without the FMO, that is,
14 that the remaining other factors that influence
15 production, in terms of the inputs the farmers
16 use, managerial practices, and other factors that
17 are very important in this case, the amount of
18 the assessments they were assessed, that wouldn't
19 change the likelihood of them being profitable.

20 So that's based on the category
21 section, when we do conduct it, the analysis,
22 which is reflected in the report, for including

1 every farm.

2 JUDGE GUTHRIDGE: Let me clarify
3 something for the record for someone who may be
4 reading this transcript and looking at a black
5 and white, not a color, copy of Figure 19 in
6 Exhibit 19 on Page 30, you called that a
7 stoplight chart?

8 THE WITNESS: Correct.

9 JUDGE GUTHRIDGE: Because it was red,
10 yellow, and green, on this chart, which one is
11 red, when you're looking at it in black and
12 white, which is yellow, which is green?

13 THE WITNESS: Sure. Black is -- the
14 intensity of the color changes.

15 JUDGE GUTHRIDGE: Let me ask it this
16 way, is the line that's unfavorable, is that red?

17 THE WITNESS: Yes.

18 JUDGE GUTHRIDGE: Okay.

19 THE WITNESS: And the one in the
20 middle, cautionary, would be yellow.

21 JUDGE GUTHRIDGE: Cautionary is
22 yellow. Okay.

1 THE WITNESS: And then favorable would
2 be green.

3 JUDGE GUTHRIDGE: That's green. And
4 then on the bar charts below that, is the red the
5 bottom section, the yellow the middle section,
6 and the green the top section?

7 THE WITNESS: Correct.

8 JUDGE GUTHRIDGE: Okay. Somebody,
9 again, reading a transcript and looking at this
10 stuff is going to be having to guess at that.

11 THE WITNESS: Right. And then on
12 Figure 20, we have the similar farm. When we
13 change the assessment levels and we look at the,
14 essentially, we do Monte Carlo simulation looking
15 at all the economic data, and because of the wide
16 range in variation in regions, we actually use
17 distribution of all the possible economic values,
18 and then we simulate 500 farms so we get a flavor
19 of all the risky variables in the model and how
20 they change the final net present value of the
21 farm model.

22 And so we can see in Figure 20 is that

1 we looked at likelihood of profitability is
2 virtually unchanged regardless of the assessment
3 rate as reflected in the baseline scenario, and
4 that's scenario 1 through 6.

5 BY MS. SCHMAEDICK:

6 Q Okay. Thank you. Unfortunately, that
7 still didn't quite get to the question I'm trying
8 to ask. So is it your understanding that
9 assessments are collected -- are they collected
10 at the grower level or the handler level?

11 A The assessments are done at the
12 handler level.

13 Q Are all pecans produced in the
14 production area, are they assessed?

15 A Yes.

16 Q So is it a logical conclusion to say
17 that production from those 30 percent of farms
18 that are below that threshold, is that production
19 being assessed?

20 A It is.

21 Q So when you look at your impact
22 analysis, are those small farms benefitting?

1 JUDGE GUTHRIDGE: Ms. Schmaedick, let
2 me clarify something in my mind, I think you
3 referred at one point to Page 7 of his testimony?

4 MS. SCHMAEDICK: Correct. Yes. But
5 we've sort of moved on.

6 JUDGE GUTHRIDGE: Exhibit 24, and
7 there's a 30 percent on there, but the 30 percent
8 I see on there talks about -- is almost half the
9 farms in the Central and West had between 50 and
10 499 acres under production, but less than 30
11 percent of the farms of this size are in the
12 East, is that the percentage you're questioning?

13 MS. SCHMAEDICK: No. I'm referring to
14 the statement that 70 percent of all farms have
15 more than 50 acres.

16 JUDGE GUTHRIDGE: Okay. Which is
17 across all regions. 70 percent have 50 or more
18 acres.

19 MS. SCHMAEDICK: Correct.

20 JUDGE GUTHRIDGE: So 30 percent have
21 -- okay. Got it.

22 MS. SCHMAEDICK: Yes.

1 MR. QUIROS: Your Honor, for the
2 record, maybe we should indicate that that's Page
3 15 of Exhibit 19 and Page 7 of Exhibit 24, the
4 reference that is just being discussed with
5 regard to the percentage of farms that are above
6 and below 50 acres.

7 THE WITNESS: Yes. So to answer your
8 question, I think that they would benefit. We
9 have cut-down analysis here for commercial
10 farmers only, but if you look at the information
11 in the graph, the amount that they would benefit
12 will depend more on the practices that they do
13 related to production, so if you got just a hobby
14 farmer, doesn't do anything about it, he's more
15 likely that he would be economically affected by
16 not fertilizing and not coming up with any type
17 of production compared to the marketing order.

18 In other words, they will benefit, but
19 the marketing order will not save them from not
20 going with the necessary inputs of production to
21 have yields.

22 BY MS. SCHMAEDICK:

1 Q So referring to your statement that
2 farmers below that threshold, their profitability
3 doesn't necessarily change with or without a
4 marketing order, is that your statement? Is that
5 correct?

6 A Well, if you look across all the
7 inputs of production, the other factors, the
8 other inputs, have more influence than just the
9 cost. So that's reflected in those graph is
10 saying, if we collected the cost and we actually
11 put in nothing, no promotion, nothing changed,
12 just the cost structure, that wouldn't change the
13 likelihood of them making profits, which is
14 slightly different.

15 So what that is saying is, that the
16 likelihood of making profit depends a lot on what
17 they do, and even with the cost included in
18 there, they would need maybe other things to stay
19 that have a higher impact of them making profits
20 than the assessments from everyone. Does that
21 clear your question?

22 Q Yes. So would it be fair to say that

1 farms below that threshold, even though the
2 marketing order may not make them profitable,
3 they still benefit.

4 A Correct.

5 Q Okay. Thank you. Couple of fairly
6 minor questions, on Page 8 of your testimony, you
7 indicate that the per person consumption of
8 pecans is 0.45 pounds. Do you have consumption
9 data for the other nuts in your study?

10 A It's more FDA data from the per capita
11 consumption system, so I don't recall if we do
12 the actual per capita consumption of all the
13 other nuts, but that would be very easy to get
14 from the per capita consumption data, when you go
15 to the system, put together with the economic
16 research service.

17 Q Thank you, I understand that.

18 A And essentially, what you'll find is
19 that the other nuts are increasing in terms of
20 consumption and pecans remain relatively flat.

21 Q Okay. I'm wondering if those numbers
22 are included in the data that you have submitted.

1 A I don't think that I included the
2 actual per capita consumption or even just
3 included for pecans. Let me --

4 MR. QUIROS: Judge, just for
5 identification, that's Exhibit 24 that we are
6 referring to now, Page 8.

7 MS. SCHMAEDICK: We don't need to take
8 a lot of time. I just wanted to know if that
9 data was there.

10 THE WITNESS: Figure 14 shows just the
11 fruit and nut in general, but it's not broken
12 down by specific nuts, and I don't think that I -
13 - I don't think that we included the rest of the
14 nuts in terms of per capita consumption.

15 BY MS. SCHMAEDICK:

16 Q Okay. Thank you. Quick point of
17 clarification, on Page 12 of your testimony, you
18 refer to Figure 17 of Exhibit 19, I think. So
19 Figure 17 refers to percent market share of
20 pecans and walnuts, it's on Page 24 of Exhibit
21 19, and if I understood your testimony correctly,
22 there's a line, a vertical line, that points to

1 the year 2007. Is it your interpretation that
2 the walnut marketing order program started in
3 2007? Is that what you're saying?

4 A What I'm saying there is the marketing
5 order for, in that case, walnuts, starts to have
6 a proving trend starting in 2007.

7 Q Do you know when the program was
8 implemented? In your analysis, did you look at
9 what might have created the bump in 2002 and the
10 drop in 2003 in that crop? Were there any
11 outstanding economic events there?

12 A In that same graph?

13 Q Yes.

14 A No, but if you look at the previous
15 figure, which is 16, you can actually see the
16 more precipitous growth, and in that particular
17 figure, you can see the series going back to
18 2000, the bars represent the market value share
19 for different nuts in these states, so include
20 almonds, walnuts, pistachios, hazelnut,
21 macadamias, so it's pretty much the whole nut
22 market, and then on the vertical side, I put the

1 percentage of pecans of the overall market, which
2 you can see in this line is a very precipitous
3 decline in the percentage of the market value for
4 pecans going from over 20 percent in the year
5 2000, and falling to very close to 5 percent in
6 2014.

7 So as you can see, there are many
8 factors that are driving that, perhaps mainly we
9 can see the growth of all the others. So when
10 you start to put the picture together in that
11 particular graph, and if you look at not only
12 walnuts, but you can look at the other nuts and
13 how have they been growing in terms of the market
14 value, the pecan has remained relatively flat.

15 So what you're seeing there is that
16 production has remained stagnant, on the one
17 hand, for pecans, but clearly, something is
18 driving the increase in the supply of the other
19 nuts. And I believe this states what's driving
20 there, which is the point I'm trying to make in
21 Figure 17 and 18, is the market demand.

22 The market demand for the other tree

1 nuts is growing at a rate that allows production
2 to satisfy that market demand.

3 MR. HILL: Mr. Palma, I just want to
4 interject for one second. You were asked a
5 minute ago about the implementation of the walnut
6 order, there was no answer, so I want to make
7 sure you answered. You're not sure when the
8 walnut --

9 THE WITNESS: Well, the record reflect
10 that I believe that the marketing efforts
11 starting making expenditures in that year, 2007.

12 MR. HILL: Okay. Just wanted to
13 clarify that because you shook your head and kind
14 of wasn't on the record.

15 THE WITNESS: Sure.

16 BY MS. SCHMAEDICK:

17 Q Okay. Thank you. On Page 15 of your
18 testimony, you refer to a Figure ES3, which I
19 believe is in Exhibit 19 and Exhibit 23? Could
20 you spend some time explaining the calculations
21 that are captured in that table? The table was
22 titled, Assessments as a Percentage of U.S.

1 Season Average Pecan Grower Prices, Midpoint of
2 Proposed Initial Assessment Range. How did you
3 make those calculations?

4 A So if you go back to my testimony, you
5 will see that, with the season average prices of
6 \$1.73, \$1.90, and \$2.12, which are the average
7 prices in Table ES2, I used those average prices
8 and look at the different assessments as a
9 percentage of those prices, and so the
10 assessments, which are in Table ES1, are divided
11 by the total price, and that gives you what's the
12 percentage of the price that the assessment will
13 be.

14 And so when you look at those, the
15 result, depending on which assessment that you
16 use relative to the average price, that will be
17 in the range of 1.2 to 1.4 percent, depending on
18 whether you use the low, the mean point, or the
19 high end of assessments, which, for improved
20 pecans, would be between 2 and 3 cents, with a
21 midpoint of 2.5 cents, and for the native
22 variety, it would be between 1 and 2 cents, with

1 a midpoint of 1.5 cents.

2 That's what's the percentage of those
3 assessments relative to the average prices.

4 Q So I'd like to take that analysis, but
5 I want to apply it to the cost of production, are
6 there differences in the cost of production
7 across the production area?

8 A Yes.

9 Q So in your analysis, and in your
10 calculations of the impact on growers, did you
11 take the cost of production into consideration?

12 A When we do the profitability, we did,
13 and we didn't take the average cost production,
14 we actually used the simulated costs so that we
15 include all the range of the possible values. So
16 perhaps the best way to describe this is, if you
17 did a sensitivity analysis and you looked at
18 what's the price of, let's say, labor in Texas
19 compared to somewhere else, you can say, well,
20 the average price for labor is about \$10 an hour.

21 And then it goes from \$8 or \$9 to \$19,
22 I'm just taking an example, so in a sensitivity

1 analysis, you will say, well, the cost of labor
2 per hour is the average, with a low of X and a
3 high of Y. So what I've done, instead of using
4 three points, if we use the full distribution of
5 all reported available costs of all the inputs
6 across the different regions, and we did sort of
7 like a sensitivity analysis, but rather than
8 taking three points, we took the density function
9 of all of those possible values, which means,
10 essentially, any possible value within that
11 distribution is used to then simulate the change
12 in that particular cost.

13 And then you use that for all the
14 possible input costs for everything else in
15 estimating the cost of production. So labor
16 costs change the price of everything else in
17 terms of the inputs also change, so normally,
18 that's what I refer to in the report as the risky
19 variables.

20 By that, what I mean is that there are
21 things that, even within the same region, if you
22 look at it today, there's wide variation. And

1 just using the average can be misleading because
2 the costs might be very different in the Eastern
3 region compared to the Central and Western.

4 So by using the full density, or all
5 the probable values of all of these variables,
6 then essentially what we're doing is we're
7 capturing all of the risk that exists within the
8 cost of production inputs. And then we're
9 simulating that 500 times to give us a wide range
10 of the possible influence that all of those
11 inputs provided will have on the bottom-line net
12 present value of the farm.

13 So yes, we accounted for all of that,
14 we took all of the inputs, we took all of the
15 levels, and used those densities to estimate
16 differences across all the regions. An
17 alternative approach would have been to do an
18 analysis on a per region basis, but that would
19 probably be a little bit more misleading in terms
20 of differences across regions.

21 So what we did is, we took these
22 representative farms and we took the risk

1 behavior of all the cost production and
2 everything else across the regions, which is very
3 standard to what we do in terms of analyzing
4 different policies in policy analysis, even for
5 the Farm Bill and other risky type of scenarios.

6 Q Thank you for that explanation. I
7 want to see if I can capture that in layman's
8 terms. So basically what you're saying is that,
9 across the three regions, the cost reduction can
10 vary depending on what types of inputs are needed
11 for that farm context.

12 A Not just the types, even with the
13 inputs.

14 Q Right.

15 A I mean, the price the diesel is not
16 the same. It doesn't cost the same in Texas than
17 what it does in Florida, or Georgia, or any of
18 the other regions. So even within the same
19 input, the cost of that input changes.

20 Q Correct. Another example might be
21 water, is that correct? It might cost different
22 in --

1 A All the inputs in production, yes.

2 Q Okay. So again, in layman's terms,
3 I'm trying to restate what I think I just heard
4 you say. You did an analysis across the regions
5 with all these different input variables and
6 looking at the range of how high and low those
7 costs might vary, correct?

8 A Not a range. You got a full
9 distribution assigned to each one of those, so we
10 didn't just say, this is high, this is medium,
11 and this is low, we assigned a distribution,
12 which means, if you look at the density function,
13 essentially, what's the probability that these
14 costs, the diesel, would be between \$2 and \$5,
15 and you assign a probability to each one of
16 those, but not a specific value because it's a
17 distribution.

18 So I mean if you look at Bromethio,
19 his particular value, 1.03, that's zero. So it's
20 over all the possible values of distribution of
21 each one of those.

22 Q Okay. Thank you. So based on that

1 analysis, how would you characterize the cost
2 impact across the production area? Does it
3 differ per region on a bottom-line analysis, the
4 impact, does it different across the region?

5 A It certainly does. It's not reflected
6 in here because we actually took all of the
7 risks, which essentially means, how does that
8 distribution look like in each region? So is it
9 flat? Is it relatively more lead curtain, which
10 means that there's more risk associated with
11 that.

12 And so what we did is, we took all of
13 that potential risk and put it into this
14 simulation farm analysis. So with that, it's
15 capturing every single possible change in that.
16 And then of course, the beauty of doing that is
17 that you can simulate what happens to net present
18 value over all the different risk variables all
19 across the region, so it is represented and
20 embedded within the model.

21 Q In your final analysis then, do you
22 say that one region would generally be impacted

1 more than another region would generally be?

2 A No, what I mean to say here, and you
3 can look at those two graphs begin to show you
4 results of all the 500 simulations on the bottom-
5 line net present value. What that is telling is
6 the impact on the costs or the likelihood of the
7 farms to make a profit would be more dependent
8 upon the actual management practices that they do
9 because the assessments are low enough that they
10 will not make a big impact in the likelihood of
11 those farms to make profits or the cost is small
12 enough that you won't change the structure.

13 It's more dependent upon the other
14 management practices.

15 Q Okay. So again, in layman's terms,
16 would you say that an assessment that is applied
17 on a per-pound basis at the handler level, would
18 that be a fair impact across the production area?
19 Is that impact applied fairly? Is anyone
20 disproportionately disadvantaged?

21 A I don't think so. I think it's
22 proportionately assessed in all different

1 regions. In fact, you brought the point that
2 it's assessed on the handler level, and yet, we
3 assume that most, 100 percent, would be bear by
4 the producers in these regions, and so to clarify
5 your question, yes. The reason for us to assume
6 that is because if you look at an increasing
7 price today, that increasing price today will be
8 reflected in the market, but if all the growers
9 decided to respond to that price increase today,
10 the actual supply's response from taking an
11 action would not be seen for six years, because
12 if they planted the trees today, that response
13 would not be seen for six or seven years, which
14 essentially just mean, in economic layman's
15 terms, that the supply would be fixed.

16 Even if I wanted put more pecans in
17 market, I wouldn't be able to do so today because
18 it's the yield that we have, and even if we
19 planted additional trees, those trees would not
20 come into production for six or seven years. So
21 with that fixed supply and response, that's why
22 we assume, at least initially, that thus, the

1 costs of those assessments would be mainly
2 impacted more by the producers.

3 And I think, just to clarify your
4 original question, that yes, it will be fairly
5 impacted across all three regions.

6 Q Thank you. So I just want to, you
7 touched on my next question, which is, on Page,
8 let's see, 20 of your testimony, which is Exhibit
9 24, you have a statement here, and I'll read it
10 into the record. You say, "It is" --

11 A I'm sorry. You said Page 20? Just
12 give me a sec. I have a different version of my
13 testimony than what you have.

14 Q Okay. Paragraph F, the title is,
15 "Handler Considerations: Costs and Benefits".

16 A Okay.

17 Q And I want to point your attention to
18 this statement, it says, "It is evident at the
19 handler level, there's the same magnitude of
20 positive price change as there is with the grower
21 analysis, but a smaller proportion of the cost
22 due to the greater prices paid to handlers." My

1 question there is, in that statement, are you
2 taking into consideration costs such as the cost
3 of planting and putting the input expenses into
4 trees, into an orchard, for seven years before
5 it's bearing? Is that cost capture in this
6 statement?

7 A No. So all that statement is
8 reflecting is that both at the producer and the
9 handler level, we can see that there is an effect
10 in demand of increasing prices that can be seen
11 in both segments, both of the handler and at a
12 grower level. The cost of the handler in that
13 case means, well, what would be the cost of that
14 associated increase in demand by having a few --
15 an increased production of anything.

16 So on the handler level, yes, it does.
17 It includes the cost of the transactions in terms
18 of accounting and making sure that they collect
19 all of those assessments, and so on and so forth,
20 that can be attributed to the FMO. On the
21 producer side, no.

22 Q Can this statement be interpreted as

1 saying that handlers will benefit more than
2 growers?

3 A No.

4 Q Can you explain that? Maybe I'm not
5 getting it. Why does that not mean that? If
6 there's a same positive price change for growers
7 and handlers, but a smaller cost, the difference
8 --

9 A The extra cost of handling, the extra
10 cost for the handler, would be expected to be
11 very low, is what I mean to say in that
12 statement, compared to the extra cost of all the
13 activities that will be borne back to the
14 producer as assumed in the model. So even though
15 the handlers are paying it, we're assuming that
16 that price paid to growers would be reflected in
17 the way back to the growers themselves.

18 So if there's an increase of 6.3
19 cents, even though that's going to be paid by the
20 handlers, that would be reflected back in the
21 price that is being paid to the growers, but that
22 increase in the actual stated cost for the

1 handlers would not be expected to be, in terms of
2 handling that extra loading, is not expected to
3 be very large.

4 MS. SCHMAEDICK: Okay. I think that
5 concludes my questions. Thank you.

6 THE WITNESS: Thank you.

7 JUDGE GUTHRIDGE: Any follow-up?

8 MR. QUIROS: Yes, Your Honor. Couple
9 of things. Dr. Palma, when you say a producer
10 under Exhibit 1, that is meant to include grower
11 when you use it, is that correct?

12 THE WITNESS: That's correct.

13 REDIRECT EXAMINATION

14 BY MR. QUIROS:

15 Q And in your testimony, when you say
16 the term native, do you also mean native and
17 seedling?

18 A Native and seedling. Yes.

19 Q Thank you very much. You have
20 described the proposed federal marketing order
21 for pecans as a domestic program. The
22 information that you produced with regard to

1 Mexico and reported on the other countries was
2 just background information and not part of your
3 study, is that correct?

4 A I believe it was important to show the
5 overall economic and marketing trends in the
6 industry and they were just meant to be used for
7 illustrative purposes.

8 MR. QUIROS: Thank you very much. No
9 further questions, Your Honor.

10 JUDGE GUTHRIDGE: Next from the USDA.

11 MR. HINMAN: Well, I guess we now say
12 good afternoon at this point. We've been here
13 for a while.

14 THE WITNESS: Good afternoon.

15 CROSS EXAMINATION

16 BY MR. HINMAN:

17 Q Actually, I first want to follow-up on
18 Ms. Schmaedick's question on Page 20 of that same
19 statement you read. This is on Page 20, "Handler
20 Consideration: Costs and Benefits", since the
21 computation you made is entirely based on -- you
22 have an average grower price and you add 57.5

1 cents and you get the handler price, right?

2 So in fact, it's a smaller proportion
3 of handler price received, is that an alternative
4 way to say that? Smaller proportion of handler
5 price received.

