

## 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 27, 2015

The hearing came to order at 8:00 a.m. in the Magnolia Room at the Hilton Garden Inn, located at 201 Boo Drive, Tifton, Georgia, Clay G. Guthridge, Administrative Law Judge, presiding.

## BEFORE:

CLAY G. GUTHRIDGE  
Chief Administrative Law Judge  
Federal Maritime Commission

**APPEARANCES:**

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

2 8:00 a.m.

3 JUDGE GUTHRIDGE: Good morning. My  
4 name is Clay Guthridge. I'm the Chief  
5 Administrative Law Judge at the Federal Maritime  
6 Commission. I've been detailed to the Department  
7 of Agriculture to preside over this public rule  
8 making hearing.

9 But before we get any farther, first  
10 let me ask you to do this, if you'll take your  
11 cell phones, other such devices that make noise,  
12 and turn them off, or at least put them on silent  
13 so we're not disturbed by any calls coming in.

14 Could I have appearances for the USDA,  
15 please?

16 MR. HILL: My name is Brian Hill with  
17 the Office of the General Counsel.

18 MS. CHILUKURI: Rupa Chilukuri, also  
19 with the Office of the General Counsel.

20 JUDGE GUTHRIDGE: And appearances for  
21 the Proponent Group, please?

22 MR. DAVIS: Yes, Your Honor. Dwight

1 Davis for the Proponent Group.

2 MR. QUIR S: Paul Quirós for the  
3 Proponent Group, and I'll announce Regina Myers  
4 for the Proponent Group as well.

5 JUDGE GUTHRIDGE: Thank you. We're  
6 here today on a proposal to promulgate a  
7 marketing agreement covering a 15-state marketing  
8 agreement for pecans pursuant to the requirement  
9 of the Agricultural Marketing Agreement Act of  
10 1937. This Act is codified at 7 United States  
11 Code, Section 601 to 674, and the proposal is  
12 Docket Number 15-0139AO-FB.

13 The proposal was published in the  
14 Federal Register on July 2, 2015 at 80 Federal  
15 Register, pages 38021 through 28032. The  
16 proposal was submitted by the American Pecan  
17 Board, the Proponent Group represented by Mr.  
18 Quirós and Mr. Davis. The production -- proposed  
19 production area extends from the Carolinas on the  
20 East Coast down to Florida and then across the  
21 United States all the way to California.

22 We've had hearings last week on Monday

1 and Tuesday, the 20th and 21st, in Las Cruces,  
2 New Mexico and then also on Wednesday morning in  
3 Las Cruces and then in Dallas on Thursday and  
4 Friday. Then it's carrying over here this week,  
5 Monday, Tuesday, Wednesday, with a possible carry  
6 over till Thursday.

7 It's my function and responsibility to  
8 conduct the hearing and to ensure that all  
9 persons who want to present relevant evidence or  
10 otherwise participate in the public hearing have  
11 the opportunity to do so. And that information  
12 that is gathered in the hearing will be presented  
13 to Secretary of Agriculture, who'll make the  
14 ultimate decision on whether to go forward with  
15 it.

16 Any interested person may testify, and  
17 the testimony may be admitted as long as it's not  
18 immaterial, irrelevant or repetitious. You also  
19 may testify by submitting a written statement  
20 under oath and that should -- that statement, if  
21 it's in writing should identify the person making  
22 the statement, including the name, address and

1 other contact information and occupation.

2 That should be submitted -- let's see,  
3 Ms. Wray is here. Is that correct? Yes. The  
4 young lady back there with her hand in the air,  
5 if you have something you want to submit, see her  
6 about it.

7 Ms. Wray, are you also going to be  
8 handling sign ups?

9 MS. WRAY: Yes.

10 JUDGE GUTHRIDGE: And if you want to  
11 testify, contact Ms. Wray and let her know that.

12 Any interested person may also ask  
13 questions of a witness who presents testimony.  
14 So at the conclusion of each witness's testimony,  
15 I'll ask if anyone in the audience has any  
16 questions, and you'll get an opportunity to do so  
17 at that time.