6 A Yes.

7 Q So is it 57 cents and therefore, for
8 growers, you have, you know, ranges of like 1.7
9 percent, and because you've added 57 cents, 58
10 cents, the handler now has a smaller percentage
11 because it's now down to about 1 percent. So
12 instead of saying cost, is it more accurate to
13 say it's a smaller proportion of handler price
14 received?

15 A You're absolutely right. Yes.

16 Q Okay. Thank you.

17 A Thank you.

18 Q I have a series of questions from
19 Exhibit 19. First of all, it is on Page 20 of
20 Exhibit 19. On Figure 11 and 12 you have --
21 well, look at Figure 11 on Page 20, you have in
22 there, production, which had to be obtained from

1 NASS data, but you also have imports and exports,
2 which would not be NASS data, is the source of
3 this, perhaps, the foreign actuals or is it the
4 Economic Research Service which tends to compile
5 these things together?

6 Could this source, in fact, be the ERS
7 rather than NASS for Figure 11?

8 A Yes. It's Foreign Agricultural
9 Service data for the import side, so you're
10 right, it's not NASS data, and I mean, the ERS
11 also puts out a report based on that.

12 Q Okay.

13 A So it would be included within either
14 one of those two.

15 Q Okay. Thank you. I'll refer you back
16 to Page 28 of the same exhibit. And on the very
17 bottom of Page 28, you use the phrase, "They will
18 be collected on the ratio of the in-shell pecans
19 managed by the handler and the in-shell pecans on
20 Page 29 managed by all regulated handlers." I'm
21 not sure, I'm trying to understand, what is this
22 ratio? What's the purpose of the ratio in your

1 analysis?

2 A So the ratio of in-shell pecans
3 managed by one particular handler, you can think
4 about it as a market share of the product that
5 floats through one particular handler. And so
6 depending on the amount of product that one
7 handler uses, the percentage of the total market
8 would be the ratio for that particular individual
9 unit or business.

10 Q Does that number fit into your
11 analysis, and if so, how? Is this mainly just an
12 observation rather than an element of your
13 analysis?

14 A It's an observation rather than
15 anything in NASS, yes.

16 Q Okay. Thank you.

17 A Thank you.

18 Q Same exhibit, Page 31. And just
19 before you begin Section E, you use the word,
20 cascading to the grower, that word cascading, you
21 mean, basically, a grower/handler market,
22 correct? Is that correct?

1 A Yes, it would be passed on.

2 Q Which you then characterize as 30 to
3 40 percent.

4 A I'm sorry?

5 Q So basically, you just refer to the
6 fact that dynamic marketing and at this point,
7 you're estimating that at 30 to 40 percent.

8 A So that's the estimated margin for the
9 grower. Yes. So if you look at a retail price,
10 the actual margin that goes back to the grower
11 from selling -- well, what you see in that
12 grocery store, for example, and if you see a
13 price of \$10, the margin of that that correspond
14 to the actual grower will be in that range.
15 That's what that means.

16 Q Okay. I want to point out on this
17 Page 31, you said a margin of 30 to 40 percent
18 from the grower to the handler, price received by
19 grower to price received by handler. Then on
20 Page 33, second paragraph, "The handler margins
21 from 30 to 60 percent of the price." This is the
22 second full paragraph on Page 33. Should those

1 be aligned? Are both meant to be 30 to 60 or
2 both meant to be 30 to 40 percent, or is there a
3 different piece of analysis going on here?

4 A That's a good question. So the first
5 one refers to the actual -- the margin to the
6 grower from retail, the margin to the grower from
7 the handlers, and then the other one refers to
8 the margin to the handler as a price paid to
9 growers, so how much of that price paid to the
10 growers is a typical margin to the handler. So
11 in a way, they should be aligned because one
12 reflects, what is the margin going from the
13 handler reflected back to the producer, and this
14 is the other way around.

15 It's the margin of the price paid to
16 the producer that is a typical margin to the
17 handler.

18 Q If we were to individually reference
19 this particular number, which range would you
20 think would be most accurate to use; 30 to 40 or
21 30 to 60 percent?

22 A I think that 30 to 40 is probably a

1 range that is accurate, but if you explored that
2 further, I mean, that range could be up to 60
3 percent.

4 Q Okay. Thank you. The 58 cents,
5 that's generally about 40 percent in your
6 example, so you're using, in an example, the
7 lower end of that estimate, is that correct?

8 A That's correct.

9 Q Okay. Thank you. I'll refer you to
10 Page 38 of that exhibit. And you have, on that
11 Page 38, a long list of studies which have
12 informed your analysis here about the range of
13 likely impacts from generic promotion, is that
14 correct?

15 A That's correct.

16 Q And I want to make sure from this page
17 I'm understanding, basically, the footnotes, and
18 if a number in the benefit/cost ratio column of
19 that has a B, and there's a margin of
20 benefit/cost ratio and does that make all of the
21 others that don't have B an average benefit/cost
22 ratio in that benefit/cost ratio column? A few

1 of them have B's.

2 A Well, so they're different types of
3 benefit/cost ratio statistics that people report
4 in the literature, and so the comparison across
5 them, we need to make sure that we are actually
6 referring in a comparison basis to the
7 appropriate benefit/cost ratio. So in my case,
8 what you have that I have estimated is,
9 additional benefits divided by costs, which, I
10 believe for the midpoints there were at about
11 2.5.

12 There's also the net/benefit cost
13 ratio, which means, if you take out the one
14 number you already invested, what's the
15 additional increase? So in this case, for this
16 particular example, if you look at the
17 net/benefit cost ratio, it would be 1.5.

18 The marginal benefit/cost ratio, what
19 that means is that if I were to spend an extra
20 unit of promotion, in this case, an extra unit of
21 promotion is one extra dollar, how much of that
22 expenditure in that extra dollar would really

1 return.

2 Q Given that, would you characterize
3 your computation, which resulted in 2.5 as a --
4 you use the word here, marginal, and average, and
5 net, where does your analysis fit in that range
6 of ways to characterize benefit/cost ratios?

7 A I think that's an excellent question.
8 Mine would be on the low side of this statement.
9 If you compare the typical BCR as the way that I
10 would calculate it, which is like what,
11 essentially, Williams and Welch do this, the
12 reason I use this size because it's very recent
13 and it includes a variety of agricultural
14 products from different promotion programs over a
15 wide range of agricultural products, and
16 essentially what they do is, they look at the
17 average of all those and apply that average, in
18 this case, to that particular commodity that
19 we're looking at.

20 And I believe that that average,
21 depending on the type of commodity, if we compare
22 across that, it would be around 4 for a

1 benefit/cost ratio. So the reason for us to use
2 the numbers that we used were twofold. Number
3 one, we wanted to have a conservative estimate of
4 the potential benefits for a couple of reasons.

5 The first reason is that the other
6 programs in the nut market have programs that
7 have been very active for many years, and so that
8 we believe that the potential impacts, at least
9 initially, it would take some time for them to
10 start to see larger returns and so for that
11 reason, we wanted these estimates to be somewhat
12 conservative in the way that it will generate
13 benefits.

14 We could have used different
15 commodities. Again, if you look at the list of
16 notes there, you have things like eggs, avocados,
17 blueberries, that might be very different than
18 the tree nut market. So rather than using all of
19 those as Williams and Welch did, what we did was
20 try to look at the studies with nuts only and
21 using sort of like the mean point for those
22 studies will be largely the largest, or the high,

1 benefit scenario in our analysis.

2 So the typical scenario that we're
3 reporting, again, is a conservative measure of
4 the potential benefits, but I just wanted to be
5 cautious in not overestimating any potential
6 benefits, and so a quick review of that
7 literature tells us that the typical range is as
8 high as, you can see some of those numbers go as
9 high as, 9:1.

10 In fact, the promotion program in
11 Texas that we analyzed a few years back generated
12 a 35:1 benefit/cost ratio for Texas pecans. Now,
13 when you look at such a large benefit/cost ratio,
14 what that means in terms of the question you just
15 asked of the marginal BCR, what that means is
16 that if you start to promote a product, even with
17 very small promotion dollars, like they are
18 limited in the case of Texas, what you see is
19 very large benefits of doing those promotions
20 because it's bringing a lot of awareness.

21 But every additional unit referred to,
22 typically in economics, marginal unit has

1 diminishing returns to investment. So what that
2 means is that every extra dollar I invest in
3 promoting pecans, and this is what we found in
4 that study, would be expected to generate less,
5 and less, and less returns, up to the optimum
6 point where you invest \$1 and then you get a
7 return of \$1.

8 So when you experience such a large
9 BCR like the one we found for Texas pecans in
10 that study, that is a sign the program is
11 significantly underfunded, which means, the
12 amount in return is so large because the program
13 has invested so little in promotion that every
14 dollar counts very much.

15 So I wanted to -- I know that's a
16 little bit of an extension of the question you
17 asked, but I think that's a good explanation as
18 to the different types of BCRs, and I thought it
19 was a good moment to bring some of the results of
20 that particular study, which I think the
21 assessment rate is about half a cent per pound in
22 the case of Texas, so that's really telling you

1 the very small amount that they have available is
2 having a very large impact, in that case, 35:1.

3 We didn't want to use something that
4 is that big, especially because, in this case, we
5 don't really know what the amount of the actual
6 amount in dollars would be used to different
7 activities. If we knew that, we could use a
8 regression-type of analysis to attribute the
9 different types of investments and look at the
10 potential return based on the literature, but we
11 at this point, do not know how those dollars in
12 the assessments are going to be invested.

13 Q Thank you. Yes, you did anticipate
14 with that some upcoming questions, so thank you
15 for that.

16 JUDGE GUTHRIDGE: Follow-up?

17 MR. QUIROS: I'll let you finish.

18 MR. HINMAN: Oh, I have additional
19 questions. Please go ahead ask.

20 JUDGE GUTHRIDGE: I thought you said
21 you had no more questions, Mr. Hinman.

22 MR. HINMAN: No, I do have additional

1 questions.

2 JUDGE GUTHRIDGE: Oh, you do. I'm
3 sorry. I thought you said you had no more
4 questions.

5 MR. QUIROS: I'll reserve until after
6 he finishes his questions, Your Honor.

7 MR. HINMAN: Okay. Thank you. On
8 Page 7 and 8 of Exhibit 19, you are providing
9 there a series of calculations to be, sort of,
10 representative averages, correct?

11 THE WITNESS: Correct.

12 BY MR. HINMAN:

13 Q And a key result of those series of
14 computations for both, I believe, native, and
15 improved, and overall, all of that is
16 approximately 2.5 benefit/cost ratio, so is that
17 correct?

18 A That is correct. In fact, I think
19 that I know when we do the different types of
20 analysis, depending on the size farm and the
21 assessments, that goes from 2.08 to 3.12, with
22 the overall for that particular scenario of 2.5,

1 which is the mean point. Yes.

2 Q You do then argue then that, well, I
3 think this is helpful for the average reader to
4 understand the results, that you said averages
5 can be misleading, which is the reason you
6 engaged in the simulation analysis think test.
7 Would you explain, you know, that more, how the
8 analysis becomes more robust with the simulations
9 and Monte Carlo analysis than it would have been
10 in using just averages, such as these?

11 A Sure. That's an excellent question
12 because especially in the particular case of
13 pecans where you have an alternative bearing
14 acreage production, using averages to estimate
15 with and without implementation of the program,
16 and then trying to put that on a particular year
17 might be even more misleading than just the
18 regular way of calculating the averages.

19 So essentially what we did in these
20 cases that we took all the historical data and
21 used that risk behavior, the historical data, to
22 run a very similar type of analysis where we

1 simulated 500 different prices from empirical
2 distribution of the data, with and without the
3 FMO, and then we estimated the potential impacts
4 on the price for the following four, five years,
5 and then took the average of those to be what you
6 see in the tables.

7 So in this regard, we're not just
8 taking the particular average of what would be a
9 potential, for example, if you were seated here
10 in 2010 or 2011, and looking at the high/low
11 prices, and doing the analysis relative to those
12 prices, the answers would be very different than
13 sitting here and doing it with the price levels
14 of 2014.

15 So in this regard, what we tried to
16 implement in the analysis is, we tried to
17 implement all of the potential risk associated
18 with the price series and use that risk to
19 generate -- using the actual data to simulate the
20 potential impact on prices.

21 Q Again, referring to Page 7, I want to
22 make sure I understand this, because you use

1 these sort of averages just for different levels
2 of farm production, you would consider your 2.5
3 propagation to be, it's not an incremental, it's
4 an average, so it's average benefit/cost ratio,
5 not a marginal benefit/cost ratio, is that
6 correct?

7 A That's correct.

8 Q Thank you. If you could turn to Page
9 29 of Exhibit 19. And actually, so 29 and 30,
10 and you have stated that the 6.3 is your midpoint
11 between a high and a low result, is that correct?

12 A That's correct.

13 Q And your basis for that is, the
14 starting point for that is, a 1.5 percent
15 increase in price.

16 A Correct.

17 Q Using your distributional methods and
18 your stochastic analysis, right?

19 A Correct.

20 MR. QUIROS: Excuse me. I understood
21 it to be 1.5 percent increase in demand, not in
22 price.

1 THE WITNESS: It is price, and in this
2 case, we're assuming that the increase in demand
3 that we're observing is observed in a 1.5 percent
4 increase in prices --

5 MR. QUIROS: Okay. Thank you.

6 THE WITNESS: -- for the average
7 scenario. And then the low is 0.5 percent
8 increase and then the high is 3 percent.

9 BY MR. HINMAN:

10 Q Just a follow-up, I want to make sure
11 I understand that, you're equating a 1.5 increase
12 in demand, but you're representing it by 1.5
13 percent increase in price, is that correct or
14 not?

15 A We did have the information about the
16 price exceeds their demand, so what we are
17 assuming here is, yes, it is a unit lasting so
18 that when we observe an increase in demand, we
19 can reflect it in the increasing prices, but
20 again, we are using those studies to look at the
21 overall final effect of the potential increase in
22 demand and what would that be reflected in the

1 increase in prices.

2 Q In the paragraph just above Table 7 on
3 Page 29, you refer to your simulations and all
4 that, so I want to make sure I understand, this
5 analysis here is basically using a distribution
6 of prices and you're estimating it -- you know,
7 you start with 1.5 and you get percent and you
8 end up with your analysis with 6.3 cents net
9 increase in price using your simulation analysis;
10 6.3 cents for improved pecans.

11 A Correct. Within the whole 500
12 simulated prices, that's the average of the
13 following five years of all the simulated prices,
14 assuming a 1.5 percent increase.

15 Q And so this analysis, you go on then
16 to discuss the model farm, but this particular
17 result, the 6.3 cents computations you made, and
18 2.5, does not -- this type of analysis does not
19 involve the model farm. This is partially
20 because you're starting your price analysis and
21 you're ending up with higher prices through these
22 simulations. Am I correct that this analysis

1 does not involve the model farm?

2 A That's correct.

3 Q The model farm is a separate analysis
4 to make a separate point.

5 A Correct.

6 Q Thank you. I'm going to point you to
7 Page 30 where you mentioned the -- at the very
8 end of that first paragraph there --

9 A I'm sorry. You said Page 3?

10 Q Excuse me. Page 30 of Exhibit 19.
11 And the first paragraph there has a footnote and
12 I want to draw your attention to that footnote,
13 and you talk about a 2.8 percent rise, and then
14 you have a footnote describing the fact that
15 you're using an empirical distribution. And I
16 want to explore this because -- let me ask you,
17 basically, you start with 1.5 and with the use of
18 your particular distribution, which I believe --
19 do you call that a standard distribution?

20 A No. So there are different types of
21 distribution that you can assume any particular
22 variable. Normal distributions, extreme value,

1 depending on what you're talking about. In this
2 case, because we have reliable price data that
3 we're using from a historical series that is
4 collected, then we're using what we call the
5 empirical data, if you want to call it, which is
6 an empirical distribution because the
7 distribution is coming directly from those
8 prices.

9 In this case, I think we used 1987 to
10 2013, so we allowed the distribution to change,
11 or to vary, according to the way it's changed
12 with historical data. So rather than assuming a
13 particular distribution that might not fit the
14 data, we used the empirical distribution, which
15 fits the data. Of course, an empirical
16 distribution tends to have some weights to the
17 tail, so it's not like your typical normal
18 distribution that can go from minus infinity to
19 infinity, but it assumes the actual risk within
20 the variable associated with the changes with the
21 actual data.

22 So whenever possible, if you have data

1 available for distribution, I think that for this
2 type of analysis, it's always better to use the
3 available data and let the data tell you how
4 risky it is rather than trying to assume another
5 distribution, so that's the reason why we used
6 that empirical distribution for prices.

7 Q So is that lack of using a standard
8 distribution, you refer to that as empirical, in
9 other words, it was your empirical work with much
10 data that allowed you to provide that
11 distribution, correct?

12 A Correct.

13 Q The impact of this -- let me ask you,
14 the impact of this is if you started with 1.5,
15 you used your empirical distribution, and then
16 used the phrase higher weigh on the tails, and
17 your net increase seems to be your 1.5 percent
18 rose to 2.8 percent, an increase of 1.3
19 percentage points, is that correct?

20 A Yes, it is.

21 Q Therefore, the results that we see in
22 6.3, and all that, is, in a sense, starts at 1.5,

1 but through your distributional analysis, we're
2 really talking about a 2.8 percent increase,
3 which gets you improved rising by 6.3 cents and
4 native and seedling rising by 3.6 cents, is that
5 correct?

6 A That is correct. And the assignment
7 of the way, what that means is the probability of
8 different price data to occur as obtained from
9 the risk behavior of the actual data.

10 Q Thank you. And could you define the
11 word stochastic?

12 A Sure. So stochastic means something
13 that is risky. So I think I use an example,
14 which I might elaborate on, if you look at the
15 cost of fuel and if somebody asks you, what's the
16 cost of fuel? And I reply to them, it's about
17 \$2.5 per gallon of gasoline in Texas, that's a
18 fixed variable, because it's changes, it's always
19 2.5, but if I told them, well, the distribution
20 of prices has a mean and a standard deviation of
21 such, I'm defining the whole distribution, which
22 means that the value of that particular variable

1 has a range with different probabilities.

2 So that's what the word stochastic
3 means, it means that it has some risk that is not
4 fixed, it's not always the same, that there is
5 some variation intrinsic to that particular
6 variable that is defined, in this case, at the
7 site of the first and second months, the mean and
8 the standard deviation, but we can derive those
9 with three and four months, typically most
10 distribution of stochastic variables are usually
11 defined within the mean standard deviation.

12 But essentially what that means, it's
13 not just 2.8, 2.8 is the largest probability of
14 that event happening, which in layman's terms we
15 refer to as, that's the average. That's most
16 like the scenario, but here, the average, if we
17 think about it, is the calculation of the density
18 function over a range of values, so what you do
19 in an average, you assign each value and you have
20 the same probability, so that you take one over
21 P , multiple by the integral of all the possible
22 values, and you end up with adding up all the

1 values and dividing by P, which is, in the sense,
2 just taking the average would be adding up the
3 numbers, dividing by the number of different
4 things that you're adding up to.

5 In the case of a stochastic, it
6 doesn't necessarily mean that every particular
7 value will have the same probability, as in the
8 case of the average, but you may assign different
9 probabilities to different values, essentially.

10 Q Thank you. I'm going to give a
11 follow-up, make sure I understand, that same
12 footnote we just referred to on Page 30, about
13 the 2.8, and I want to explore again the phrase,
14 higher weight on the tails. If you could walk us
15 through how that term, higher weight on the
16 tails, gets us the extra 1.3 percent, which is a
17 critical portion of your analysis; phrase, higher
18 weight on the tails.

19 A Sure. So what that means, if you look
20 at the potential distribution, what that means in
21 this framework that you just explained, is that
22 this type of distribution assigns a higher

1 probability on the low and the high possible
2 scenarios.

3 So high probability compared to a
4 normal distribution. So you still have the
5 highest possible probability, you're still at the
6 center, or the average value, but then that has
7 some weights distributed to the tails where you
8 have a little bit more probability compared to
9 the normal distribution, having those weights in
10 the tail, what that means is that it makes some
11 of those particular scenarios change, it might be
12 at the bottom or it might be at the top, and in
13 this case, the end result is that we look at the
14 average increase in prices and we see a little
15 bit higher increase in price because of that
16 empirical distribution.

17 Again, I think the point is that
18 rather than me trying to assume just the normal
19 distribution, since we have the data, we let the
20 data tell us what would be assigned to either the
21 risky or the stochastic behavior for that
22 particular series, in this case, the prices.

1 Q Thank you. Stay on Page 30. Now I
2 want to go to the model farm in Figure 19. First
3 question, just based on understanding, you have
4 made a point that it's hard to see red, yellow,
5 green because it's black and white, but am I
6 correct that the graph and then the three lines
7 above it, the order is reversed, is that correct?

8 A I'm sorry?

9 Q You have the graph there, you know,
10 with a base and scenarios 1 through 6 going from
11 0 to 100, and it looks like the way in Figure 19
12 those graphs are stacked is the reverse of the
13 stacking in the three lines above it. Are they,
14 in fact, reversed?

15 A Yes, you're correct. So the
16 probability of unfavorable at the top would
17 typically be the red, if we had it in color, and
18 that would be the bottom category in the graphs.
19 So for example, in the baseline scenario, that
20 would be at 27 percent. If you go to the middle
21 one, which would be the cautionary, that would be
22 in the middle, of course, and then the other one

1 is favorable, so you're right. Yes, 21.8 percent
2 is at the top in the bar, and it's in the bottom
3 of the legend.

4 Q Is that the typical way to present
5 material like this, to have them reversed, or are
6 they more often aligned in the same order?

7 A You know, the typical order of
8 presenting them is the one used in the actual
9 graph. Normally, we have the actual color
10 graphs. In fact, when the farmer is presented
11 and Congress votes, they typically get a one-
12 pager with the probabilities of impacts with
13 different policies to different stakeholders so
14 they can make an informed decision, but they're
15 actually looking at the colors.

16 But I think the typical way is the one
17 described in the bars.

18 Q Thank you. Looking at Table 8, which
19 gives you the different levels of the scenarios,
20 Scenario 3 is improved 1.5 percent. This is
21 Table 8 on Page 30 of Exhibit 19.

22 A Yes.

1 Q So that 1.5 percent, that is your
2 midpoint of the range that you've been mentioning
3 all along, and it is also the midpoint of the --
4 it's the mid scenario here, is that correct?

5 A Yes, so the correspondence there would
6 be, the low scenario would be Scenario 1, which
7 is 0.5 percent, the mean point would be Scenario
8 3, which is 1.5 percent, and then the high
9 scenario is the 3 percent for improved, and then
10 the corresponding or associated levels for the
11 native categories.

12 Q Thank you. One more question on that
13 model then, the 1.5 percent in your Scenario 3,
14 is it worked through the model farm as actually
15 2.8 percent instead of the 1.5 percent?

16 A Yes, so if you were simulating within
17 the farm model, so it's embedded within the farm
18 model there, but that would be the same scenario
19 as related to your previous question, which means
20 that there's an associated increase of 2.8
21 percent. Yes.

22 Q You know, step back from all the

1 specifics, and again, your view of the main
2 value, you're analysis has -- could you explain
3 again in terms, if the promotion program went
4 into effect, you believe that your model is a
5 good representation of what would be the impact
6 on the industry from the implementation of
7 promotion through a federal marketing order, is
8 that correct?

9 A Using the best available data that we
10 have, yes.

11 MR. HINMAN: That concludes my
12 questions.

13 JUDGE GUTHRIDGE: This time it was
14 finished. Okay. I understood you to say that
15 earlier. Do you have any follow-up, Mr. Quiros?

16 MR. QUIROS: I think I'll reserve to
17 the end.

18 JUDGE GUTHRIDGE: All right. Let me
19 just sort of explain what's going on to everyone
20 here. Usually, a hearing like this, we would
21 have stopped for lunch, but Mr. Palma is going to
22 Australia tomorrow and he can't get to Australia

1 from here, has to go somewhere else first, and so
2 he can get out to that somewhere else, I'm just
3 going to keep going until people start falling
4 out or he finishes, one or the other.

5 THE WITNESS: Appreciate that.

6 JUDGE GUTHRIDGE: Okay.

7 MR. HILL: As long as he's not the one
8 falling out.

9 MS. VARELA: Jen Varela, USDA. I just
10 have one question for you.

11 THE WITNESS: Sure.

12 MS. VARELA: I just want to make a
13 quick clarification. Looking at, it's Page 15 in
14 your testimony in my copy, under Section B, the
15 effectiveness of tree nut promotion. When you
16 described the average prices from 2012 through
17 2014, \$1.73, \$1.90, and \$2.12 per in-shell
18 pounds?

19 THE WITNESS: I'm sorry, can you
20 repeat that?

21 MS. VARELA: Sure. I'm just trying to
22 get you to the right part there. Do you have it

1 there?

2 THE WITNESS: So you are --

3 JUDGE GUTHRIDGE: Exhibit 24, Page 15?

4 THE WITNESS: Page 15, I think?

5 MS. VARELA: Yes. On the top of Page

6 15 of my copy, the last sentence there,

7 "Similarly with average in-shell per pound prices

8 of 88 cents, 92 cents, 88 cents, am I correct

9 that that refers to native and seedling?

10 THE WITNESS: Correct. Yes.

11 MS. VARELA: Just wanted to clarify.

12 Thank you.

13 THE WITNESS: Thank you. Oh, yes.

14 MS. LOOFT: Hi, Dr. Palma. I'm Katy

15 Looft. I have a couple of questions for you. On

16 Page 6 of Exhibit 19, on the second paragraph,

17 would you say that the low scenario is 0.5

18 percent and the high scenario is 3 percent?

19 Where do those come from?

20 THE WITNESS: Page 6 of what? I'm

21 sorry.

22 MS. LOOFT: Of Exhibit 19. It's the

1 second paragraph. Do you see the low and the
2 high value --

3 THE WITNESS: So what we did is, we
4 reviewed all of the literature related to
5 promotion progress, and based on those, a copy of
6 which is included in Appendix A of Exhibit 19, we
7 decided not to use all of those studies as
8 representative of the potential impacts on pecans
9 because some of those have very different
10 structures and are coming from very different
11 agricultural products or commodities.

12 So what we did, essentially, was
13 taking the available literature that we have in
14 the nut markets and use those to estimate the
15 potential impacts. Now, one of the challenges in
16 the literature is that they have actual
17 expenditures, they have information about
18 elasticities and many other things that we at
19 this point do not have.

20 So what we did, we used those studies,
21 which I think would be marked as Exhibit 20
22 through 22, is that right? It's 20, 21 --

1 MR. QUIROS: 20, 21, and 22.

2 THE WITNESS: And we used those
3 studies to base a potential effect that we could
4 see in the actual price market, and then we use a
5 conservative for those studies to reflect the
6 likelihood of the impact for pecans. And in
7 doing so, we selected a very low potential
8 increase in price of 0.5 percent to a mean point
9 of 1.5, then a high level of 3 percent, as
10 observed increase in prices due to the shift in
11 demand.

12 And then we used those scenarios to
13 base our analysis on.

14 BY MS. LOOFT:

15 Q Okay. Thank you. Second question, on
16 Page 7, Table ES5?

17 A Yes.

18 Q You have that you're assuming that 78
19 percent is improved variety acreage and the 22
20 percent is native/seedling acreage, but then on
21 Page 27, Table 3, you have 60 percent improved
22 acreage, 40 percent native/seedling acreage, and

1 I'm just wondering how --

2 A Which? 27?

3 Q Page 27. It's Table 3 on Page 27. Do
4 you see you have the percentage of total for
5 improved and native, you have 60 percent and 40
6 percent?

7 A So I think that this information is
8 coming from the 2012 Census data and it has all
9 the different acreage across all regions. What
10 we did with the other table was, essentially,
11 take the -- that might be over a particular year,
12 maybe the average, so what we did is, we used the
13 typical breakdown, and it's for illustration
14 purposes, the idea is that somebody with a
15 different structure would actually use this type
16 of information to generate their own costs and
17 their own benefits.

18 Based on the information provided
19 here, we believe that this was as close of a
20 representation as it is on the actual breakdown
21 of native and improved, but again, we need that
22 flexibility for somebody. If somebody grows no

1 natives at all, then we will use that native
2 share to be 0 percent.

3 So depending on the breakdown and
4 where they are, they can use these numbers, and
5 more than anything, these are for illustration
6 purposes based on the results.

7 MR. QUIROS: Your Honor, if I could
8 ask a clarifying question. I think was is in
9 terms of pounds the other is in terms of acreage,
10 and the difference really is because the native
11 yield so --

12 THE WITNESS: Low. That's right.

13 MR. QUIROS: They yield so low in
14 terms of the acreage per pound. I hope that
15 helps. The one that you're referring to on Page
16 27.

17 JUDGE GUTHRIDGE: Which one is which?
18 Which one is pounds, which one is --

19 THE WITNESS: So Table ES5, when we
20 breakdown in pounds, okay, so for example, if you
21 take the small case scenario there, you have 30
22 acres at 66.67 pounds, and then you take the

1 total number of pounds, which is 291,667, and you
2 take the share of improved to be 78 percent, and
3 then 22 percent for natives, that's the actual
4 per pound basis.

5 And then on Page 23 I think it's
6 what's referred to as acreage, where the other --

7 MR. QUIROS: Page 27.

8 THE WITNESS: Page 27 is on an acreage
9 basis.

10 MS. LOOFT: Thank you.

11 JUDGE GUTHRIDGE: Okay. You finished?

12 MS. LOOFT: Yes.

13 JUDGE GUTHRIDGE: Who's next? Mr.
14 Hill?

15 MR. HILL: I have no further
16 questions.

17 JUDGE GUTHRIDGE: Anymore questions
18 from the USDA? No. Okay.

19 MR. QUIROS: Your Honor, I have a few
20 questions as a follow-up.

21 JUDGE GUTHRIDGE: You have follow-up
22 questions. Yes.

REDIRECT EXAMINATION

BY MR. QUIROS:

1
2
3 Q Dr. Palma, in preparation of your
4 Exhibits 19, 23, and 24, did you consider the
5 factors between regions as well as within each
6 region?

7 A Yes.

8 Q And do you believe that the costs are
9 fair across all regions for growers?

10 A Yes, I do.

11 Q And how about for handlers?

12 A Yes, I do.

13 Q Do you believe that the benefits
14 outweigh the burdens across all regions?

15 A I think that the results clearly point
16 out that that's the case for all the different
17 types of scenarios we used, different size of
18 farms, so yes.

19 Q And in your review, and analysis, and
20 modeling, is any region treated unfairly with
21 regard to either cost or benefits?

22 A No, it's not. I mean, except for

1 change reflected on the data as it pertains to
2 particular effects of weather conditions for a
3 particular year in one region, but not in the
4 economic analysis.

5 MR. QUIROS: Thank you very much.

6 JUDGE GUTHRIDGE: USDA, anymore
7 questions? Are there any questions from the
8 audience? Hearing none, Mr. Palma, you're
9 excused. Go to Australia. Check with Ms.
10 Gonzalez to see if she has any questions. It's
11 now 1 o'clock. Do you think an hour?

12 MR. QUIROS: Yes, sir. I think an
13 hour is going to be helpful.

14 JUDGE GUTHRIDGE: An hour is enough
15 time to get out to eat, so we'll resume at 2
16 o'clock. Recess until then.

17 MR. QUIROS: Thank you, Your Honor.

18 (Whereupon, the above-entitled matter
19 went off the record at 12:59 p.m. and resumed at
20 2:11 p.m.)
21
22

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 (2:11 p.m.)

3 JUDGE GUTHRIDGE: Mr. Davis, call your
4 next witness.

5 MR. DAVIS: We're ready to move
6 forward, Your Honor. We call as our next witness
7 Mr. Bruce Caris. And I have, for the record, I
8 have distributed copies of his testimony along
9 with his CV. We will mark that as Exhibit 25,
10 but I will tender it at the end of his testimony
11 if that's all right with you as well.

12 (Whereupon, the document referred to
13 was marked as Exhibit 25 for identification.)

14 JUDGE GUTHRIDGE: All right. Swear
15 the witness. Mr. Caris, that's how that's
16 pronounced?

17 MR. CARIS: Yes, it is.

18 WHEREUPON,

19 BRUCE CARIS

20 was called as a witness by Counsel for the
21 Proponent and, having been first duly sworn,
22 assumed the witness stand, was examined and

1 testified as follows:

2 JUDGE GUTHRIDGE: Proceed.

3 DIRECT EXAMINATION

4 BY MR. DAVIS:

5 Q Mr. Caris, state your full name and
6 spell it please.

7 A My name is Bruce Caris, B-R-U-C-E, C-
8 A-R-I-S.

9 Q Have you prepared some testimony to
10 give here today sir?

11 A Yes I have a written statement and I'd
12 like to read.

13 Q Why don't you go ahead and do that.

14 A Okay. My name is Bruce Caris. I live
15 in Tucson, Arizona. I'm the Chief Operating
16 Officer for the Green Valley Pecan Company. A
17 copy of my resume is attached to the handout
18 you've all received. The Green Valley Pecan
19 Company has roots that go back to 1948 when Keith
20 Walton bought his farm in Southern Arizona.

21 In 1965, 7,000 acres were transitioned
22 from cotton to the production of pecans and

1 became the largest irrigated pecan farm in the
2 world. Green Valley Pecan Company currently has
3 two farms in Sahuarita, Arizona and San Simon,
4 Arizona, and one pecan farm in Albany, Georgia.

5 We have over 6,800 acres currently in
6 production. Last year we produced over 10-1/2
7 million pounds of in the shell pecans. We have
8 also planted 2,000 acres of new pecan trees that
9 will not be in full production for another five
10 years.

11 On our farms, we grow two varieties of
12 pecans and we are the largest producer of organic
13 pecans in the world. In 1975, we established our
14 processing facility to shell pecans. We would be
15 considered a large grower and a large sheller
16 under the Small Business Administration
17 guidelines.

18 I think the proposed Federal Marketing
19 Order, Exhibit 1, is critical in the pecan
20 industry and it's the best hope this generation
21 of growers and handlers be given by the industry.

22 I so believe this that I joined the

1 Board of the American Pecan Board that
2 participated in numerous meetings with the
3 workers of the American Pecan Board, with
4 growers, with shellers and an in industry
5 meetings. I have spoken on panels to grower and
6 sheller groups and have talked to well over 100
7 industrial shellers and growers about different
8 aspects of the proposed Federal Marketing Order.

9 I've read and studied the language of
10 the proposed Federal Marketing Order and
11 especially focused on sheller issues in the
12 Council structure. I think the concepts of
13 regional representation and a board composed of
14 growers and shellers from each region and one
15 accumulator and one non-pecan person are very
16 important. There are approximation 2,500 growers
17 and 250 shellers that would participate in the
18 voting of Council Members and Alternates.

19 I think that even though growers have
20 more representation, representatives on the
21 Council, the supermajority voting, two-thirds or
22 12 members of the Council on major issues,

1 section 986.55 (c)(1) "Procedures" and section
2 986.65 "Marketing Policy", provides an adequate
3 and important protection and balance for the
4 shellers.

5 Stated plainly, no vote of the Council
6 on bylaws, the Council's Manager or CEO, budget,
7 assessments, compliance and audits, redistricting
8 of regions, modifying certain definitions,
9 research and promotion, handling authorities and
10 marketing policy, especially crop and price
11 projections can be made without grower and
12 handler approvals.

13 We need consensus between the regions
14 and the grower/handler committees to move the
15 pecan industry forward. I think we have achieved
16 this balance in the proposed Federal Marketing
17 Order for Pecans.

18 I have reviewed the economic analysis
19 objectives summary, here in Exhibit 23, prepared
20 by Dr. Marco Palma, specifically the projected
21 average price increase from promotion of 6.3
22 cents per pound, in shell pound, versus the

1 average 2.5 cents per in-shell cost.

2 Overall, I am aware of the costs that
3 the Federal Marketing Order may impose on our
4 growing operation and I do not believe these
5 costs are unduly burdensome. Further, I believe
6 that the benefits of the Federal Marketing Order
7 to our growing operation greatly outweigh any
8 cost associated with it.

9 A portion of our pecans are certified
10 as organic. We are aware that the law
11 differentiates the amount of assessments paid by
12 handlers on organic crops and non-organic pecans.

13 We understand that the portion of the
14 assessment related to promotion is not collected
15 on the organic crop. Specifically, as an organic
16 pecan grower, we think the benefits of the
17 proposed Federal Marketing Order outweigh the
18 burdens.

19 In recent years, we have seen long
20 variation in the prices we have received from our
21 pecan crop. Such wide variation in pricing makes
22 it extremely difficult to plan for the future

1 operation of our farm.

2 While prices for pecans go up and down
3 dramatically from year to year, our costs of
4 production has, our costs of production have
5 steadily increased. Costs of fertilizer, labor,
6 equipment and other input costs have all
7 increased in recent years regardless of price we
8 receive for our crop.

9 The lack of accurate market
10 information on the anticipated size of the pecan
11 crop in any given year also makes it difficult
12 for us to negotiate prices for pecans we buy and
13 to make reasonable business decisions about
14 inventory levels for our shelling operation.

15 Increased price stability and more
16 accurate market information would greatly benefit
17 our business.

18 I think our business and the industry
19 would also benefit in the future from the grade,
20 size, quality, packaging, shipping protocols and
21 other handler requirements as we're competing
22 with other tree nuts for shelf space and consumer

1 attention. And the entire industry, through the
2 Council, has proposed means to carefully think
3 through these issues.

4 I understand that under the proposed
5 order, only growers with more than 30 acres of
6 pecans or more than 50,000 pounds of average
7 production per year over the last four years will
8 be allowed to vote on the proposed order.

9 In my opinion, this threshold is
10 reasonable because a grower that does not meet
11 this threshold is not a commercial grower.

12 Any grower that is smaller than the
13 proposed threshold could not justify the costs
14 inherent in such a small production and is most
15 probably merely a seller of pecans from older
16 trees that happen to be on his or her property, a
17 hobby farmer or one that does not plan to put in
18 all the commercial inputs fertilizer, water, et
19 cetera on his or her farm.

20 I also understand that only shellers
21 that handle more than 1 million pounds of in-
22 shell pecans per year will be eligible to

1 nominate and to be elected to the sheller seats
2 on the Council.

3 It may seem arbitrary, but we need to
4 draw a line somewhere. There are really lots of
5 small shellers that put pecans for sale at
6 convenience stores or in Christmas holidays that
7 are not going to move this industry forward.
8 Taking all of this into consideration, I believe
9 this is a fair threshold.

10 First, I am not aware of any sheller
11 in my area which handles less than 1 million
12 pounds, in shell pounds per year, that is in the
13 commercial shelling business.

14 Further, if there is such a sheller,
15 I do not believe it to be commercially viable
16 because such a smaller operation could not invest
17 in the required equipment and turn profit on such
18 a small production.

19 I also want to discuss the two sheller
20 seats, Sheller Seat 1 and Sheller Seat 2 for each
21 region. Why did we pick the 12.5 million pounds
22 of in shell nuts as a threshold? First off, why

1 have this at all?

2 Well, the American Pecan Board and
3 especially our shell representatives on the Board
4 felt that it was very important to have a large
5 and a small sheller from each region.

6 Without a specific guideline, we could
7 potentially only have huge shellers on the
8 Council. We did not want this, we wanted all
9 voices.

10 Next, we needed to make sure that we
11 had enough large and small shellers in each
12 region to make the elections for the nominees
13 meaningful. Specifically, we needed to make the
14 shellers seat one seat small enough to make sure
15 we have enough shellers in the region be part of
16 the nomination process.

17 Finally, at some point, we had to make
18 a decision after, believe me, many hours of
19 discussions and phone calls. We settled on 12.5
20 million in-shell pounds as the right number to
21 divide a large and small sheller representation
22 from each region.

1 If this proves in the future that
2 there should be a better number to define who is
3 nominated for Seat 1 and/or Seat 2, we could vote
4 as a Council to change that number under section
5 986.55(c)(vi).

6 The proposed Federal Marketing Order
7 has some flexibility to let informed, pecan
8 industry representatives on the Council to make
9 any adjustments so that the industry is properly
10 represented. But for now, I think, the sheller
11 seat proposals are exactly where they should be.

12 In conclusion, my company and I fully
13 support the full proposed Federal Marketing Order
14 for Pecans and encourage the Secretary to
15 implement the order as proposed by the American
16 Pecan Board.

17 I'd be glad to answer any questions
18 that anyone may have.

19 MR. DAVIS: Your Honor, before we make
20 Mr. Caris available for questions, we would
21 tender Exhibit 25, which is his written statement
22 and his curriculum vitae.

1 JUDGE GUTHRIDGE: Any objection from
2 the USDA?

3 MR. HILL: No objection.

4 JUDGE GUTHRIDGE: Any objection from
5 anyone else? Then, Exhibit 25 is admitted. And
6 you have no questions at this time Mr. Davis?

7 (Whereupon, the document previously
8 marked for identification as Exhibit 25 for
9 identification was received into evidence.)

10 MR. DAVIS: I'll reserve questions,
11 Your Honor.

12 JUDGE GUTHRIDGE: All right.
13 Department of Agriculture, any questions?

14 CROSS-EXAMINATION

15 MS. SCHMAEDICK: Melissa Schmaedick,
16 USDA. Good afternoon Mr. Caris.

17 MR. CARIS: Good afternoon.

18 BY MS. SCHMAEDICK:

19 Q Thank you for your testimony. So,
20 based on your testimony, I have to say you are
21 what we would be, what we would consider a
22 perfectly integrated company?

1 A Yes we are.

2 Q With a grower and handler?

3 A We are. And that's fairly unique our
4 industry in that we typically have growers and
5 then the handlers, shellers handlers. And we are
6 one of two large companies in the industry that
7 are vertically integrated.

8 Q Do you anticipate that there might be
9 a future trend towards vertical integration?

10 A I anticipate that yes, I do. We're
11 already starting to see some consolidation within
12 the industry.

13 As one of the earlier witnesses, I
14 think it was Mike Adams mentioned this, the past
15 five or six years have been fairly good time to
16 be in pecans. So there is a lot of interest from
17 the outside. So I do think that, as we move
18 forward there is potential for companies, either
19 grower a large grower to decide that they're
20 going to produce a shelling plant or for shellers
21 to try and purchase existing acreage of plant
22 pecans.

1 I also think that we will see interest
2 from outside of the industry, money from outside.
3 There's one large group right now, National Pecan
4 Company, that over the past 18 months has bought
5 about 3,000 acres and they're actively trying to
6 buy shelling facility. So, that were the three
7 large companies.

8 Q What are some of the factors that an
9 individual would consider when thinking about
10 becoming a sheller or adding a shelling
11 operation?

12 A Well, we as a company always have felt
13 that it gives us more options, different ways to
14 market our pecans. If we're reliant purely on
15 selling it in-shell, there are years that we
16 maybe won't have them better as vertically
17 integrated company.

18 So, for us, one of the main factors
19 was being able to control how we brought that
20 product to market. So I think that's one thing
21 to consider. That's our main consideration.

22 Q Are there substantial costs associated

1 with setting up a shelling operation?