18 Ms. Brenda Thompson, Ms. Thompson is  
19 sitting to my right over here. She's the court  
20 reporter in charge of taking down everything and  
21 making sure it's accurate. If you'd just  
22 leave -- it would be very helpful to her if you

1 would speak into a microphone and clearly  
2 enunciate properly. And if you're testifying, I  
3 might -- at the conclusion of your testimony, I  
4 would ask you to consult with her and see if she  
5 has any problems with any spellings of names or  
6 anything else.

7           So the first thing I want to  
8 address -- and what I -- rather the  
9 representatives of the Department of Agriculture  
10 seated to my right over here, are not permitted  
11 to talk with anyone about any substantive matters  
12 in a proposal. Procedural matters they can talk  
13 about, so -- but substantive matters they are not  
14 permitted by the rules to talk with you. So  
15 please don't approach them, saying, Hey, don't  
16 you think it be a good idea to change the fiscal  
17 year averages. They'll get a very frightened  
18 look on their faces.

19           The first thing I want to address is  
20 that on Friday there was an exhibit that was --  
21 Exhibit 62 was submitted by the Proponent Group,  
22 and the Department of Agriculture objected. I



1       sustained the objection on hearsay grounds. It  
2       was a letter that had been written but was not  
3       under oath. And I told counsel for the Proponent  
4       Group that I would look at that over the weekend  
5       though. And I've looked at the rules and I'm  
6       going to hold to that position. And as I said,  
7       that -- there's a way for you to appeal to the  
8       Secretary, and he can decide the end result.

9               MR. DAVIS: Your Honor, you also had  
10       suggested that we could get an affidavit from the  
11       author of that letter authenticating it, and  
12       we're going to see if we -- he's from Oklahoma,  
13       was unable to make it to the Dallas hearing  
14       because of an emergency on his farm. But we'll  
15       see if we can work something out.

16               JUDGE GUTHRIDGE: That'd be great.

17               Okay. So, Mr. Quirós and Mr. Davis,  
18       you may proceed.

19               MR. DAVIS: Yes. We'd like to call  
20       our first witness in this portion of the hearing,  
21       Mr. Larry Willson.

22               JUDGE GUTHRIDGE: Mr. Willson, if

1 you'd come sit up here to my left.

2 (Pause.)

3 JUDGE GUTHRIDGE: And while they're  
4 doing that, for USDA personnel, I know you'd been  
5 very good last week about announcing your names  
6 when you -- before you speak. Ms. Thompson  
7 pointed out that from where she is, she can't  
8 really who you are because you're in a line. So  
9 I'd just ask you to make sure you continue that  
10 this week so it'll help her out.

11 MR. HILL: Not a problem. And that's  
12 Brian Hill.

13 (General laughter.)

14 JUDGE GUTHRIDGE: Very good.

15 Mr. Wilson, could you raise your hand.

16 Whereupon,

17 LAWRENCE WILSON

18 having been first duly sworn, was called as a  
19 witness herein and was examined and testified as  
20 follows:

21 JUDGE GUTHRIDGE: Okay. Proceed, Mr.

22 Quirós.

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DIRECT EXAMINATION

BY MR. QUIR S:

Q State your name.

A My name is Lawrence Beatty Willson; I go as Larry. And for the court reporter's benefit, my last name is spelled with two Ls.

Q Would you spell your entire name for her?

A Okay. L-A-W-R-E-N-C-E B-E-A-T-T-Y and W-I-L-L-S-O-N.

Q And, Mr. Willson, where do you live?

A Albany, Georgia.

Q Tell us a little bit about your educational background.

A I graduated from high school in '68, went to Trinity College in Hartford, Connecticut. I graduated with a BA in economics in '72. Went back to work briefly on the farm, went to Georgia State University and got an MBA in marketing in 1976.

Q Thank you, Mr. Willson. Would you

1 tell us a little bit about your family's history  
2 in the pecan business and your history in the  
3 pecan business.