2 A There are. There definitely are.
3 You know, from a building standpoint, just for
4 example, we're looking at building a new
5 processing area without any frozen storage or
6 cold storage. And we anticipate it's going to be
7 about \$15 million investment. Well, take that
8 back. We are going to add some frozen storage to
9 that as well. But just in building, we
10 anticipate it's about to do 25 to 30 million
11 pounds of in shell pecans a year and that it's
12 going to be about a \$15 million investment. And
13 then with your equipment, you easily looking at
14 another \$5 to \$8 million for a plant that size
15 with your pasteurization from food safety
16 standpoint, your crackers, shellers, aspirators
17 and equipment like that.

18 Q And you mentioned that you were part
19 of the American Pecan Board, which is also the
20 proponent for this proposal.

21 A I'm sorry.

22 Q I said, you mentioned that you were or

1 are a member of the American Pecan Board, which
2 is also a proponent for this proposal. Is that
3 correct?

4 A Yes. I am.

5 Q So you were involved in the
6 discussions of identifying the thresholds for
7 shellers and growers?

8 A Yes. I was very involved in that
9 discussion.

10 Q So in identifying the threshold for
11 the sheller, was the cost of establishing an
12 operation taken into consideration? The fairer
13 to end rate, was that taken into consideration?

14 A We did talk about that. You're
15 talking about the 1 million--

16 Q Correct.

17 A --pound entry level to that? We did
18 talk about that, you know, with the crackers and
19 shellers and aspirators for a small operation,
20 you're probably looking, just at that equipment,
21 a half million dollars off the top of my head.

22 We also took into consideration, FSMA,

1 the Food Safety Modernization Act. And we feel
2 very strongly, and I say we our company, but also
3 the pecan industry, that a mandated kill step is
4 in the future.

5 The FDA is doing a risk assessment on
6 tree nuts right now and looking at it's a high
7 risk group. And with that, the pasteurization
8 equipment is anywhere from a quarter million
9 dollars to a million dollars. And we considered
10 that as well, anticipating that was going to be a
11 need in the very near future.

12 Q So your comments about this
13 pasteurization and some, it's peeked my interest.
14 Do you see a potential role for this Marketing
15 Order to work in tandem with those concerns in
16 the industry?

17 A Very much so. We talked about that a
18 lot as we review, and the American Pecan Board
19 came together, I think Mike Adams may have made a
20 reference to this, we wanted to try and turn them
21 away to come up with a mechanism to fund
22 marketing. But we also looked at a lot of the

1 other needs in the industry that as an industry
2 wide, with shellers, handlers and growers that we
3 could address some of these issues. And after
4 marketing, I'd say FSMA was the number two
5 target.

6 Q Thank you. In your role as a Board
7 member, did you participate in sheller
8 discussions about membership on the Council?

9 A Yes I did.

10 Q Can you, from a shellers perspective,
11 share some of the concerns about representation,
12 and how those were addressed?

13 A Yes. When we, you're talking about
14 the Council, in the event that the proposed
15 Marketing Order goes through?

16 Q Correct.

17 A Yes we did. That was actually in our
18 Dallas meeting. And, it was in January of this
19 year where we had the whole Board together along
20 with somebody from the USDA to start to put
21 language and definitions and based on everything
22 we collected from the industry over the past two

1 years. And, we talked about having equal voices
2 or fair voices across the industry.

3 The rationale to come up, would you like me
4 to talk about the rationale, how I felt that we
5 came up with it from a sheller perspective?

6 Q Yes please.

7 A Okay. What we looked at were a couple
8 things. First, we looked at there's a lot more
9 growers, significantly much larger amount of
10 growers than there are shellers. But, the
11 shellers probably handle, since so much is being
12 exported now, probably 55 to 65 percent of the
13 U.S. crop on an average year. And so, we looked
14 at the number of growers versus the number of
15 shellers.

16 And then we looked at the handle of
17 the shellers relative to the crop. And then we
18 looked at the split on the Board. And we came up
19 with nine growers and six shellers. The six
20 shellers we felt it was very important to have
21 large and small sheller voices on there because a
22 lot of the small shellers sell only domestically.

1 They don't get involved in any really type of
2 advertisement or anything.

3 So they have a very different business
4 model than the large seller who, a company like
5 ours, half of our business is exported. You
6 know, we do, we just have very different views.
7 So we thought it was important to do that.

8 And then we felt across the regions,
9 there's different challenges for different
10 shellers based on the in-shell. You know, a 50
11 percent yield nut out of, per yield out of the
12 East is different than cracking 60 percent
13 Western Slycer Wichita of the West.

14 So we thought we needed to have people
15 from all those different regions as well as
16 people who handle any procedure. That's a whole
17 other story. But my company doesn't handle those
18 pecans because you need different equipment.
19 It's a different process.

20 But then, one thing that was very
21 important to all six of the shellers who were on
22 that Board, we actually had three shellers and

1 three grower shellers on the American Pecan
2 Board, was that we have a strong voice in any
3 major decision that was being made. And, that's
4 where we really came up with the supermajority.

5 We applied that supermajority to
6 almost every major decision that we could make or
7 the Council could make so that it didn't sway one
8 way or each other saying, hey, we don't have a
9 voice. And that's how we came up with that.
10 That's the way.

11 Q Thank you. Would you say, in your
12 opinion, that the sheller community has their
13 concerns have been heard and addressed?

14 A Yes they definitely have been heard.
15 And, because I've heard them. And they have been
16 addressed. There are a couple of guys that still
17 hold concern that it's not equal representation.

18 But what we did is we had at our, we
19 have two meetings a year the National Pecan
20 Shellers Association. I sit on the Board. And,
21 we discussed it as a Board prior to our meeting
22 and then in the shellers forum, which is just the

1 shellers. No one else from industry there. We
2 had long discussion about it. And it was good
3 discussion. Points were brought up. What we
4 decided at that sheller's forum was that the
5 Executive Board was going to have a meeting after
6 and discuss it again. And we did that about ten
7 weeks ago.

8 And from that we came up with a list
9 of questions and we went out to the, all the
10 members of the shelling industry, as well
11 Shellers Association, as well as guys, big
12 shellers who are not in that and we asked
13 questions, gathered data and came back together.
14 And it's my understanding, then we had a follow
15 up meeting about two weeks ago. And out of the
16 nine people on that Board, eight were in support
17 along those lines.

18 Q Thank you. I have two other themes I
19 would want to follow up on. First is, you
20 mentioned that you're an organic grower and
21 sheller obviously.

22 A Yes.

1 Q And that you are the largest in the
2 world or largest in the country?

3 A Actually, for our organic blend is
4 largest in the world.

5 Q Oh. So can you talk to us about the
6 organic industry for pecans? Do you have a sense
7 of how many growers are out there? Is there a
8 demand? Is it increasing?

9 A There's very, very strong demand for
10 organic tree nuts in general, but, very much so
11 for pecans.

12 One of the real challenges we have
13 with organic pecans are organic herbicides and
14 pesticides that will work particularly in the
15 Southeast United States. Scab is a fungus that
16 was mentioned earlier and it's hard to combat
17 that conventionally let alone organically.

18 So in, and I'm not an expert on this,
19 but it's my understanding in talking with farmers
20 in the industry and within our company, that
21 there's a fairly limited growing region. And
22 that's probably the Western United States that

1 today can successfully grow organic pecans
2 because of the challenges in the field that
3 cannot be oppressed with chemicals.

4 It's, the demand is very, very strong.
5 I don't think the U.S. crop this year, past year
6 was about 265 million pounds and I think the
7 organic crop was probably less than 5 million
8 pounds. So it's fairly small relative to the
9 entire U.S. crop.

10 I am aware of one, two other organic
11 growers, one in South Africa, one in Mexico.
12 They're very small. But the majority of the
13 organic pecans are grown in the Western, Texas,
14 New Mexico, Arizona.

15 Q Thank you. You also mentioned in your
16 testimony, you just very briefly mentioned the
17 importance of a non-pecan person sitting on the
18 Council. I'm wondering if you could give us your
19 thoughts on why a non-pecan person's important?

20 A I think as an agricultural product,
21 pecans are relatively small compared to a lot of
22 the other agricultural products in the U.S. As a

1 shelling industry, a food processing industry,
2 the shellers are tiny, tiny, tiny compared to
3 other big food companies.

4 And the discussion we had as it would
5 be good to get someone most likely from the food
6 industry outside of pecans who might bring a
7 level, a higher level of expertise in dealing in
8 manufacturing, working with retail supermarkets,
9 things like that, that as a shelling industry
10 we're just starting to move into.

11 I would say there's five or six
12 shellers who export regularly into Europe and the
13 European Food Standards are very, very strict.
14 And so sometimes, I think we are a little bit
15 ahead of some of the other in our industry
16 because the demands we need to meet.

17 You know, they could ship product in
18 there, but I think an outside person in the food
19 industry can, could help us with what's going on
20 in the United States. Food safety, the
21 manufacturing practices and bring some good
22 things to the industry.

1 Q So do you have an idea of what
2 profession that individual might represent, for
3 example, banker or ag economist or just your own
4 example?

5 A Well, the gentlemen whose currently on
6 the American Pecan Board came to us from the
7 chicken industry. And he brought some great
8 insight. Was it Tyson Foods that he was with?
9 Yea, Tyson Foods. And your just, they're just
10 larger but, I would think probably someone
11 outside of tree nuts. Maybe someone from an
12 industry that has worked with a Marketing Order
13 currently in their industry and has some
14 experience with that. It could be someone who's
15 comes from like a grassroots or something very
16 involved in product development.

17 We talked about the focus, if this
18 goes through, on the marketing efforts and
19 creating awareness would be in the United States.
20 Maybe someone who'd been involved in product
21 development and could give us some good input on
22 how to go about researching that.

1 Q Okay. I did have one more question to
2 talk to.

3 A That's fine.

4 Q I apologize. So, and change direction
5 a little bit here. But I do want to take
6 advantage of your experience as both a grower and
7 a sheller. And referring to Exhibit number 1,
8 which is the proposed Marketing Order.

9 A I'm sorry, what's that?

10 Q Referring to Exhibit number 1--

11 A Okay. Yes.

12 Q --the proposed Marketing Order. There
13 is a proposed assessment category for substandard
14 pecans. Can you explain to me both the grower's
15 relationship to substandard pecans and the
16 handler's relationship to substandard pecans and
17 how that assessment impacts both of those
18 entities?

19 A Okay. The relationship to a
20 substandard pecan and it can't really talk about
21 meat yield because with all the different
22 varieties.

1 You know, a really good nut out of
2 Georgia, a particular variety might be a 48
3 percent meat yield. And, that's considered
4 substandard out here in the West just because
5 it's a thicker cell than Georgia and things like
6 that.

7 But I'll call them lows or, the
8 substandard pecans are usually separated in the
9 cleaning process. When we're bringing the
10 product in from the fields, from the farm, before
11 it's, it either goes to a sheller or to an
12 accumulator or to someone who can take those
13 pecans to market, they need to remove all the
14 debris and the bad nuts from the good nuts. And,
15 you know, the first thing you do, is you get rid
16 of the sticks and the clumps of dirt, the rocks
17 and things like that.

18 And then the pecans will go through and
19 they remove the ones that, we call stick tights,
20 and that's where the hull or the husk is still
21 stuck to the nut. And there's a process to try
22 and remove that. But those stick tights that you

1 can't remove will be set aside.

2 And those typically, don't jump on me
3 growers out there, those typically are lighter
4 weight nuts. They're not filled very well. They
5 just haven't matured.

6 The next cut starts coming with
7 aspiration. And with that what we're doing is as
8 nuts will fall through and a lighter weight nut
9 will get blown out, you know. And you can
10 control, these guys in the clean burns, they can
11 control that aspiration recovered at 49 percent
12 meat over 48 or 50. It's very good. But those
13 will get separated out.

14 Those aspirated nuts that, along with
15 the stick tights, are typically kernels that will
16 add, that's make pieces for ingredients. So you
17 know, in a pecan you have two halves. And
18 ideally when you crack it, you can get those two
19 halves out of there.

20 When you crack a lightweight nut it's,
21 it doesn't make a good half. You can't take it
22 apart. So that will be cut. It will probably

1 actually break during the cracking and shelling
2 process. But then it will be cut and sized and
3 used for different ingredients.

4 So there's a higher handling fee like
5 really on both sides because as a, your big nuts
6 will pass all the way through. And, so, and
7 those are the ones you get the most money for and
8 the ones you touch the least.

9 And that's true in the processing
10 plant and that's true in the cleaning barn. So
11 the lighter weight nuts, the grower or whoever
12 has those, has to put them in cold storage.
13 He's, he or she's going to get less money for
14 them. So there's more handling involved.

15 And those nuts tend to sell later in
16 the year after all the good pecans have been sold
17 between October and say the middle of March.

18 Then the second market, seconds market
19 might open up. Does that answer, get to what
20 you're asking?

21 Q Yeah, your, that's good, that's good.

22 A Okay. You know.

1 Q So if I'm understanding correctly, the
2 grower does get paid for substandard pecans.

3 A Yes.

4 Q Right. And then the handler would pay
5 the assessment on those substandard pecans as
6 well. Correct?

7 A Yes.

8 Q And so then in the proposal, what, how
9 is the assessment rate with those substandard
10 pecans different from the assessment rates for
11 the native and the improved? Are they higher or
12 lower?

13 A Oh. Substandard, the assessment is
14 lower. And paid less for those pecans as well
15 because there's just not as much kernel and you
16 have to have a little bit more. But it's lower.
17 It's lower.

18 MS. SCHMAEDICK: All right. Thank
19 you.

20 MR. CARIS: Yeah.

21 MS. SCHMAEDICK: That concludes my
22 questions.

1 JUDGE GUTHRIDGE: Mr. Davis, do you
2 have any follow up at this point?

3 MR. DAVIS: I'll do like Mr. Quiros
4 and just wait until the end.

5 JUDGE GUTHRIDGE: All right.

6 CROSS-EXAMINATION

7 BY MR. HINMAN:

8 Q I just have one question. You have
9 quite a few different perspectives as a grower,
10 sheller, organic, non-organic and you did mention
11 that you are familiar with Dr. Palma's study and
12 that you took the, you know, it was good
13 representation if you then benefit substantially
14 you see the cost. Correct?

15 A I'm sorry. Good representation and
16 what?

17 Q Yeah, that benefits substantially
18 exceed the costs for the proposed Marketing
19 Order.

20 A I thought it was. My initial reaction
21 was maybe a bit conservative. But I understand
22 that was, you know, that's probably what you want

1 to do in these things. But, yes I thought, I
2 thought it was a good representation.

3 Q And the question then goes to, of
4 course, all these different aspects, grower,
5 sheller, small or large, improved native across
6 the three regions, organic and conventional,
7 across all those categories you also state that
8 the benefits substantially exceed the costs.

9 A Yes. Yes. I believe so, without a
10 doubt.

11 MR. HINMAN: Okay. Thank you.

12 MS. VARELA: Jennifer Varela, USDA.

13 MR. CARIS: Hi.

14 MS. VARELA: There we go. Can you
15 hear me now?

16 MR. CARIS: Yes I can.

17 CROSS-EXAMINATION

18 BY MS. VARELA:

19 Q Jennifer Varela, USDA. I just wanted
20 to go back to your discussion of sheller numbers.

21 A Yes.

22 Q We've heard a couple different numbers

1 as to how many shellers there might be in U.S.
2 So I just wanted to get a little background on
3 how you came up with your number. So, I know
4 you're in touch with lots of them.

5 A Yes. Yes I am.

6 Q So I just wanted to get an idea of how
7 you differentiated those and how you came across
8 that.

9 A What, the 250?

10 Q Yes.

11 A As the witness before me said, that's
12 a very good question. I think he might have had
13 better answers. Quite frankly, I was a little
14 surprised when I first saw this number and we
15 were talking about it a couple of weeks ago.

16 Because in the National Pecan Shellers
17 Association, we have about 32 to 35 members. The
18 majority of these 250 shellers are small shellers
19 in Georgia, Texas, Louisiana, Oklahoma, and
20 that's where the bulk of that number comes from.
21 And it came after a lot of discussion.

22 Mike Adams, we've all traveled a lot,

1 but Mike is been in every single meeting we've
2 gone in. And he's gone out, he's met a lot of
3 people. So it was talking with the people in the
4 different areas that we came up with that number.
5 But I would say that the majority of those are
6 small shellers.

7 Q Okay. Thank you. And do you think
8 most of them would be over that 1 million pound
9 threshold or there probably might some of those
10 be underneath the 1 million pounds?

11 A I would say some of them are
12 definitely underneath that.

13 Q Mm-hmm.

14 A Well, yea, even though right, I said
15 participate. I would say that I think that
16 number is a little bit high--

17 Q Okay.

18 A --for that million plus sum.

19 Q Okay. So that might not all be
20 shellers that meet that million pounds. That's
21 great. I also heard that you touched on the need
22 for more data. I'd like to hear, especially from

1 your perspective, some of the benefits that you
2 can think might come from having that data. And
3 maybe a couple of the types that you think might
4 be most beneficial that you expect the Council
5 needed to apply.

6 A I'll definitely do that. You know,
7 I'm, for the past five years have been the
8 Statistical Chair for the National Pecan Shellers
9 and I'm also the Statistical Chair for the
10 International Tree Nut Council for Pecans. So I
11 spent a lot of time looking at these numbers.

12 My primary source for numbers right
13 now for import export is CFAS and we use that.
14 And then, what we currently have is and with the
15 budget cuts back in 12, we actually lost our
16 final pecan estimate, so the number that is
17 reported is it on stats.

18 For the 2012, was our January
19 estimate, which we know is not a good number. So
20 what we did as an industry is we came up with a
21 number that we used because that number, there's
22 just no way it's accurate.

1 But what we currently use, we get in
2 October estimate, December/January estimate and
3 then we get our final estimate in July. And
4 those are big numbers. Timing, you know, you'd
5 always like to have that final estimate before
6 you start buying and selling but that's just not
7 reality.

8 So what we as an industry, what we
9 have is we get our first growers estimate comes
10 out at the Tri-State meetings and that's in June.
11 And that for this current year, what's on the
12 tree now, came out of, I'm going to say, about
13 273 million pounds for the U.S. production for
14 what we're going start harvesting in October.

15 A month later, we had the Texas
16 meeting, and that was just last week. The
17 estimate there came out at 327 million pounds.

18 So in the matter of four weeks, the
19 information, and these are estimates that go
20 worldwide because it's all we really have, in the
21 matter of four weeks, we had two estimates.
22 That's a huge difference, you know, from 273 to

1 327.

2 So one of the things we look at is how
3 the almond industry, you know, does their
4 objective and subjective estimates. And taking a
5 much more scientific approach to it, we've
6 actually had one of our grower members make a
7 donation of \$10,000 for the next three years to
8 the American Pecan Board so we can start to
9 research now and we're going to do that.

10 Different methods start getting a
11 better crop estimate so that we can use that
12 information better. Currently reporting for cold
13 storage to the USDA comes out once a month. It's
14 not mandatory in pecans.

15 So there, industry wide, there's a lot
16 of doubts as to how accurate that is. I
17 personally feel well one, it's our number so we
18 have to use it.

19 And, two, I don't think there are too
20 many companies out there that would risk lying
21 like that and putting themselves at risk. That
22 is the perception across the industry.

1 And when I talk about that, it's some
2 shellers feel that way, growers feel that way and
3 our customers feel that way. So there's not a
4 very high level of confidence in the current
5 numbers that we have.

6 And so I think with this Marketing
7 Order, we can go out and start to get much, much
8 better information. And it will take time, but
9 over the course of the first three or four years,
10 really start to get some numbers that everyone in
11 the industry can use, can have faith in. And I
12 think that would be a very big positive thing for
13 our industry.

14 Q Thank you. You brought up another
15 good point there in talking about not having
16 faith in some of those numbers or not being
17 confident in the reporting. Can you speak to
18 some of the compliance issues or potential
19 compliance issues that the Board talks about in
20 coming up with their proposal and how you think
21 the order will help to take care of that?

22 A Compliance issues in what?

1 Potentially how they can be achieved?

2 Q Or right now if people aren't
3 reporting, what is it about the proposed order
4 that gives you more confidence that they will
5 report.

6 A Well they have to report is my
7 understanding. Is that correct? That's my
8 understanding that they would be required to
9 report.

10 I will say this that David Caldwell
11 from the USDA, he stepped down from doing the
12 pecan data about a year ago. He did a very good
13 job of going out and trying to get more
14 participation. And I think our number now is as
15 good as it has been. But that's something own
16 industry wide.

17 I think required reporting, we can
18 look at, you know, what your receiving in your
19 claiming run. You know, what are you bringing in
20 from the field. What are the handlers receiving.
21 We'll just have a lot of different data points
22 that I think a good management of that data will

1 give us information we can look at from a lot of
2 different ways. How much of the product is
3 actually being handled by shellers? How much is
4 being handled by accumulators and getting
5 exported? Things like that.

6 Right now, the only real good number
7 that we can get for domestic consumption is the
8 back end of that number by taking our carry in,
9 our imports, take away our exports, what's our
10 carry out and we arrive at consumption. I think
11 we can track that better with some different
12 reporting that hopefully the Council will be able
13 to place.

14 MS. VARELA: Thank you very much for
15 your time.

16 CROSS-EXAMINATION

17 BY MS. SCHMAEDICK:

18 Q Melissa Schmaedick, USDA. Mr. Caris,
19 do you anticipate that the Council would conduct
20 an annual analysis of this statement to help it
21 in its decision-making and assessing the
22 industry?