4 A Yes, sir. My grandfather Willson  
5 bought the farm in Albany, Georgia in 1926 when  
6 the pecan trees were five years old. He and his  
7 family lived in Atlanta, but he grew up  
8 alternately in Atlanta and Albany on the farm  
9 during the Depression. His father had died in  
10 1928 and my grandmother, his mother, continued to  
11 live in Atlanta, but also had kept the farm going  
12 and they lived in one of the farmhouses on the  
13 farm.

14 After he went to Emory University and  
15 Harvard, he swore to his mother that he would  
16 never come back to the farm. He had had enough  
17 of that during the Depression. He got an MBA at  
18 Harvard, then served in the South Pacific in  
19 World War II. When they moved back to Atlanta,  
20 my father was working for an accounting firm. In  
21 1947 he married my mother. And he worked four  
22 years with -- I said accounting; it was a

1 consulting firm.

2 In 1950 my grandmother had contracted  
3 to sell the farm in Albany -- and it's about 1800  
4 acres -- for \$90,000, which you all do the math.  
5 It was about 50 bucks an acre back then. The  
6 financing fell through so my father I think had  
7 had enough after four years of sitting behind a  
8 desk and told my grandmother not to sell the  
9 farm, he would move back to Albany and run it for  
10 her.

11 And so early in '51 he moved to Albany  
12 with his wife and two young boys. I was one of  
13 those, I was three months old, my brother was 20  
14 months old, and later they added another son and  
15 a daughter. And he farmed the farm for his  
16 mother for -- all the way until her death in the  
17 '70s.

18 Back in the '30s and '40s when pecan  
19 trees had been planted in Albany, they really  
20 weren't economically viable, so they did a lot of  
21 other things. They sharecropped, they -- you  
22 know, I'm sure that the sharecroppers wondered

1 what these trees were doing in the way of their  
2 mules trying to plow.

3 But anyway, the pecans were not -- as  
4 I said, not a great source of income that they  
5 now can be, and people found other ways to  
6 enhance their income. My father ran cattle and  
7 had cattle on the farm right up until when I came  
8 back in '78. This is the farming operation today  
9 we call Willson Farming Company.

10 While he and my mother were still in  
11 Atlanta, she was a Wellesley Alumni, and the  
12 Atlanta Wellesley Alumni Association knew that  
13 her husband had a pecan farm in south Georgia,  
14 and they were interested in purchasing pecans to  
15 sell as a fundraiser.

16 And my parents thinking that if  
17 Wellesley wanted pecans, maybe others would also.  
18 So in 1948 while still in Atlanta, they started a  
19 small mail order business selling pecans only.  
20 And this is a business that we now call Sunnyland  
21 Farms.

22 That part of the business, after my

1 father and mother moved to Albany, grew very  
2 slowly. My father used to say you could grow a  
3 mail order business if you have one or two  
4 things, either a lot of time or a lot of money.  
5 And they didn't have lots of money. So I can  
6 remember in the '50s and '60s stuffing catalogues  
7 to mail out in our family room at home.

8           While I was at college, the mail order  
9 business in 1968-69 had gotten big enough where  
10 it was -- it wasn't making a real return, but it  
11 was taking up a lot of time. It was at that  
12 point that they decided that they would either  
13 get all the way in or get out. And they made the  
14 decision to go ahead and get in fully in the  
15 business. They hired professional help, they  
16 expanded mailings, and started growing the  
17 business more rapidly.

18           It was about this same time that he,  
19 my father, got into the shelling business. As  
20 the mail order business grew, it became  
21 increasingly hard to find good enough quality  
22 pecan meats. There was one sheller in central

1 Georgia, Ross Smith Pecans, that turned out the  
2 most beautiful halves. And my father every year  
3 would try to buy as much of Dr. Ross's production  
4 that he could.

5 But in order to maintain quality for  
6 our catalogue, he decided to get into the  
7 shelling business. And one summer, I guess I was  
8 home from college and I was working on the farm,  
9 I can remember getting in the open van, big van  
10 truck, and going down to Quincy, Florida with two  
11 of the guy that worked for my father, where we --  
12 where he had bought a small shelling operation  
13 from a lady that wanted to get out of the  
14 business. It had a few champion crackers and  
15 shellers and picking tables and a few other  
16 items.