1 A Without a doubt. Without a doubt.
2 What we'll have to, again I think we're really
3 on, we're going to have to learn on the data
4 means. And I think, you know, talking Mike Adams
5 has done a very good job of reaching out to the
6 almond, pistachio and walnut commissions and
7 boards on what they do and we talk with their
8 people.

9 The commission will appoint someone in
10 charge of statistics. And whoever that person
11 is, I'm sure will be charged with going out and
12 finding out how these other industries collect it
13 and how they utilize it. But, yea, it'll be used
14 in what we think our assessment should be on an
15 annual basis, where we project and what we're
16 seeing happening with demand.

17 I think what we'll also be able to do
18 is gather information, better information on mean
19 planted acres, bearing and non-bearing trees.

20 You know, Mike Adams mentioned the
21 census, and if you, the 2012 census and you take
22 that data, all the acres that are there and

1 divide that into the annual an average crop size,
2 it comes out to about 600 pounds per acre, which
3 is not at all indicative of what we do.

4 So that data's gathered and those are
5 acres, but we have to find out, what do we
6 utilize acres, and what's really being used and,
7 you know, what are we getting in the West and
8 what are we getting in the East.

9 So I think there's tremendous
10 opportunity for this commission, whoever they put
11 in charge of statistics, to really gather some
12 meaningful information over a three to five week
13 period once they're charged with that. It
14 excites me.

15 MS. SCHMAEDICK: Thank you. We have
16 no further questions.

17 JUDGE GUTHRIDGE: Any more questions
18 for the USDA? Any follow up?

19 REDIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q Yes, Your Honor. And Mr. Caris, I
22 have a few questions just to clarify some points

1 that were brought up. I know we're going to have
2 more discussion over the coming days about this
3 supermajority. But, again just to put some
4 numbers to that so people know, the Board is 17,
5 nine growers and six shellers and two
6 independents, well accumulator independent. So
7 the supermajority is 12 of those 17 correct?

8 A Correct.

9 Q So, in saying you're giving comfort to
10 the shellers, that would mean that all the
11 growers and the two independents could ban
12 together and they still couldn't get any of this
13 through without some sheller participation. Is
14 that right?

15 A Absolutely. They'd have to have at
16 least one vote. At least one vote for a sheller.

17 Q And again, just to make the example
18 clear, if the shellers were trying to get
19 something through, they would have to get both of
20 the independent votes and some grower
21 participation if not all the growers were in
22 favor. Is that correct?

1 A Yeah, and that assumes that our
2 industry can act like republicans and democrats.

3 Q Yeah. We're not.

4 A We're looking, were moving away from
5 that very much as an industry.

6 Q That's good.

7 A This effort is done.

8 Q Moving on quickly to follow up on one
9 thing that Ms. Schmaedick asked you about, the
10 importance of a non-pecan person. And you gave
11 some good examples who you'd like to have.

12 Would you say you participated in lots
13 of discussions with the current Board about what
14 the Council would look like? Would you say there
15 was an awareness of the importance of having a
16 diverse voice and having different segments and
17 different groups represented in the voices that
18 you hear in this upcoming Council?

19 A Yeah, absolutely. And I think that
20 when you look at how we broke out small for the
21 growers and shellers, small and large, that we
22 really tried to cover that because they're

1 different business models.

2 Q And then the final point, I guess.
3 You were giving some in response to a question
4 about the efforts that you undertake to try and
5 get an estimate of the crop. Is it true that a
6 lot of your efforts are really going in to try to
7 figure out what last year's crop was, not so much
8 what this year's crop is or, heaven forbid, what
9 next year's crop is?

10 A Yeah, well, when you look at the way
11 pecans work, the harvest in the Southeast starts
12 in October, here in the West starts November. So
13 the harvest period goes October through at the
14 latest, middle of March.

15 And typically, the pecans are all sold
16 at some price as a rule a majority of them are
17 sold at some price during that point in time.

18 And as a sheller, what we do is we go
19 out and I'll pay a grower X amount of dollars for
20 the crop hoping that I can turn around, process
21 it and then sell it at a price that works for me.

22 So if we had better information going

1 in, what we're carrying now and what this crop is
2 going to be if, for example, I think it's going
3 to be at 280 pound crop and it comes in at 350
4 and I buy my pecans in November/December, I'm
5 going to pay a price still thinking that it's a
6 280 pound crop. By January/February, we seeing
7 it's much greater, that price starts tailing off.

8 As a sheller who's inventoried a lot
9 of in shell pecans early, I'm going to lose money
10 on those pecans because the kernels are typically
11 sold relative to the in shell price at that time.

12 Q Do you have a feeling that there's
13 better market information out for the almond
14 crop. Do they have better gathering of
15 information than does the pecan industry?

16 A I do. Until last year they were
17 really off. But they're dealing with drought
18 conditions and they really don't know what that
19 factor is. But as a rule, they do a very good
20 job, yes.

21 Q Thank you. We have no further
22 questions, Your Honor.

1 JUDGE GUTHRIDGE: Does anyone in the
2 audience have any questions for Mr. Caris? No
3 volunteers. So, Mr. Caris--

4 MR. CARIS: Thank you.

5 JUDGE GUTHRIDGE: --you're excused.
6 If you would check with Ms. Gonzalez.

7 MR. CARIS: Oh sure.

8 JUDGE GUTHRIDGE: There's a thing that
9 she needs clarification on.

10 MR DAVIS: It's Ms. Dennis, yes sir.
11 Okay. Oh, no. Thank you.

12 JUDGE GUTHRIDGE: Call your next
13 witness.

14 MR. QUIROS: Yes. Louie Salopek
15 please.

16 WHEREUPON,

17 LOUIE SALOPEK
18 was called as a witness by Counsel for the
19 Proponent and, having been first duly sworn,
20 assumed the witness stand, was examined and
21 testified as follows:

22 MR. QUIROS: Mr. Salopek, I understand

1 you've prepared some testimony for us. Your
2 Honor, we're going to tender that as Exhibit 26
3 and I am going to call on Mr. Salopek to read
4 that.

5 (Whereupon, the document referred to
6 was marked as Exhibit 26 for identification.)

7 THE WITNESS: First of all, thank you
8 all for having me. My name is Louie Salopek. It
9 is spelled L-O-U-I-E, S-A-L-O-P-E-K. I live in
10 Las Cruces, New Mexico. Our family farm is just
11 under 1,200 acres of improved pecans in New
12 Mexico.

13 We can be classified as a large pecan
14 grower under the Small Business Administration
15 definition, which is more than \$750,000 in gross
16 pecan revenues.

17 I graduated from New Mexico State
18 University in 1987, and began working on our
19 pecan farm. We also founded, we founded, an acid
20 fertilizer company in that same year, which has
21 been important to pecan farmers in our area,
22 which we deal with high pH water and soils.

1 Selling fertilizer to pecan farmers in
2 this 400 mile radius of Las Cruces has given me
3 an opportunity to spend a lot of times with pecan
4 farmers in this West region. I've met some of
5 these farmers, discussed their concerns about the
6 pecan industry my entire career.

7 Several years ago, I was attending the
8 Paris Food Show in Paris, France, when I was part
9 of the U.S. Pecan Growers Council to go to
10 promote pecans internationally. On that 12 hour
11 flight home, I definitely had a lot of time to
12 think.

13 And my recurrent thought coming back
14 on that flight, that selling pecans
15 internationally was and still is a very important
16 part of our industry. However, we just have not
17 made a lot of attempts to bring things to the
18 biggest consumer market we have in the world,
19 which is the U.S. domestic market.

20 Excuse my reading, by the way, I
21 forgot that these are my wife's. About this time
22 two years ago, Mike Adams was talking to pecan

1 growers and shellers and in beginning to form
2 what is now the American Pecan Board.

3 The simple idea was to listen to
4 growers and the handlers and find out what they
5 thought we should do to fix the obvious problems.
6 We have breakthrough food product in pecans that
7 is not being marketed.

8 I was nominated as a grower from the
9 West and voted in by the Western Pecan Growers
10 Association to become a board member of the
11 American Pecan Board. I have been to dozens of
12 meetings, been to dozens of meetings of growers
13 and shellers since then and have literally talked
14 to hundreds of growers and shellers.

15 I just thought it was important to
16 listen to growers and shellers and put the
17 solutions to their problems into this Federal
18 Marketing Order.

19 Here's how I see it after working on
20 this project for over two years. First growers,
21 shellers, accumulators and other participants
22 just do not have accurate data on the industry,

1 which Bruce and you all were just talking about.
2 Carrying inventory, which is the cold storage,
3 and the scientific actual crop estimates in the
4 field for the upcoming year are just nonexistent.

5 We rely on volunteer reporting and
6 guesses, which we have to get by with and deal
7 with in the best possible way we know. How can
8 you sell or buy without good information?

9 Second, the price for pecans has at
10 times been too low and unstable. Third,
11 marketing agricultural commodities is a
12 privilege, which they can discuss in quite a bit.
13 You just heard from Dr. Palma on this and there's
14 no doubt this is worked for other tree nuts and
15 it will work for pecans.

16 Fourth, if we lose the ability to sell
17 our nuts internationally, we will be in a mess if
18 we did not have a strong domestic market for
19 pecans to back that up.

20 Fifth, the large recent plantings of
21 pecans because of the few price spikes in the
22 last few years will create a both welcome, a new

1 supply, but also the prospect of lower prices for
2 growers if we cannot find buyers for the
3 incessant nuts.

4 Finally, I think as an industry, we
5 have really started to heal. And what I mean
6 about this. I mean, I feel a new sense of
7 growing understanding between growers in regions
8 that have not shared a lot of information in the
9 past.

10 I've also noticed between growers and
11 shellers, this is my quote, who have always had
12 the challenge of being on the same page, now have
13 a new sense of understanding between them. We
14 need to seize on this unity and commit to work
15 together to make this terrific, healthy food
16 available to more Americans.

17 Additionally, I think our farms and
18 the industry would also benefit in the future
19 from grade, size, quality, shipping protocols and
20 other handling requirements as we compete with
21 other tree nuts for consumer attention.

22 I also understand that under the

1 proposed order, only growers with more than 30
2 acres of pecans or more than 50,000 pounds of
3 average projection per year over the last four
4 years will be allowed to vote on this proposed
5 order.

6 In my opinion, this threshold is
7 reasonable because a grower that does not meets
8 these thresholds is not a commercial grower.

9 I've reviewed the economic analysis
10 summary prepared by Dr. Marco Palma, specifically
11 the projected average price increase from
12 promotion of 6.3 cents per in shell pound versus
13 the average 2.5 in shell pound cost. I do agree
14 that promotion will increase prices.

15 Overall I'm aware of the costs that a
16 Federal Marketing Order may impose on my farm,
17 and I don't think, and I do not believe those
18 costs are unduly burdensome. Further I believe
19 that the benefits of the Federal Marketing Order
20 on my, to my farm, will greatly outweigh any
21 costs associated with it.

22 In conclusion, I fully support the

1 proposed Federal Marketing Order for pecans and
2 encourage the Secretary to implement the order as
3 proposed by the American Pecan Board. I will be
4 glad to answer any questions anyone may have.

5 MR. QUIROS: Your Honor?

6 JUDGE GUTHRIDGE: Yes.

7 MR. QUIROS: Just a couple of
8 questions, then I'd like to finish the tendering
9 process.

10 JUDGE GUTHRIDGE: Certainly.

11 DIRECT EXAMINATION

12 BY MR. QUIROS:

13 Q Mr. Salopek, you said that you had
14 reviewed Dr. Marco Palma's summary economic
15 analysis. Is that what's been identified as
16 Exhibit 23, The Economic Analysis of the
17 Implementation of the Federal Marketing Order for
18 Pecans Executive Summary?

19 A Yes it is.

20 Q And do you also said participated in
21 the preparation of the proposed Federal Marketing
22 Order for Pecans. Is that also what is been

1 identified as Exhibit 1 in the notice that was
2 published in the Federal Register for this
3 hearing that contained the proposed Federal
4 Marketing Order for Pecans?

5 A Yes it is.

6 MR. QUIROS: Thank you Mr. Salopek.
7 Your Honor, we would tender this document and
8 this testimony into evidence.

9 JUDGE GUTHRIDGE: Any objection from
10 the USDA?

11 MR. HILL: No objections.

12 JUDGE GUTHRIDGE: Any objection from
13 the audience? Exhibit 26 is admitted. Mr.
14 Quiros, do you have any other questions?

15 (Whereupon, the document previously
16 marked as Exhibit 26 for identification was
17 received into evidence.)

18 MR. QUIROS: No, Your Honor.

19 JUDGE GUTHRIDGE: Okay. Department of
20 Agriculture.

21 CROSS EXAMINATION

22 MS. SCHMAEDICK: Melissa Schmaedick,

1 USDA. Good afternoon Mr. Salopek.

2 MR. SALOPEK: Good afternoon.

3 MS. SCHMAEDICK: Thank you for your
4 testimony.

5 MR. SALOPEK: You're welcome.

6 BY MS. SCHMAEDICK:

7 Q One of the first questions I'd like to
8 ask of you is, according to your testimony you
9 spent your entire career in the pecan industry.
10 Is that correct?

11 A That is correct.

12 Q Primarily as a grower, correct?

13 A Correct. Primarily as a grower.

14 Q So are you aware of any other attempts
15 to establish a program, a national program for
16 pecans?

17 A You know, I've known for a fact, Mike
18 Adams and another group in the early '90s
19 attempted to take a check-off I believe they were
20 talking about earning.

21 But Mr. Page is out of Louisiana and
22 he is a legend in the pecan industry. I think

1 he's older than the pecan industry itself to be
2 honest with you. And he's a wonderful, wonderful
3 man. And during this process it was last year at
4 the Texas Pecan Show actually, he said to me
5 said, technically, Louie, this is the fifth
6 attempt that this pecan industry has tried to
7 push through a marketing order. And I'll tell
8 you, he just, he just said take advantage of the
9 unity we have right now.

10 Q So given that context, what are some
11 of the changes you've seen? Why is this so
12 different now?

13 A In our pecan industry?

14 Q Yes.

15 A I don't know how I stated it in my
16 statement, but honestly up until about ten years
17 ago the East growers and the West growers didn't
18 share a lot of information. The West growers and
19 the Central growers just didn't share a lot of
20 information.

21 You know, you had the Western Pecan
22 Growers, you had the Southeastern Pecan Growers,

1 you had the Georgia Pecan Growers, you had the
2 Texas Pecan Growers. And really we didn't cross
3 lines very much. And you can ask any grower in
4 this room. They just, communication, there
5 wasn't much communication lines crossing. So
6 that was one issue. And then when you talked to
7 all the growers in those different regions, they
8 did have one thing in common. Let's not work
9 with the shellers.

10 And so there's just been these walls
11 in the industry that are finally coming down that
12 have given us an opportunity with all the growers
13 in the three different regions with the shellers
14 to finally unify and then make something happen
15 in this industry. And we're literally at least
16 20 years behind the other industries. So I
17 think, just the biggest factors is the unity of
18 all the different regions.

19 Q And when you say unity, to you, does
20 that convey a sense of sort of interdependence,
21 you're all working together?

22 A Yes.

1 Q You all have a vested interest?

2 A Yes. That's exactly how, it's a
3 vested interest. Everybody is wanting to the,
4 together for the same goals. That's exactly
5 right. And we, you know, we've all had the same
6 goals but maybe we just haven't been quite on the
7 same page in the different regions. And this is
8 a huge change. I mean, our family has been in
9 the pecan industry for year and years and years.
10 And it's a good change for the pecan industry.
11 And it's long overdue.

12 Q And in your work with the American
13 Pecan Board, is it your experience that this
14 exercise has really perpetuated that unity is it?

15 A It really has. It, when I was
16 nominated to join, I didn't jump to the back of
17 the room and say, "I want to be on this Board"
18 buy the way. But it's been a great experience.

19 Yes, just the first times going out to
20 the West. I mean to the Central, Southeast
21 Georgia, Texas and getting their feedback. And
22 they see like me as a Western grower going out to

1 the Eastern and Southeastern shows and Georgia
2 shows and the Central shows and they see our
3 commitment to what we want to do.

4 And then you see them coming out to
5 the West and that is just increased tenfold
6 literally within the last few years. And it
7 really is exciting. And it really is because
8 across all regions, every single region has an, I
9 didn't realize it up until a few years ago, they
10 have different challenges. And that's what we
11 have one goal. We all have different challenges
12 growing our pecans, but we have one goal and we
13 have to address the challenges.

14 Q Thank you for bring up the idea of
15 different challenges. And sort of working on
16 that theme, you mentioned in your testimony one
17 of the benefits is that, is the improved prices.
18 So are there other benefits that could come out
19 this program that could potentially address those
20 challenges?

21 A Besides improve pricing? Are you
22 talking about marketing and the improved pricing?

1 Q Right but for example, would research
2 be beneficial?

3 A You know, I'll tell you what's the,
4 right next to marketing is, and you guys just
5 talked about it is, having these cold numbers,
6 cold storage vendors, rural members, is close to
7 marketing. And the crop prediction that's in the
8 field right now. And research is, there is so
9 much research out there on the health benefits of
10 pecans. And the National Pecan shellers have
11 done research. The Georgia Pecan Growers, the
12 Southeastern and there's some great, great
13 research out there on the medical benefits of
14 pecans. And I think this vehicle carrying that
15 message to the public is huge. It really is
16 huge.

17 Q And given your background and your
18 family's background in this area's pecan
19 industry, can you tell me how common is it to
20 have a grower that has fewer than 30 acres or
21 less than 50,000 pounds in production in this
22 region.

1 A How common is it? You know, I knew
2 you were going to ask me that question and I
3 honestly -- and my own fertilizer business deals
4 with a bunch of them. It's, you know, it's I
5 would say it's pretty common to be honest with
6 you. You got five acre, ten acre and they're
7 motivated and they want to learn about pecans.
8 It's common.

9 Q Are those individuals aware of this
10 proposal.

11 A. They're aware of this proposal. They
12 are. Yes. They're aware of this proposal.

13 MS. SCHMAEDICK: Thank you. No
14 further questions.

15 MR. SALOPEK: What's that?

16 MS. SCHMAEDICK: Thank you. No
17 further questions.

18 MR. SALOPEK: Oh. Thank you. If I
19 could have one quick moment real fast? We're
20 talking about this Board. And I just want, Your
21 Honor, to, this American Pecan Board we put
22 together, it's really, sorry about this. It's

1 really a diverse board. We've put, we put our
2 heart and soul into this Board. And it's, the
3 voting Board, it's a diverse board. We covered
4 all three regions. We covered growers with
5 shellers. We sat in meetings and meetings and
6 meetings. Never thought in my life I'd sit in so
7 many meetings. Working with USDA has been
8 wonderful. Our team, you get, growers like this
9 to jump on board. It's just been wonderful
10 experience and I just want to recommend that
11 everybody should have confidence in this Board.
12 And I'll tell you, the leader, he's out here in
13 this audience. If it wasn't for him, we wouldn't
14 be where we're at. And the leadership from him
15 is just been spectacular and the support from the
16 Board. It's just been a great experience.

17 MS. SCHMAEDICK: Thank you.

18 MR. SALOPEK: Thank you.

19 JUDGE GUTHRIDGE: Any more USDA
20 questions? Any follow up?

21 REDIRECT EXAMINATION

22 BY MR. QUIROS:

1 Q Yes, Your Honor. Mr. Salopek, you
2 testified that there were some small growers in
3 this areas that had less than 30 acres or 50,000
4 pounds a year. Are those people who can make a
5 living off of those pecans?

6 A No. They cannot do that.

7 Q Are they commercial growers or are
8 they just people that are trying to make a little
9 bit of money on pecans?

10 A You know what I tell them, like I said
11 we've had this fertilizer business and I deal a
12 lot with them, so take care of those and you
13 could make good business with those.

14 Q Right. So it's not full time living
15 for these people.

16 A There's no way you could do that.

17 Q These are yard crops or they're hobby
18 farming with regard to--

19 A Yes.

20 Q --getting a little extra money.

21 A Yes.

22 Q Is it your experience they put full

1 inputs on those trees?

2 A You know it's some of them do.

3 Q Mm-hmm.

4 A They really do. But they, and they,
5 and the ones I talked to, just make sure, they
6 know that, they know they're going to bounce
7 back. And, but they know, like I told them,
8 chances are it's your Christmas bonus.

9 Q And that's why they buy fertilizer?

10 A Sometimes.

11 MR. QUIROS: Thank you Mr. Salopek.

12 MR. SALOPEK: Thank you.

13 JUDGE GUTHRIDGE: Are there any
14 questions from the audience? Hearing none. Mr.
15 Salopek, you're excused. And, if you'd check
16 with Ms. Rodriguez to see if she has, Gonzales
17 rather, see if she has any questions.

18 MR. SALOPEK: Thank you, Your Honor.

19 MR. QUIROS: Your Honor, we request a
20 short recess if that's okay with counsel for the
21 USDA.

22 JUDGE GUTHRIDGE: Yes. How brief?

1 MR. QUIROS: Ten minutes?

2 JUDGE GUTHRIDGE: All right. Ten
3 minutes. It's right now 3:22 at 3:32 we'll start
4 up again.

5 MR. QUIROS: Thank you, Your Honor.

6 (Whereupon, the above-entitled matter
7 went off the record at 3:22 p.m. and resumed at
8 3:31 p.m.)