17 From that point the business grew and  
18 became viable and successful for my parents. We  
19 now have our own candy kitchen and toasting room  
20 in addition to the shelling plant.

21 Just a brief description. Sunnyland  
22 Farms is a mail order business selling pecans and



1 other nuts, candies, cakes, toasted nuts and  
2 dried fruits and other specialty items. We also  
3 sell pecan kernels to the wholesale market. We  
4 send out thousands of catalogues and flyers a  
5 year, as well as maintaining a website,  
6 sunnylandfarms.com. We're also involved in  
7 various aspects of social media.

8 My personal involvement in Sunnyland  
9 Farms/Willson Farming Company came in 1978 when I  
10 moved back at age 27. Most of my experience has  
11 been on the farming side of the business. When I  
12 came back it was late September, early fall, and  
13 that's when pecans are harvested. So the first  
14 thing my father did was send me down to the  
15 cleaning plant, which is where the nuts come in  
16 from the field to separate out sticks, rocks,  
17 leaves and other trash from the pecans.

18 In the early years I did about  
19 everything on the farm including running sweepers  
20 and harvesters. We hired a company in 1979 to  
21 put out our first 250 acres of irrigation. After  
22 that we figured we could do it ourselves, so we

1 bought a trencher and I supervised the rest of  
2 our irrigation installations over the next seven  
3 years.

4 Now all of our orchards, except a  
5 small orchard right across from our main plant,  
6 is irrigated in either silent set, which is  
7 sprinklers or drip or microjet. And in the late  
8 '80s and early '90s we started a program of  
9 cutting out weaker varieties and replanting  
10 mostly with the varieties, Desirable and Stuart,  
11 and our orchard now consists primarily of three  
12 varieties, Desirable, Stuart and Schley.

13 While both my parents were still  
14 alive, I was -- I also had the responsibility of  
15 running the shelling plant in addition to  
16 procuring all the raw materials for that plant.  
17 My father died in 2004 and my mother retired last  
18 year at age 90. She's still alive and not  
19 active.

20 Although I'm officially, according to  
21 corporate books, VP and CFO of Sunnyland Farms,  
22 for all intents and purposes I'm now President

1 and CEO of both companies. Willson Farming  
2 Company consists of approximately 1775-80 acres  
3 of which 320 are planted in improved pecans. The  
4 original orchard had about 980 acres of trees  
5 planted on a 46-2/3 space, which gives you 20  
6 trees to an acre, so it was around 19,000 trees  
7 originally. We have added the additional acreage  
8 since I moved back, planted mostly in the  
9 Desirable variety.

10 Willson Farming Company would be,  
11 under the FSA guidelines, a large grower. And  
12 Sunnyland Farms would be considered a small  
13 handler.

14 Q Mr. Willson, I may have misunderstood.  
15 I thought you said that you had 320 planted acres  
16 in pecans. Is that 1300?

17 A I'm sorry, 1320, if I said 320.

18 Q And they're all in improved varieties?

19 A They are.

20 Q Okay. Mr. Willson, you're clearly a  
21 grower and a sheller, but under the proposed  
22 Federal Marketing Order for pecans, if you

1 thought about how you might vote, would you vote  
2 as a grower or as a sheller?

3 A As a grower, sir.

4 Q Thank you. Tell us about your  
5 participation in various trade organizations up  
6 until this time.

7 A Okay. I have been a member of the  
8 Georgia Pecan Grower Association and the South --  
9 and still am a member, and the Southeastern Pecan  
10 Growers Association since moving back to Albany  
11 in '78. I have served on both Boards and am a  
12 past officer and past president of both Boards.

13 Sunnyland Farms was not a member of  
14 the National Pecan Shellers Association till  
15 about 25 years ago, but since becoming a member,  
16 I have served on that Board several times and I'm  
17 currently on that Board and have held all the  
18 officer positions, including president in that  
19 association as well. And I'm a member of the  
20 American Pecan Board as well.