9 JUDGE GUTHRIDGE: The hearing will come
10 to order. Mr. Davis, call your next witness
11 please.

12 MR. DAVIS: Yes, Your Honor. The
13 proponents calls the next witness, Dr. Dennis
14 Lucero.

15 WHEREUPON,

16 DR. DENNIS LUCERO
17 was called as a witness by Counsel for the
18 Proponent and, having been first duly sworn,
19 assumed the witness stand, was examined and
20 testified as follows:

21 JUDGE GUTHRIDGE: Proceed.

22 MR. DAVIS: Your Honor, as we have

1 done previously, we have handed out copies of Dr.
2 Lucero's statement along with his CV, but I'll
3 tender that at the end. Dr. Lucero, if you would
4 please, introduce yourself to the court

5 DR. LUCERO: My name is Dr. Dennis
6 Lucero. It is spelled D-E-N-N-I-S, L-U-C-E-R-O.
7 I live in Albuquerque, New Mexico, and I am the
8 owner of Pecans De Lucero. Pecans De Lucero is a
9 pecan farm in Radium Springs, New Mexico, which
10 is 14 miles North of Las Cruces. I have over 80
11 acres of pecans currently in production. Last
12 year I produced 102,000 pounds of pecans. And
13 then next year, I will plant two or 300 pecan
14 trees on my existing acres that will not be in
15 production for another seven years.

16 Can you hear me out there? Can you
17 hear me? Alright.

18 On our farm, we grow the improved
19 variety of pecans. I'm a third generation pecan
20 farmer. In 1920, my grandfather purchased our
21 pecan farm, and my father continued in his
22 footsteps. Three years ago, I became full time

1 in the pecan grower business. I am also a
2 medical doctor and a pharmacist. Attached is my
3 resume.

4 Under the Small Business
5 Administration definition, Pecans De Lucero is
6 classified as a small pecan grower business,
7 having less than \$750,000 in annual gross revenue
8 from pecans.

9 I have reviewed the Economic Analysis
10 Summary prepared by Dr. Marco Palma,
11 specifically, the projected average price
12 increase from promotion of 6.3 cents per in shell
13 pound versus the average 2.5 cents per in shell
14 pound cost.

15 Overall, I am aware of the costs that
16 the proposed Federal Marketing Order may impose
17 on my farm and I do not believe those costs are
18 unduly burdensome. Further, I believe that the
19 benefits of the federal marketing order to my
20 farm will greatly outweigh any costs associated
21 with it.

22 In recent years, I have seen a wide

1 variety in the prices I have received from my
2 pecan crop. Such wide variation in pricing makes
3 it extremely difficult to plan for the future
4 operation of my farm.

5 While prices for pecans go up and down
6 dramatically from one year, from year to year, my
7 costs of production have steadily increased.
8 Cost of fertilizer, insecticide and equipment
9 have all increased in recent years regardless of
10 the price I receive for my crop.

11 Further, the lack of accurate market
12 information on the anticipated size of the pecan
13 crop in any given year also makes it difficult
14 for me to negotiate a fair price for my crop and
15 to make reasonable business decisions about
16 investment in my farm.

17 Increased price stability and more
18 accurate market information would greatly benefit
19 my small family operation.

20 As a medical doctor and pharmacist, I
21 believe the nutritional health benefit of the
22 pecan should have continued research. In an

1 issue reading 2014 not 2014, that's a typo. In
2 2013, the prestigious medical journal, the New
3 England Journal of Medicine, published a study
4 titled Association of Nut Consumption with Total
5 and Cause-Specific Mortality.

6 As a brief summary, this was a 30 year
7 study of over 116,000 patients, which
8 demonstrated a 20 percent mortality reduction for
9 those who consumed nuts. Clearly demonstrating a
10 significant health benefit for nut consumption.

11 We still need more research as to the
12 full scope of health benefits of the pecan
13 specifically as related to reduction of
14 cardiovascular disease, cancer, and respiratory
15 ailments. This article was a part of Mike Adam's
16 Testimony and is Exhibit 9.

17 I think my farm and the industry would
18 also benefit from the future from grade, size,
19 quality, packaging, shipping protocols and other
20 handling requirements as we compete with other
21 tree nuts for shelf space and consumer attention.

22 Also, another very important issue of

1 concern to me is related to work safety
2 standards. I understand that under 986.69 allows
3 the American Pecan Board to establish handling
4 regulations.

5 As a medical professional, I believe
6 that our pecan farm workers should be protected
7 against dust particles or anything else that may
8 cause long-term illness.

9 I understand that under the proposed
10 order, only growers with more than 30 acres of
11 pecans or more than 50,000 pounds of average
12 production per year over the last four years will
13 be allowed to vote on the proposed order.

14 In my opinion, this threshold is
15 reasonable because a grower that does not meet
16 this threshold is not a commercial grower. Any
17 grower that is smaller than the proposed
18 threshold could not justify the cost inherent in
19 such a small production and is most probably
20 merely a seller of pecans from older trees that
21 happen to be on his or her property, a hobby
22 farmer or one that does not plan to put all

1 commercial inputs -- fertilizer, water, et cetera
2 on his farm.

3 I am a member of the New Mexico
4 Growers Association. The American Pecan Board
5 has kept our organization informed about its
6 efforts to propose a Federal Marketing Order.

7 I attended the Western Pecan Growers
8 Association's annual meeting this last March 2015
9 which presented information as related to the
10 federal marketing order of nuts. I believe that
11 I have been informed about the process and I have
12 been given the opportunity to participate in the
13 process.

14 In conclusion, I fully support the
15 proposed Federal Marketing Order for Pecans and
16 encourage the Secretary to implement the order as
17 proposed by the American Pecan Board.

18 I would be glad to answer any
19 questions anyone may have.

20 JUDGE GUTHRIDGE: Mr. Davis?

21 DIRECT EXAMINATION

22 BY MR. DAVIS:

1 Q Yes Your Honor, I may have one
2 clarifying question just before we tender your
3 testimony Dr. Lucero. If you have your statement
4 there, it appears at the bottom of Page 2
5 referring to that New England Journal of Medicine
6 and it was incorrectly typed 2014. With your
7 permission, I'll make a pen and ink correction
8 that it's 2013.

9 A Please.

10 Q Is that correct?

11 A Yes sir.

12 MR. DAVIS: And I'll initial that now,
13 but with that I tender Exhibit 27 which is Dr.
14 Lucero's sworn statement, or his testimony
15 statement and his curriculum vitae.

16 (Whereupon, the document referred to
17 was marked as Exhibit 27 for identification.)

18 JUDGE GUTHRIDGE: Any objection from
19 Department of Agriculture?

20 MR. HILL: No objections.

21 JUDGE GUTHRIDGE: Any objection from
22 the audience? Hearing no objection, Exhibit 27

1 is admitted.

2 (Whereupon, the document previously
3 marked as Exhibit 27 for identification was
4 received into evidence.)

5 MR. DAVIS: I'll tender that into the
6 record.

7 JUDGE GUTHRIDGE: Do you have any more
8 questions Mr. Davis?

9 MR. DAVIS: Not at this time, Your
10 Honor.

11 JUDGE GUTHRIDGE: Department of
12 Agriculture.

13 CROSS-EXAMINATION

14 BY MS. SCHMAEDICK:

15 Q Yes, Melissa Schmaedick, USDA. Thank
16 you Dr. Lucero for your testimony. You mentioned
17 on Page 3 of your testimony that an issue of
18 concern to you was work safety standards. Can
19 you expand on that and how you believe the
20 marketing order might address your concerns?

21 A Through research on my small farm
22 being with toxic chemicals. Toxic chemicals that

1 may be high in pH or acidity. We deal with dust
2 with pecan husking so the hull in our cleaning
3 plant. And I'm concerned about it well you are
4 aware, so respiratory illness would be a concern
5 for those who work in our industry just as in the
6 mine industry where they have black lung and
7 those illnesses.

8 I'm concerned about the husk maybe in
9 our shelling and cleaning plants. And this
10 research can help us understand what we may be
11 putting our workers in hazard.

12 In addition, we work with
13 insecticides, pesticides, protoxide -- all which
14 have long-term potential for adversity. And this
15 is where I would really want to see research so
16 we can protect our workers. Because I really
17 feel that we that the pecan is a long-term
18 industry. It's a tree that can last for
19 centuries.

20 It's a long-term industry. And we
21 need to protect the workers. And it's only
22 through this research that we can begin to make

1 sure that we have safe and productive industry.
2 And this is very common, as we saw, in the mine
3 industry. We need to protect our workers.

4 Q And in that vein, would you say
5 research on other problems and safe techniques,
6 would that fall into handling regulations in
7 terms of how the product is harvested? Is that
8 kind of how you see it working in the program?

9 A There's so much on literally
10 harvesting because a lot of that's involved in
11 how you harvest your own field. Again, we bring
12 all those dirt clogs, sticks to clean. There's a
13 lot of investment in cleaning pens. The shelling
14 process, you know, you can have resistance. So
15 all of these issues, I think, could be looked at
16 so that we can help workers, whether they be
17 migrant workers or long-term workers.

18 MS. SCHMAEDICK: Okay, thank you. No
19 further questions for me.

20 MS. VARELA: This is Jennifer Varela,
21 USDA. I really appreciate having you here, Dr.
22 Lucero.

1 CROSS EXAMINATION

2 BY MS. VARELA:

3 Q So I was interested in the statement
4 you made similarly on Page 3 about needing more
5 research to get the full scope of that. When you
6 talk about those potential projects are you
7 referring to how this affects, long-term and what
8 the industry has done so far? I'm trying to get
9 like a sense of what the structure of this order,
10 in particular, would help the industry get those
11 particular projects done. Could you tell me a
12 little more about that?

13 A If we're dealing just with the health
14 benefit, having been a physician now for 36 years
15 and pharmacist for 13, and so over 40 years in
16 the healthcare industry, the human body, just as
17 we saw in similar cases, can take years to
18 develop in the mining industry.

19 And that's why we need to be having
20 short-term as well as the long-term studies to
21 see what is the impact on this product, good or
22 bad. From the medical standpoint I'm concerned

1 about our society, our American society.

2 Cardiovascular disease is our number one problem.

3 This is a product that you made.

4 Q Well, just to follow up on that one,
5 I'm sorry to interrupt you.

6 A Okay.

7 Q As you talk about the need for this
8 type of research and the importance do you have
9 an idea of why it hasn't been done already?

10 A There's been some. And this is
11 ongoing, but I, having dealt with a lot of
12 pharmaceuticals and having dispensed a lot of
13 pharmaceuticals to my patients, there's other
14 ways to heal the body besides pills. I've seen,
15 and I've had patients come in who were taking 20
16 different medications not counting the number of
17 pills. They could be taking 60 pills a day.
18 It's terrible. We can make a difference in this
19 life, but we need to research.

20 Q Thank you. And I wanted to go down
21 just a little further into your testimony and ask
22 one clarifying question. You referred to section

1 986.69 allowing the Board to establish handling
2 regulations. I think there you meant the
3 American Pecan Council. Is that correct?

4 A What page are we on? Oh, that--

5 Q Page 3.

6 A I see it. Yes. And what was the
7 question?

8 Q I assuming that you meant to say
9 American Pecan Council, which the order would
10 establish.

11 A Okay. They have it written here
12 wrong. That's fine.

13 MS. VARELA: That's fine. Okay.
14 Thank you very much. That's all I have.

15 JUDGE GUTHRIDGE: Any other questions
16 from Agriculture?

17 MR. DAVIS: No further questions, Your
18 Honor.

19 JUDGE GUTHRIDGE: Are there any
20 questions from the audience? Hearing none, Dr.
21 Lucero, you're excused.

22 DR. LUCERO: Thank you.

1 JUDGE GUTHRIDGE: Go talk to Ms.
2 Gonzalez over there to see if she has any things
3 to clarify.

4 MR. QUIROS: Your Honor, we'd like to
5 call Thomas Chavez.

6 JUDGE GUTHRIDGE: Sure.

7 MR. CHAVEZ: Good afternoon.

8 JUDGE GUTHRIDGE: Good afternoon, Mr.
9 Chavez. Thank you for coming.

10 MR. CHAVEZ: Yes sir.

11 JUDGE GUTHRIDGE: Okay.

12 WHEREUPON,

13 THOMAS CHAVEZ
14 was called as a witness by Counsel for the
15 Proponent and, having been first duly sworn,
16 assumed the witness stand, was examined and
17 testified as follows:

18 JUDGE GUTHRIDGE: Mr. Quiros.

19 MR. QUIROS: Thank you, Your Honor.
20 Mr. Chavez, I understand you've prepared some
21 testimony for us today, but you would also like
22 to have your testimony through question and

1 answer. Is that correct?

2 MR. CHAVEZ: That's correct.

3 MR. QUIROS: Your Honor, I will not
4 tender it at this time, but if I could, I would
5 like to go ahead and give you a copy of his
6 testimony and have that marked as the next
7 Exhibit.

8 (Whereupon, the document referred to
9 was marked as Exhibit 28 for identification.)

10 JUDGE GUTHRIDGE: Certainly.

11 DIRECT EXAMINATION

12 BY MR. QUIROS

13 Q Mr. Chavez, we appreciate you being
14 here with us this morning. First of all, please
15 tell us what your name is.

16 A My name is Thomas Chavez. It's
17 spelled T-H-O-M-A-S, C-H-A-V-E-Z.

18 Q And where do you live?

19 A I live at [REDACTED] Las
20 Cruses, New Mexico.

21 Q And tell us about your involvement in
22 the pecan industry and any personal or family

1 history of your involvement in the pecan
2 industry.

3 A So this started back in 65. My dad
4 plated his five acres of pecans, you know. And
5 then we have a concrete business and pecan farm.
6 Then from there on, we just took off every year.
7 We buy a different track of land and put trees in
8 it and kept going for years and years until we
9 got up to 175 acres. It's still a small farm,
10 but it keeps me real busy, you know so.

11 Q And, last year, how many pounds did
12 you produce on that farm?

13 A We've got like 400,000.

14 Q That's great. And tell us what type
15 of pecans you grow.

16 A We have west pecan and Western side.

17 Q So those are improved pecans?

18 A Yes.

19 Q Thank you. The Small Business
20 Administration defines a small grower as a grower
21 with less than \$750,000 of gross revenue from
22 pecans. Are you a large or a small grower?

1 A I'm a small.

2 Q Great. Have you received a copy of
3 the proposed Federal Marketing Order as published
4 in the Federal Register as part of the notice,
5 which has been marked Exhibit 1 in this
6 testimony.

7 A Yes sir.

8 Q And you've had a chance to review
9 that?

10 A Yes sir.

11 Q And have you received a copy of the
12 Executive Summary of Economic Analysis of the
13 Implementation of a Federal Marketing Order for
14 Pecans prepared by Dr. Marco Palma, which has
15 been marked Exhibit 23.

16 A Yes sir.

17 Q And have you had a chance to review
18 that?

19 A Yes sir.

20 Q Thank you. Describe the challenges
21 you have as a small grower that the proposed
22 Federal Marketing Order for Pecans attempts to

1 address.

2 A I'm sorry.

3 Q Yes. Let me repeat the question. I
4 may rephrase it, if it's not helpful. What are
5 the things you like the federal, proposed Federal
6 Marketing Order for Pecans to do for you as a
7 farmer? How would it help you?

8 A Well it'll help us get better prices
9 for pecans, you know. And help everybody.

10 Q And how would it get you a better
11 price for the pecans?

12 A Well by the marketing. You know,
13 they're going to market it. And right now
14 there's no, like you saying, there's no
15 marketing. Yea, our neighbors seen pecans in the
16 shelves, in the stores or anything, you know. So
17 we could keep that going, get that marketing
18 going we can better from it, you know, so.

19 Q Great. Let me refer back to Exhibit
20 23, the executive summary of the Economic
21 Analysis of the Implementation of a Federal
22 Marketing Order for Pecans. Do you agree with

1 Dr. Marco's finding that generic promotion
2 campaigns of agricultural products stimulates
3 demand and results in higher prices?

4 A Yes sir.

5 Q Any why do you believe that?

6 A Well, you know, I'm new at this game
7 so you guys got to bear with me. And this is
8 really the first time I ever spoke into a mic and
9 in front of people. So I'm a little nervous.

10 Q Sure.

11 A I'm here, really my thing here is to
12 help you promote this FMO.

13 Q Thank you.

14 A And a--

15 Q Have you seen this work in other nuts.
16 Mr. Chavez promotion work?

17 A Yes, sir. It works good.

18 Q Yeah.

19 A I've seen it in almonds. I've seen
20 the TV on almonds to just about anything. But
21 you don't it in pecans, you know.

22 Q No, I won't tell anybody, but has

1 anybody in your family ever bought almonds? Just
2 between us.

3 A Yes. That's what I eat.

4 Q Oh. You're killing me.

5 A Yea.

6 Q Back to the question.

7 A Sorry.

8 Q This is a bit of a technical question,
9 but do you remember in that same Exhibit 23, do
10 you recall Dr. Palma's discussion of the midpoint
11 of the cost of assessment for handlers? This was
12 the 2-1/2 cents for improved pecans and 1-1/2
13 cents for native seedlings. Do you remember that
14 discussion?

15 A Mm-hmm.

16 Q Do you agree, or does it seem
17 reasonable to you, based on Dr. Palma's
18 presentation, that if the entire cost was born by
19 reducing your price of pecans paid by the
20 midpoint, the 2-1/2 cents, that you might expect
21 to receive an addition 6.3 cents per in shell
22 pound for your crop. Does that seem reasonable.

1 A Yeah. That sounds good.

2 Q What do you believe about the balance
3 between the costs and the benefits presented in
4 Exhibit 23? The balance between those two. Do
5 the benefits outweigh the burdens or the burdens
6 greater than the benefits?

7 A Probably the burdens greater than
8 benefits.

9 Q I'm saying that if you spend 2-1/2
10 cents a pound and you get 6.3 cents per pound,
11 you think that the benefits of getting 6.3 cents
12 a pound are greater than the burden of 2-1/2
13 cents.

14 A Yeah.

15 Q You understand the question?

16 A Mm-hmm.

17 Q Okay. And so do you believe the
18 benefits outweigh the burdens?

19 A Mm-hmm.

20 MR. QUIROS: Thank you.

21 JUDGE GUTHRIDGE: Is that a yes?

22 MR. CHAVEZ: Yes.

1 BY MR. QUIROS:

2 Q The proposed Federal Marketing Order
3 for Pecans, which is part of the notice in
4 Exhibit one, which you've received and reviewed,
5 only allows growers to vote for the establishment
6 of the proposed Federal Marketing Order for
7 Pecans and participate in the Counsel and
8 Alternates nomination process. If they have at
9 least 30 acres of pecans or an average of 50,000
10 in shell pounds of pecans over the last four
11 years, what do you think of this requirement?

12 A That it's good.

13 Q And why do you think that it's good.

14 A You can be a bigger farmer so they can
15 be able to participate in there.

16 Q Do you know a lot of small farmers?

17 A I sure do.

18 Q Do you know that 30 acres, does that
19 sound, or 50,000 pounds, do you think that's an
20 appropriate line between a commercial farmer and
21 somebody that's just doing this part time or as a
22 hobby?

1 A I think it is.

2 Q Okay. Thank you.

3 A Yes sir.

4 Q Maybe some specific questions, would
5 your farm benefit from the proposed authority in
6 986.65 of Exhibit 1, Better Data for the
7 Industry? Would that help your farm?

8 A Yes it would.

9 Q Likewise, would your farm benefit from
10 the authority in section 986.68 of the proposed
11 Federal Marketing Order for Pecans regarding
12 research and marketing activities, including
13 promotion?

14 A Mm-hmm. Yes sir.

15 Q And finally, would your farm benefit
16 from section 986.68 of the proposed Federal
17 Marketing Order for Pecans with regard to
18 authorities regulating handling, which would be
19 things such as packaging et cetera, shipping.
20 Would that be a benefit to your farm?

21 A Yes it would.

22 Q Thank you. Mr. Chavez, are you a

1 member of a pecan growers association?

2 A Yes sir.

3 Q And which one are you a member of?

4 A New Mexico.

5 Q And how long have you been a member of
6 that association?

7 A About 25 years.

8 Q Thank you. Have you had an
9 opportunity to hear a presentation on the
10 proposed Federal Marketing Order for Pecans by
11 the American Pecan Board.

12 A Yes sir.

13 Q Great. And tell us about that. Were
14 you at those meetings?

15 A I've been to a few. And they said
16 that from different farmers and my broker and--

17 Q Correct.

18 A I do agree that we need to get
19 something going on now.

20 Q Right. Do you know Louie Salopek and
21 Mike Adams?

22 A Yes sir.

1 Q And you have heard them testify today
2 at this hearing?

3 A Yes sir.

4 Q And you feel like you've had an
5 opportunity to be involved in this project and
6 also hear from people with regard to this project
7 and have your questions answered?

8 A Yes sir.

9 Q Thank you. Mr. Chavez, this is a bit
10 of a business question, but how do you decide how
11 much to sell your crops for?

12 A Whatever my broker gives me. I don't
13 have a, you know, we don't have a say so. It
14 just, it depends on year to year.

15 Q What would help in this regard? So
16 you essentially get offered a price and that's
17 the price that you--

18 A No there's no negotiating.

19 Q Right.

20 A They give you a price and you either
21 take it or leave it, you know. And right now we
22 can't negotiate anything unless we get something

1 else going that we can really help us to-

2 Q Would the information in the
3 authorities from this proposed Federal Marketing
4 Order help you in this regard.

5 A It will help us.

6 MR. QUIROS: Good. Thank you. I
7 appreciate your testimony Mr. Chavez. Your
8 Honor, I'd like to now tender the written
9 testimony of Mr. Chavez into the record as well
10 as his oral testimony.

11 JUDGE GUTHRIDGE: Exhibit 28.

12 MR. QUIROS: Yes, Your Honor.

13 JUDGE GUTHRIDGE: Any objection from--

14 MR. HILL: I'm sorry. I would just
15 like to ask a couple of questions.

16 CROSS-EXAMINATION

17 BY MR. HILL:

18 Q Mr. Chavez, you've had a chance,
19 obviously, to read the statement.

20 A Yea I've read. Yes sir.

21 Q So you did take part in putting
22 together this statement.

1 A Yes sir.

2 Q And this, the opinions in here are
3 your opinions?

4 A Yes sir.

5 Q Would that be correct?

6 A Yes sir.

7 MR. HILL: I have no objection, Your
8 Honor.

9 JUDGE GUTHRIDGE: Is there anyone in
10 the audience have any objection. Hearing no
11 objection, the Exhibit 28 is admitted.

12 (Whereupon, the document previously
13 marked as Exhibit 28 for identification was
14 received into evidence.)

15 MR. CHAVEZ: Thank you, Your Honor.

16 JUDGE GUTHRIDGE: Do you have more
17 evidence.

18 MR. QUIROS: No sir. Thank you, Your
19 Honor.

20 JUDGE GUTHRIDGE: Does the Department
21 of Agriculture have any questions? No. Speak
22 now or forever hold your peace.

1 MS. SCHMAEDICK: No.

2 JUDGE GUTHRIDGE: Anyone in the
3 audience have any questions for Mr. Chavez? No.
4 Mr. Chavez, you're excused.

5 MR. CHAVEZ: Thank you, Your Honor.

6 JUDGE GUTHRIDGE: Go over and speak
7 with Ms. Gonzales. She might have questions
8 about spelling of words or names or something.

9 MR. CHAVEZ: I will. Thank you.
10 Thank you.

11 MR. QUIROS: Thank you Mr. Chavez.
12 Appreciate you.

13 JUDGE GUTHRIDGE: Okay.

14 MR. QUIROS: Your Honor, we'd like to
15 call our next witness, Mr. Phillip Arnold.

16 JUDGE GUTHRIDGE: All right.

17 WHEREUPON,

18 PHILLIP ARNOLD
19 was called as a witness by Counsel for the
20 Proponent and, having been first duly sworn,
21 assumed the witness stand, was examined and
22 testified as follows:

1 MR. DAVIS: Good afternoon Mr. Arnold.

2 MR. ARNOLD: Good afternoon.

3 MR. DAVIS: Have you prepared us some
4 written remarks you'd like to give this
5 afternoon?

6 MR. ARNOLD: Yes I have.

7 MR. DAVIS: Why don't you go ahead and
8 begin.

9 MR. ARNOLD: My name is Phillip
10 Arnold, spelled P-H-I-L-L-I-P, A-R-N-O-L-D. I
11 live and work in Mesilla Valley, near Las Cruces,
12 New Mexico. I have attached my resume to this
13 testimony for your reference.

14 Briefly, I have been in the pecan
15 business full time for 31 years after spending
16 four years in the meat business.

17 I have interests in three pecan
18 businesses. The first is about 350 acres of
19 pecans. Of this, 65 acres is our original family
20 farm that was planted by my father 45 years ago
21 and over the years we have added around 85 more
22 to total about 150 acres that we own.

1 In addition, we lease approximately
2 200 more acres of pecans. All of this acres is
3 of improved varieties. Three generations of the
4 Arnold family worked in this business.

5 I am aware of the Small Business
6 Administration's guidelines for a small growers,
7 less than \$750,000 in annual gross revenue. Most
8 years our farm would have been a small business,
9 but last couple of years we would have been
10 considered a large pecan grower.

11 The second pecan business I have an
12 ownership interest in is a custom pecan
13 harvesting and a custom pecan cleaning business.
14 Many of the small pecan farmers in our area
15 cannot afford the expensive machinery to manage
16 the pecan harvesting and pecan cleaning
17 functions.

18 These farmers pay us a fee per pound
19 to shake their trees, gather their nuts off the
20 ground, transport their nuts to our cleaning
21 plants and clean their nuts. The owners of these
22 nuts then decide who they want to sell their

1 pecans to, and when. We never take title to
2 these pecans and we just charge them a service
3 fee to do the work.

4 If our group, or groups like ours were
5 not around, these growers may not be able to
6 efficiently harvest their pecans and get them
7 ready for market.

8 I have read section 986.19 of the
9 proposed Federal marketing Order, the To Handle
10 definition. It says, to handle means to receive,
11 shell, crack, accumulate, warehouse, roast, pack,
12 sell, consign, transport, export, or ship except
13 as a common or contract carrier of pecans owned
14 by another person, or in another way to put in
15 shell or shelled pecans into any and all markets
16 in the stream of commerce either within the area
17 of production or from such area to any point
18 outside thereof.

19 The term to handle shall not include
20 sales and deliveries within the area of
21 production by growers to handlers; growers;
22 warehousing; custom handling except for selling,

1 consigning or exporting or other similar
2 activities paid for on a fee-for-service basis by
3 a grower who retains the ownership of the pecans;
4 or transfers between handlers.

5 The second sentence described our
6 custom harvesting and custom cleaning business.
7 Our business provides custom handling or other
8 similar activities paid for on a fee-for-service
9 basis by growers who retained the ownership of
10 the pecans.

11 I agree with the language of section
12 986.19 that these fees for service should not be
13 defined as handling.

14 The third pecan business I am in is as
15 a buyer of pecans for San Saba Pecan, a large
16 sheller as defined by the Small Business
17 Administration, one having \$7,000,000 or more in
18 gross revenue as a pecan sheller.

19 I have a perspective of the pecan
20 industry from a lot of vantage points, but
21 certainly that of a grower, sheller and contract
22 service provider.

1 I have been President of the National
2 Pecan Growers Council, which is focused on MAP
3 funding oversight, essentially promotion of
4 pecans overseas. I was President of the Western
5 Pecan Growers Association and I am currently
6 President of the New Mexico Pecan Growers
7 Association.

8 As current President of the New Mexico
9 Pecan Growers Association, I have sent a letter
10 from our organization to the United States
11 Secretary of Agriculture in support of the
12 proposed Federal marketing Order, a copy of which
13 is also attached to this testimony.

14 None of these organizations, The
15 National Pecan Growers Council, Western Pecan
16 Growers Association, or the New Mexico Pecan
17 Growers Association, will compete with the
18 proposed American Pecan Council and their work.

19 Actually, I think the American Pecan
20 Council will allow each of these three
21 organizations to operate more efficiently, as the
22 industry starts to rely on the American Pecan

1 Council to use its authorities to address:
2 gathering and publish pecan industry data,
3 research, promotion, collecting assessments, and
4 reviewing and recommending changes to how we
5 handle and package pecans. It will free our
6 other pecan organizations to focus on their
7 grower constituencies and their MAP issues.

8 JUDGE GUTHRIDGE: What is MAP?

9 MR. PHILLIPS: It is the Market Access
10 Program that we, the pecan industry receives
11 funds from.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q And that is focused on export?

15 A Export. It's international. It's
16 solely international export.

17 Q Not domestic.

18 A Four years ago, I helped organize the
19 first industry meeting in Frisco, Texas, that led
20 to the formation of the American Pecan Board.

21 Since its formation, I have been
22 extremely pleased with the intense two year,

1 grass-roots effort by all participants in the
2 pecan industry, growers, shellers, and other
3 handlers to talk together and address our common
4 opportunities through this proposed Federal
5 Marketing Order.

6 I think I have been well informed of
7 all of the steps taken by the American Pecan
8 Board to secure the proposed Federal Marketing
9 Order and have had numerous opportunities to
10 participate in this process.

11 I have listened to the testimony of
12 Dr. Marco Palma and have reviewed the economic
13 analysis summary prepared by Dr. Palma,
14 specifically, the project average price increase
15 from promotion of 6.3 cents per pound, in shell
16 pound versus the average of 2.5 cents per shell
17 pound cost for improved varieties.

18 Overall, I am aware of the costs that
19 a federal marketing order may impose on my grower
20 and sheller interests, including the indirect
21 costs of record keeping and funds transfer to the
22 Council, but I do not believe those costs are

1 unduly burdensome.

2 Further, I believe that the benefits
3 of the Federal Marketing Order to my grower and
4 sheller interests will greatly outweigh any costs
5 associated with it.

6 I think my grower and sheller
7 interests would also benefit in the future from
8 grade, size, quality, packaging, shipping
9 protocols, and other handling requirements as we
10 complete with the other tree nuts for shelf space
11 and United States consumer attention. I
12 understand this will only occur after the Council
13 receives and debates these issues.

14 I also understand that under the
15 proposed order, only growers with more than 30
16 acres of pecans or more than 50,000 pounds of
17 average production per year over the last four
18 years will be allowed to vote on the proposed
19 order.

20 In my opinion, this threshold is
21 reasonable because a grower that does not meet
22 this threshold is not a commercial grower. Any

1 grower that is smaller than the proposed
2 threshold could not justify the costs inherent in
3 such a small production and is most probably
4 merely a seller of pecans from older trees that
5 happen to be on his or her property, a hobby
6 farmer or one that does not plan to put all the
7 commercial inputs (fertilizer, water, et cetera)
8 on his farm.

9 In my work as a fee for service
10 harvester and cleaner, I see this all the time.
11 Folks with a few acres cannot afford the
12 expensive farming and harvesting equipment.

13 We built our custom harvesting and
14 cleaning business in part on such non-commercial
15 grower situations. But make no mistake, even
16 though those growers may not have a vote, they
17 will get to share in the burdens and benefits of
18 the proposed FMO.

19 But on balance, I think it is fair
20 that these small, non-commercial growers are not
21 getting a vote, pecan growing is simply not their
22 livelihood.

1 I also understand that only shellers
2 that handle more than one million pounds of in
3 shell pecans per year will be allowed to vote on
4 the proposed order. I believe this is also a
5 fair threshold.

6 Lots of folks shell pecans. For some,
7 it is just enough for a pecan pie or for other it
8 is just enough to sell in small packages at a
9 convenience store, but these are not commercial
10 shellers.

11 I am not aware of any sheller in my
12 area which handles less than one million in shell
13 pounds per year that is in the commercial
14 shelling business. Further, if there is such a
15 sheller, I do not believe it would be
16 commercially viable for such a small operation
17 could not invest in the required equipment, pay
18 employees and turn a profit on such a small
19 production. It would not be sustainable as a
20 business at that level.

21 In conclusion, as a person with both
22 grower and sheller interests as well as the

1 current President of the New Mexico Pecan Growers
2 Association and a member of and past President of
3 both the Western Pecan Growers and the National
4 Pecan Growers Council, I fully support the
5 proposed Federal Marketing Order for pecans and
6 encourage the United States Secretary of
7 Agriculture to implement the order as proposed by
8 the American Pecan Board.

9 I would be glad to answer any
10 questions anyone may have.

11 MR. DAVIS: Just before we tender the
12 Exhibit, if I could ask one point blank question,
13 Your Honor?

14 JUDGE GUTHRIDGE: Yes.

15 BY MR. DAVIS:

16 Q Sir, on page three of your remarks,
17 you noted that you had reviewed the economic
18 analysis summary. That is the summary that
19 appears in this record as Exhibit 23. Is that
20 correct?

21 A Yes it is.

22 MR. DAVIS: With that clarification,

1 Your Honor, we would tender Exhibit 29, which I
2 will also note for the record is the written
3 statement by Mr. Arnold, also his curriculum
4 vitae, also the letter of support from the New
5 Mexico Pecan Growers Association.

6 (Whereupon, the document referred to
7 was marked as Exhibit 29 for identification.)

8 JUDGE GUTHRIDGE: Any objection?

9 MR. HILL: I have no objection.

10 JUDGE GUTHRIDGE: Any objection from
11 the audience? Hearing no objection, Exhibit 29
12 will be admitted. Do you have any other
13 questions?

14 MR. DAVIS: I'll reserve questions,
15 Your Honor.

16 JUDGE GUTHRIDGE: Does Department of
17 Agriculture have any questions?

18 CROSS-EXAMINATION

19 BY MS. SCHMAEDICK:

20 Q Melissa Schmaedick, USDA. Thank you
21 Mr. Arnold for your testimony. The first
22 question I have for you, you mentioned that you

1 lease about 200 acres is it?

2 A Yes ma'am. That's correct.

3 Q Under the proposed program, would you
4 be considered the grower of those 200 acres?

5 A Well, on our lease, on most of our
6 leases we have, we do it on a share basis. So,
7 yes we would be considered the grower on two-
8 thirds of the crop. Is our, the way our, it's on
9 a share basis and we do all the inputs, they pay
10 their land and water taxes because it's in their
11 name and sometimes some capital improvements.
12 But all the inputs there, and we take two-thirds
13 of the crop. Basically it's part of that.

14 Q So under the proposed program, that is
15 in Exhibit 1, would you be considered a grower of
16 those 200 acres? Would those 200 acres be
17 attributed to you as a grower?

18 A I would guess it would have to be
19 considered. I don't know. That's a good
20 question. I don't know what the legalities
21 involved. I would consider that we are the
22 grower because we actually grow the crop. Yes.

1 Q Okay. Thank you. You also mentioned
2 that you have a custom harvesting and cleaning
3 operation. Can you describe in a little bit more
4 detail what exactly your role is in the industry?
5 How do you, who are your customers? How are you
6 interacting with them?

7 You did mention that you don't take
8 ownership of the product. But if you could just
9 paint a slightly more detailed picture for us so
10 we have a better idea of how you function that
11 way.

12 A Certainly. There's, in this valley,
13 the Las Cruces area, Mesilla Valley. Over the
14 years, there were a lot of people that bought
15 acres that anywhere between, you know, one to
16 two, ten, 15, 20, 30 acres and planted pecans on
17 them.

18 And the idea was that a lot of these
19 people had thought it was going to be easy.
20 Because all they had to do was plant the trees
21 and watch them grow.

22 As time went on, they found out how

1 much work was involved from just harvesting say
2 five acres of pecans. It took up a couple of
3 weekends during the month of December and you got
4 your Christmas out of it to where it became a
5 situation where they were spending every weekend
6 and every bit of extra time they had, including
7 all their Christmas time, to try to harvest the
8 pecans.

9 Because the, once the trees got up to
10 size and level and there was a pretty good
11 tonnage, it became very purposed job on them
12 trying to get it done. So, that was where
13 primarily our business kind of came from, I would
14 say.

15 It, a lot of these smaller people that
16 couldn't afford, because a set of -- you have to
17 understand even a used set of harvesting
18 equipment, is you have to have a shaker, your
19 sweeper, and then you have to have the harvester.

20 And so, even a used set of equipment
21 today would probably cost you a bare minimum of
22 maybe \$100,000 or more. And if you're talking

1 new equipment, your talking many more times that.

2 So if you have five or ten acres of
3 pecans, there's no way you are going to go spend
4 \$100,000 on equipment when the economics are just
5 simply not there. And with the cost of labor,
6 doing it all by hand is preventative.

7 So, you have a situation now where my
8 brother and I have a company we started back in
9 the early 80s. We've grown the years and we
10 basically go in, they contract us early in the
11 year, we check to make sure their ground is
12 properly prepared so that we can harvest the
13 pecans.

14 We'll go in and once we get a chilling
15 freeze here, that's usually the standard modus
16 operandi is, in this valley, is when we get a
17 killing freeze, which knocks the leaves off the
18 tree, dries up the hulls, and then you get an
19 acceptable level of moisture in the nut that you
20 can start handling, which usually around, happens
21 around Thanksgiving.

22 Then we'll go in and shake the nuts on

1 the ground, sweep them into win rows and then
2 pick them up with our harvesters. From there, we
3 take them into our cleaning plant. And our
4 cleaning plant is another deal, because even
5 though a very inexpensive cleaning plant, a very
6 small, minimally run few hundred pounds an hour
7 maybe, you could be talking as much as \$15,000 to
8 \$20,000-\$30,000.

9 With some of the larger cleaning
10 plants, you know, you could be getting into
11 almost in the millions of dollars in some of
12 these things depending on how big you get with
13 all the equipment involved and depending on the
14 volume that you're trying to handle.

15 But even one that would take care of
16 a small operation and do it in a timely method so
17 that you can get the pecans to market in a timely
18 basis. It's very expensive in addition to the
19 other harvest equipment.

20 We take the pecans and we run them
21 through the plant and I think, Dave referenced, I
22 can't remember his testimony was earlier, but

1 they referenced how they rate the pecans and I
2 think that Mr. Caris was talking about they
3 separated the off grade pecans from your number
4 ones.

5 Essentially they come in and they
6 separate out the major trash from the pecans
7 themselves. They run them through, you take the
8 hulls out and the sticks and twigs and any rocks
9 and dirt clods.

10 And they run them in and they'll, from
11 there, they separate and they'll blow out the,
12 what they call pops, which are usually a nut
13 that's hollow. And then they'll run them through
14 to make sure they can peel off the stick tights
15 with the hulls still adhering there. It peels
16 that off and then they will run them from there
17 into a sedimentary airways or, I can't remember
18 the, anyway basically it's a separation unit that
19 separates the live pecans that don't feel as well
20 from the ones that are heavier that have a higher
21 density that are filled well save full of what.
22 So that's how you separate your number one grade

1 pecans from your number twos.

2 So, we'll clean those pecans for those
3 individuals and pull off their number ones and we
4 get their number twos and we have those, which
5 are the two products that are pretty much
6 marketable for the individual.

7 And then like my brother who runs that
8 part of the business, he'll call them and tell
9 them what their clean tonnage is and he'll tell
10 them what the market is and some of the
11 individuals maybe decide to hold them for a while
12 hoping the market's going to come up.

13 Some of them will go decide they want
14 to go ahead and take the money or, you know.
15 Every year is different. Sometimes the price is
16 really good and the people want to sell them
17 right away. And then he'll make arrangements
18 with sometimes he buys them for me, from the
19 company I represent.

20 And other times he'll buy them from
21 another company depending on what prices are and
22 so on to get the best deal he can for them. And

1 he takes pecans, sells them for the individual.
2 They get their money, we get, they pay us and
3 we're, everybody's happy.

4 Q Thank you. So are your customers then
5 predominantly small growers?

6 A Predominantly. We had a few growers
7 that, I think the largest one, we had one of the
8 larger grower that he -- I think he has about, we
9 harvest around 1,000 acres of pecans. And one of
10 our growers, I think he has about 180 or 150, I
11 don't interact with that end of the business as
12 much as I used to. I am the primary one on the
13 buying end now.

14 But, we have one guy who's pretty good
15 size and he's probably be considered a large
16 grower. But he doesn't have the time. He's also
17 a road crop farmer. He doesn't have the time to
18 mess with all the equipment and everything else.

19 And so to have his own equipment and
20 have to go do it and everything else he simply
21 contracts us to come in and harvest the pecans
22 and clean them for him. So we do have some, a

1 few large growers. But most of the growers we
2 have are the smaller growers. That's the bulk of
3 our business.

4 JUDGE GUTHRIDGE: I'm sorry. What
5 kind of farmer did you say he was?

6 MR. ARNOLD: Road crop. In other
7 words standard crop.

8 JUDGE GUTHRIDGE: Road crop.

9 MR ARNOLD: Yeah. You have a
10 permanent crop, which is pecans. And then you
11 could have a road crop we currently refer to
12 maybe cotton, chili, watermelons, whatever.

13 BY MS. SCHMAEDICK:

14 Q And in your custom cleaning operation,
15 does that include or could it include sizing and
16 grading.

17 A It could. We do grade them when we're
18 actually, you know, we run them through the
19 airway. We're actually sorting them, so we're
20 actually in that sense grading the pecans.

21 We could size them as well if the
22 grower put, - the demands from China the way they

1 are, we've actually talked about putting in a
2 sizer.

3 It's a, kind of, logistics thing as to
4 where you can put it. And then is it viable the
5 service be good enough for the individual.

6 One of these smaller growers don't
7 have enough that you could size out a portion of
8 the crop and have a full load to sell to China
9 for instance where you could a better price for
10 those particular pecans. But as time goes on, I
11 could definitely see where that would be
12 something that could evolve.

13 Q So hypothetically speaking, if the
14 definition of to handle excludes the custom
15 handling or the custom harvest and cleaning that
16 you do and hypothetically if there were greater
17 size regulation in effect, would you need to be
18 meeting that regulation that's in effect in your
19 operation?

20 A Well, really the way I look at it and
21 what we've considered is that we never take title
22 of the pecans. We don't take ownership. And so

1 when you're talking about actually providing
2 services to somebody and until you actually, as
3 handler, a lot of times a handler is charging
4 those fees to handle the pecans or actually to --
5 he takes possession of them as he buys the pecans
6 and then turns around and sells them.

7 But in our operation, our basic deal
8 is to help the individual with the pecan crop and
9 then so that they can sell it to somebody so that
10 he can be paid for it.

11 Q So, my understanding, you correct me
12 then, you could size and sort to your customers'
13 wishes who would be the grower.

14 A Right.

15 Q But that -- you would not necessarily
16 be beholding to size and grade regulations that
17 are in effect because you are not the handler.
18 Is that was you're saying?

19 A Yeah, well this is -- we're doing it
20 to a standard so that he can sell that to
21 shellers. For instance, in this part of the
22 United States in the food market normally you

1 would consider a No. 1 grade pecan 55 percent
2 meat and higher.

3 Sometimes one year if there's a very
4 wide quality problems then you drop it down to 54
5 percent. But generally, industry-wide, with all
6 the different companies that are buying, a lot of
7 times that's going to be a separate issue.

8 So as a grower, even if that's what
9 you're doing, you're talking about sorting, is
10 you're actually separating and trying to ensure
11 that he -- his pecans will be graded at least 55
12 percent or higher so that he gets more or less
13 top price for his pecans.

14 Q So essentially you're assisting --

15 A We're not -- we're never handling the
16 meats themselves. All we do is handle in-shell.

17 Q So essentially you're assisting the
18 grower to prepare his or her products to be the
19 best presentation to the market.

20 A So he can market to the best the best
21 that he can.

22 Q Thank you. You mentioned -- are you

1 the current president of the New Mexico --

2 A Yes, I am.

3 Q Are you able to make a statement on
4 behalf of that organization today?

5 A Yeah, I would think so.

6 Q Okay.

7 A I would hope so.

8 Q So in your experience and capacity has
9 the -- or is the New Mexico grower population
10 aware of this proposal?

11 A Yes, I believe so. The Western pecan
12 growers as well as the New Mexican pecan growers
13 have tried to make sure that, as well as
14 individuals, have tried to talk this around to
15 make sure that all individuals and all the
16 different farmers regardless of size and so on
17 looked at it and so they all know that they're
18 talking about this.

19 Q Okay.

20 A And so it's been published in all of
21 the Common Court cases in the south. And I feel
22 that the American pecan grower did a pretty good

1 job of trying to make sure that everybody was --
2 they got the information out there and they tried
3 to make sure people were given good knowledge of
4 this and explained -- as well as explaining all
5 the different details of the regs and so on.

6 There were some meetings back in,
7 well, September, ordinary meetings that came
8 through, and people talked about it. And so I
9 feel like as an organization's president
10 organization, I felt like the New Mexico area was
11 pretty well mitigated with that information.

12 Q But are you aware of any concerns that
13 exist within your growing population? Are there
14 concerns that are specific to this area?

15 A Well, yeah. I mean, one of the major
16 issues, and I think this is just a generality
17 type thing, is that a lot of people just don't
18 want the government involved in their business
19 anymore. And that's something I think inherent
20 to a lot of people, particularly farmers because
21 they're a very independent bunch.

22 By the same token, I think you have,

1 you know, other people have referenced where the
2 industry has started coming together. And as
3 individual that once signed up on this industry
4 along with others, and one of the things that
5 always bothered me was the disdain that's shown
6 in this industry and we've always had for each
7 other.

8 I mean, we're connected at the hip.
9 We depend on each other. 75, 80 percent of the
10 pecans that we produce in this country are
11 handled by this processing, this shelling
12 industry. But we would fight with each other.

13 And we were getting nowhere. And
14 you're looking at these other industries, the nut
15 industries, and these guys were planting more
16 acres and, you know, making lots of money. And
17 we would have these highs and lows. We have a
18 lot of inner problems. We're not the same as
19 these industries because we are a diversified
20 group, across the entire United States.

21 But that's also something, to the
22 credit of the American pecan grower, that they

1 spend only a time and the difference today versus
2 what they're doing today with the referendum that
3 they're looking at and what was going, was
4 proposed in front of the industry over the last
5 two, three times, whatever it was and they tried
6 to do it.

7 It's, first of all, I think the
8 writing's on the wall. And I think it's a lot of
9 growers that really realize if we don't do
10 something we're never going to gain. And I think
11 that's a general consensus with a lot of our
12 industry. And I believe I speak for the industry
13 as a whole, particularly New Mexico.

14 There might be a few people, but I
15 think, generally speaking, most of the people in
16 our industry feel that way. The other thing is
17 is that I think that you're seeing some of the
18 old, I don't know any -- how's it's explained to
19 you, but the hatreds and jealousies, whatever it
20 is that the growers and shellers, well they
21 didn't get along.

22 This one guy, you know, chews some

1 other guy out or something, you know, whatever --
2 bad business deals over the years. But I think
3 they all realized that we've got to work
4 together. And I think that you've kind of got to
5 change the bar. You've got new, younger people
6 coming in, and we're all realizing, you know,
7 what we've got at stake here.

8 And, again, I think that the American
9 pecan grower did, bought, put a lot of time in to
10 make sure that they address all the regions that
11 we have, and how we're different than in the
12 naval region in simple taxes in Louisiana and
13 Oklahoma and how that's different from the
14 southeastern region.

15 And so I feel like we, they've done --
16 they put the time in, they've done a good job of
17 putting this thing together and addressing all
18 the different issues that we need to be
19 addressing so that this marketing work will
20 represent the entire industry and will be fair to
21 everybody as well.

22 MS. SCHMAEDICK: Thank you. And on

1 that note, you mentioned the program members
2 represent the industry. So I want to just ask
3 their opinion on the sections of the proposal --
4 again, I'm referring to Exhibit No. 1 -- that
5 speak to the proposed council, the structure,
6 representation of shellers and handlers as well
7 as things such as term limits.

8 Q So you believe that -- well, first of
9 all, do you feel like you have a good
10 understanding of how it's supposed to work?

11 A Yeah, I think I have a very good
12 understanding, but I know I've been a little bit
13 more heavily involved. And I think each
14 individual probably needs to educate themselves a
15 little bit more. But I think that the way it's
16 been set up it's fair. I think it's a fair
17 representation of some advisors or with shellers
18 or loaders.

19 But it has enough of the shelling
20 interest involved and they will have and should
21 have a say in it. I mean, it's -- one of the
22 things I learned a long time ago was I was in

1 China and went to Europe too, trying to sell and
2 promoting pecans.

3 And you get these customers in front
4 of you, and they're ready to buy. And you give
5 them a list. Well, go call these people. They
6 don't want the list. They want you to tell them
7 the price and when you can get it there and
8 everything else. And so there's a disconnect
9 there.

10 In order to do that the growers had to
11 bring the shelling industry in, and we all had to
12 do this together as a concerted effort. And I
13 think that that's basically what we're doing with
14 this.

15 Q My last question for you is do you
16 propose to structure along with the elements and
17 term limits -- do you think that that structure
18 would provide for enough of an opportunity for
19 diversity -- a continuance of knowledge but also
20 the opportunity for many of your people to get
21 involved? Do you think it's a good structure in
22 those terms?

1 A Yes. You know, I understand and I
2 certainly want the Board to understand we won't
3 have continuity, like keeping in the Board in
4 place. And sometimes the Board can become
5 painted or narrow-minded or just, you know,
6 because I think it's good to have fresh blood,
7 you know now, to get people in it.

8 The other thing is is to get the right
9 of people from the industry to come in and really
10 understand what the Board deals with and the
11 decisions they're making. And I think that's,
12 for instance, the Western Pecan Growers
13 Association. We have, it's a very sizable board,
14 but we have a lot of different people that come
15 in and out anymore -- people can sit on that
16 board for years.

17 So it's been a benefit to our industry
18 because it's helped educate a lot of the growers
19 here because of the different issues that we deal
20 with as growers -- more than just dealing with
21 what we hear from the farmer producing pecans.

22 So I feel like it's a better deal.

1 And one of the other major things that has been
2 written in to this that has kind of been a --
3 made a lot of the growers even happier, that some
4 people worried that they were going to get
5 shackled to something that maybe works and, you
6 know, won't work.

7 Well, you have a five-year sunset
8 clause in this. And it has to be revoted on
9 every five years. So if it's not working, I
10 guarantee you that they're not going to vote.
11 And if it's working they're going to keep it in.

12 So that also -- you know, that, in
13 itself, is going to cause the authority of the
14 Board to have to make sure they're doing their
15 job and doing it properly. And once you -- how
16 they spend money and where they allocate it and
17 what they're doing. So I think that has some
18 good quality.

19 Q And by sunset clause do you -- are you
20 referring to the continuous work around that, the
21 vote to --

22 A Right. It has to be voted back in

1 every five years.

2 MS. SCHMAEDICK: Okay. Thank you.
3 Thank you for your answers. And that's all my
4 questions.

5 JUDGE GUTHRIDGE: I'd like to follow
6 up on one of her questions -- when she was asking
7 you about publication of the proposal. And, for
8 instance, when you were dealing with your -- with
9 grower customers for your custom harvesting
10 business, would you talk with them about it?

11 MR. ARNOLD: Well, in the custom end,
12 my brother, I mean, he runs that. But the -- I
13 buy pecans and I buy from a lot of different
14 growers. And I would have a lot of growers ask
15 me about it because they knew I was involved in
16 it. And I was glad to take time to talk to all
17 these people.

18 And there was also other people that
19 would come in and they would gripe about the
20 price. And, you know, that was -- one of the
21 things that we've seen the last several years is
22 China.

1 China's been a big revelation for the
2 pecan industry because, prior to that, you know,
3 the other nut industries, you know, walnut
4 industry's probably sent what they were growing
5 domestically as being exported. But the comment
6 is this is maybe the most in any given year when
7 we had a big profit line of maybe 20 percent,
8 more like 15 or less.

9 So we never really had a domestic
10 market. And pecans started dealing with North
11 America. So they know how a lot of other
12 countries around the world didn't know anything
13 about pecans if they're not out of North America.
14 In Mexico didn't know a lot about them and the
15 southern part of the United States.

16 And I'm embarrassed to say that
17 there's not a lot of people in the northern tier
18 of the United States that certainly know a lot
19 about pecans either. And that's not their fault.
20 That's ours, as an industry for not telling them
21 that story.

22 So, you know, I think this is going to

1 come a long ways into educating people and, you
2 know, I just feel like this is long overdue for
3 our industry. And I think that, you know, but to
4 answer your question, we try to make sure that we
5 -- I try to myself -- matter of fact, I've been
6 accused of talking too much. You can ask any of
7 the growers out there. I'm sure they'll agree
8 about it -- as evidenced by me rambling on right
9 now.

10 But I try to make sure that the
11 people, the growers, Dr. Lucero -- he's one of
12 ones that I first met -- and Tom Chavez and
13 several other people and some of the other larger
14 growers I've talked with the last year trying to
15 explain to them where we were going with this.

16 Because there's a lot of people that
17 were very skeptical about it from the get-go and
18 had a lot of concerns.

19 JUDGE GUTHRIDGE: Any other USDA
20 questions?

21 MR. HINMAN: Yes, Don Hinman, of the
22 USDA. Actually, it's just a single question.

1 CROSS-EXAMINATION

2 BY MR. HINMAN:

3 Q You stated in your testimony that you
4 were aware of any accepted inclusions for Dr.
5 Palmer's study and from your own perspective that
6 the potential for the -- the benefits would
7 greatly outweigh the costs.

8 And you bring more perspective as
9 grower. You employ my sheller, correct? I just
10 want to ask the different perspectives of the
11 industry from grower, sheller, improved native
12 across the three regions and sold to market which
13 is all those aspects of the industry that that
14 particularly applies that the benefits strongly
15 outweigh the costs.

16 A Are you asking is it going to asking
17 is it going to affect all that, different parts
18 of the industry?

19 Q Right, because it was stated in terms
20 of you saying, as it was stated, you had said,
21 the findings there, there was one that said
22 across the different aspects of the industry, do

1 you think that the that the, certainly, the cost
2 for both licensed growers or nut shellers
3 domestic and native and for legitimate across the
4 three regions?

5 A Like I was mentioning earlier, when
6 China came in the equation, for us to start
7 exporting, what happened was we saw a huge
8 increase in demand and everybody in this industry
9 benefitted. The grower got a higher price. The
10 processor got more money. The percentage of what
11 they were processing and selling because their
12 percentages were higher because the costs were
13 higher in the market.

14 So everybody across the board in this
15 industry benefitted from it. And that's exactly
16 what we want to do with this, is to put pecans
17 out in front of people. I think we have great a
18 product. You heard the testimony about the
19 health benefits.

20 And I've been repeatedly asked by
21 different people when I tell them I'm in the
22 pecan business, well, yeah, I like nuts. How

1 come we never hear anything about them? And, you
2 know, several years ago I started figuring it
3 out. You know, if we don't start telling our
4 story nobody's going to do it for us. So that's
5 what this has been all about.

6 MR. HINMAN: Thank you. Nothing
7 further for this witness.

8 JUDGE GUTHRIDGE: Any other questions
9 from USDA?

10 MS. VARELA: Jennie Varela from the
11 USDA. I just have a few questions for you.
12 Thank you very much for giving us such good
13 background on what it's like to be a customer
14 leader. That's definitely something that was new
15 to us, and we got to know the industry. And I
16 appreciate you talking about how it applies to
17 you specifically.

18 CROSS-EXAMINATION

19 BY MS. VARELA:

20 Q Would you say that this definition is
21 just as accurate for most of the customer
22 leaders in the industry, that it's across the

1 board, nobody takes high risks with those?

2 A In this area what we or the way we run
3 our business is very common in putting risk for
4 most of the other customer leaders.

5 Q I see, thank you.

6 A I mean, I don't think there's -- I
7 can't speak exactly for everybody in the business
8 but from what I know almost all the customer
9 leaders I really think it's the same.

10 Q Okay. And in describing some of your
11 activities, you referred to number ones and twos,
12 is that a reference to U.S. Standards?

13 A That's more about an industry
14 standard. Like I said, the industry typically
15 comes in and a western pecan or an improved
16 writing in western United States. And most of
17 your companies will come in and they would, if
18 they will, if they're going to buy an unknown
19 grade pecan and you're paying so much as point
20 for them, and usually they're looking at a
21 minimum as setting a standard for what that grade
22 pecan constitutes.

1 So, if I contract within your house or
2 your grower and, you know, when I buy a guy's
3 crop I buy the whole thing. And so that's why we
4 set a standard, you know, what is number one
5 under this pricing agreement will be at a 55
6 percent or better and there might be a size
7 limitation as well that's put in there as well.

8 But then once it falls below that 55
9 percent then we would negotiate out a price.
10 We'll increase that pricing structure that will
11 become basically his price now for those pecans.

12 Q Thank you. That's really helpful.
13 And then I had just one other question following
14 up on your description of some of the small
15 shellers who maybe aren't commercial shellers,
16 who are just doing a little bit. How do they
17 manage to juggle a product if they don't have
18 their own facilities?

19 I mean, are some just doing it a
20 different way, are they to custom shellers? And
21 if they are going to a custom sheller what are
22 some of those options?

1 A Well I try to custom shell in our --
2 we have a buying station there for our company.
3 And we would actually custom shell the pecans for
4 the individual, and they would get back their own
5 pecans. And we had to close it down because we
6 couldn't make it work. We weren't charging
7 enough money to do it.

8 I can tell you first-hand it is
9 extremely expensive because it's very, very labor
10 intensive. One of the large commercial shellers
11 used electronic eyes and stenciled-on equipment
12 to compete and get it done efficiently. And
13 smaller shellers just can't afford that kind of
14 input. You know, that amount of money outlaid
15 for that type of equipment.

16 So a lot of it's done by hand, but
17 it's usually a smaller operation and they're
18 doing, like, again, I know there's a few people
19 here that's invested sharply. And there's some
20 other shellers that are probably considered
21 really more like a small sheller. But there's
22 very few people that are going to handle less

1 than a million pounds a year, even for this area
2 here.

3 If they're below that they're really
4 not -- they're doing it for themselves, they're
5 doing it for their friends or they're doing a
6 custom deal, like I said, for other people doing
7 their own pecans. But it's not really what you
8 would call commercial.

9 MS. VARELA: Thank you so much.
10 That's all I have.

11 JUDGE GUTHRIDGE: Mr. Hill?

12 CROSS-EXAMINATION

13 BY MR. HILL:

14 Q Well, Ms. Varela kind of stole my
15 thunder with that last question anyway. At the
16 bottom of Page 3 of your testimony you wrote, I
17 think my grower and sheller interests would also
18 benefit from future grade size following
19 packaging and shipping protocols, which could
20 give us a couple months of shelf space in the
21 United States consumer attention. I do want to
22 point to you to one thing. And you've read the

1 notice in the Federal Register for the proposal?

2 A Yes. I couldn't quote it all back to
3 you, but --

4 Q I can give you a copy if you need it.

5 A I've got one here.

6 MR. HILL: I just wanted to know one
7 thing. The reports, books and records, reports
8 pending, inventory requests for pecans handled
9 across the span you seem to handle, could you
10 tell me how that accountability is shown in this?

11 Q After being -- inventory reports with
12 weights have been a big issue with us and
13 accurate inventory reporting would be huge for
14 this industry. It has been suggested that there
15 have been years, many years past, there's been
16 individual companies and so on that have also
17 referred to their inventories and balance sheet,
18 whatever, for various reasons.

19 One of the great things I think could
20 come out of this, actually, with the government
21 involved, would -- well, I would think they would
22 not want to try and falsely report anything. So

1 you would get, hopefully get, more accurate
2 reports so we know what the size of the crop is
3 going to be, how and what the inventory positions
4 are out there.

5 They're still going to have to protect
6 the anonymity of each individual and company,
7 what their inventory position is. You know,
8 that's very sensitive information as far as the
9 industry goes. But as far as the dual hold, to
10 know how many pounds of in-shell are out there
11 being held, that they've not hit the market yet
12 by the handlers or whatever, how many pounds of
13 meats are out there that have not been consumed
14 yet, I think that is extremely important
15 information to this industry.

16 Q And you see that as helping you in
17 terms of marketing the product?

18 A Absolutely. I mean, if you figure
19 out, I made a reference earlier, if he doesn't
20 know how much actual inventory is out there then
21 he doesn't have a good handle on making a profit.

22 You could end up with guys that pay

1 way too much money at the beginning of the crop
2 year. and then once they figure it out then the
3 price slides. And you have growers that are
4 caught at the back end because they can't get
5 their profit. And they're just stuck in a bad
6 position because of where they -- you know,
7 weren't able to get out in a timely basis when
8 the market turned.

9 Whereas, I'm not going to say this is
10 going to correct it, but if you have better
11 information going in then the price will already
12 be a little downwards and you'll probably get a
13 better average across, throughout the entire
14 season.

15 MR. HILL: Thank you very much, Mr.
16 Arnold. I have no further questions.

17 JUDGE GUTHRIDGE: Anyone else from
18 USDA? Any follow-up?

19 MR. DAVIS: We do, Your Honor. Let me
20 touch on a couple topics that were raised.

21 REDIRECT EXAMINATION

22 BY MR. DAVIS:

1 Q Ms. Schmaedick mentioned the, your
2 lease of property. And I'd like to refer you to
3 Exhibit 1, the proposed FMO and the definition of
4 grower. And when you look at that first
5 sentence, and actually I've got to follow up with
6 you because I don't know the nature of your
7 lease.

8 But let's assume you're leasing 200
9 acres, and then you're going to sell that
10 product. But under the proposed definition of
11 grower is synonymous with the producer and means
12 any person engaged within the production area in
13 a proprietary capacity in the production of
14 pecans if such person, A, owns an orchard and
15 harvests his pecans for sale, even if the
16 customer harvest is used -- even if a custom
17 harvester is used or, B, is a lessee of a pecan
18 orchard and has the right to sell harvest even if
19 the lessee must remit a percentage of the profit
20 or rent to a lessor.

21 So with that definition in mind, as to
22 those 200 acres, would you be a grower by this

1 definition?

2 A We would, in fact, be a grower.

3 Q Thank you. Next, I think for the
4 benefit of the record and our audience, I would
5 like to refer you to the last page of Exhibit 29,
6 the letter that you have written on behalf of the
7 New Mexico Pecan Growers Association and have
8 forwarded to the Secretary of Agriculture. Do
9 you have that in front of you?

10 A I do not, sir.

11 Q Okay, let me -- look at this. I'll go
12 from mine, and we'll get that right up on the
13 overhead here. Would you mind reading the body
14 of the -- the salutation and the body of the
15 letter into the record, please?

16 A Certainly. Dear Secretary Vilsack,
17 the New Mexico Pecan Growers Association is
18 writing you in support of federal marketing order
19 of pecans currently being promulgated by the
20 American pecan grower.

21 Our industry has, in a deep space,
22 issues of price and supply instilled into the

1 market. This situation inhibits our efforts to
2 provide a consistent quality supply of pecans to
3 New Mexican consumers at a price that supports a
4 profitable return to producers and processors.

5 We believe that a federal marketing
6 order will contribute to a more stable market
7 environment that is favorable to growers, buyers,
8 shellers and consumers. The Board of Directors
9 of the New Mexico Pecan Growers Association goes
10 on record in favor of the order and greatly
11 appreciates your support. Respectfully
12 submitted, Phillip Arnold, President, New Mexico
13 Pecan Growers.

14 MR. DAVIS: I don't think I can
15 anything to that, Mr. Phillips. Thank you so
16 much for your testimony. I have no further
17 questions.

18 JUDGE GUTHRIDGE: Follow-up?

19 MR. HILL: No, Your Honor.

20 JUDGE GUTHRIDGE: Are there any
21 questions from the audience? Very well, Mr.
22 Arnold, you're excused.

1 MR. DAVIS: Well, we're about on
2 schedule. Those are the last of the witnesses
3 that we had to offer today.

4 JUDGE GUTHRIDGE: I note that. And I
5 earlier had a report -- is Sammy Sing here still?
6 Sammy Sing? Ms. Ray, do you have anyone else
7 who's signed up? Is any, does anyone in the
8 audience want to present any evidence today about
9 this?

10 So I guess that pretty much concludes.
11 Ms. Gonzalez, all the exhibits come in? Do you
12 have any question about whether -- everything's
13 in? It's straight?

14 MS. GONZALEZ: Yes.

15 JUDGE GUTHRIDGE: Everything's right?
16 The record is straight. Do you have all the
17 exhibits?

18 MS. GONZALEZ: Yes.

19 MR. DAVIS: Great.

20 JUDGE GUTHRIDGE: Okay. Then, in that
21 case, this hearing is recessed until 8 o'clock
22 tomorrow morning.

1 (Whereupon, the above-entitled matter
2 was adjourned at 4:56 p.m.)
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This is to certify that the foregoing transcript

In the matter of: Proposed Marketing Order and
Agreement for Pecans

Before: USDA

Date: 07-20-2015

Place: Las Cruces, New Mexico

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