21 Q Well, let's stay with that. Tell us  
22 a little bit more about your participation in the

1 American Pecan Board and the work that you did to  
2 prepare the proposed Federal Marketing Order for  
3 pecans.

4 A Personally, I have always thought that  
5 the industry, the pecan industry needed to work  
6 together to get great things accomplished. To  
7 that end, I was active in getting the pecan  
8 program, similar to the FMO we're now trying to  
9 establish, of the early '90s implemented, and I  
10 served on its Board until it was voted out.

11 So when this movement to get an FMO  
12 for pecans was started, I was eager to help. I  
13 attended many preparatory meetings and grower and  
14 sheller conferences where the idea was presented.  
15 With positive feedback, it was decided to form  
16 the American Pecan Board to pursue and FMO, and  
17 when asked to serve as an eastern representative,  
18 I accepted.

19 My involvement -- now this is my  
20 recollection, I didn't write all this down and I  
21 relied on some others to help fill in the blanks,  
22 but my involvement began back in 2011 when the

1 idea of an FMO was just that, an idea, and one  
2 that not a lot of people wanted to say out loud.

3 But there was definitely a movement to  
4 get all aspects of the pecan industry working  
5 towards a unified goal of increasing demand in  
6 light of the coming increase in supply. It was  
7 only later when the American Pecan Board was up  
8 and running, that we realized the only effective  
9 way to raise funds was through an FMO.

10 The following is a summary, although  
11 probably incomplete, of various meetings over the  
12 years I attended as either a proponent of or a  
13 member of the American Pecan Board, or its first-  
14 year race in the US Pecan Council. We began by  
15 listening to growers, shellers, and handlers at  
16 whatever meetings we could go to.

17 In February 2012 at a meeting of the  
18 Southeastern Pecan Growers Association was one of  
19 the first meetings where the idea of the  
20 marketing order was suggested. I was part of  
21 that meeting. From that meeting and the  
22 subsequent National Pecan Shellers Association

1 meeting in March there became -- there came a  
2 proposal for an organizational committee.

3 After several conference calls, the  
4 committee was formed near the end of 2012, and  
5 was named the US Pecan Council, which as we noted  
6 earlier, later became the American Pecan Board,  
7 which consisted of three growers, three shellers  
8 and three grower/sheller members, one from each  
9 section of the country, west, central and east.  
10 It also had two at-large members.

11 I was a grower/sheller representative  
12 from the east. I don't recall all the meetings  
13 of this Board, both formal and informal, but know  
14 that we -- except for the mid-winter sheller  
15 meeting in Nashville, Tennessee, I think it was a  
16 year-and-a-half ago, I have attended all the  
17 meetings of Southeastern Georgia and the National  
18 Pecan Shellers, except for that national meeting,  
19 and the only reason I missed that was it  
20 conflicted with the Georgia Pecan Growers  
21 meeting.

22 In addition, I attended the Texas

1 Pecan Growers meeting in 2014. In all these  
2 conferences there was a meeting of those APB  
3 Board members present, and in most cases APB was  
4 part of the program at these meetings. And in a  
5 lot of cases USDA representatives were in  
6 attendance as well.

7 As a result of these meetings, and  
8 with input from USDA, we wrote a first draft of  
9 the Federal Marketing Order. A big meeting of  
10 APB occurred this year, January 13 through 16,  
11 when the entire Board and representatives from  
12 USDA met in Dallas for the purpose of having a  
13 rule summit to iron out the FMO.

14 That, and its subsequent drafts, were  
15 finalized into the FMO that we are discussing  
16 today and is the purpose of these hearings. And  
17 I was a part of all these meetings.

18 Q Thank you, Mr. Willson. You have  
19 received and reviewed Exhibit 1 to these  
20 hearings, have you not?

21 A Yes, sir.

22 Q And I understand you are going to



1 refer to Exhibit 1 in your testimony in just a  
2 few minutes as a member of the Board of the  
3 American Pecan Board to discuss Sections 986.60  
4 through 986.65. Please begin.

5 A 986.60 is the budget. The budget is  
6 the backbone, or road map, for the whole  
7 assessment and marketing research program. The  
8 Council will meet before each upcoming fiscal  
9 year for the purpose of proposing a budget for  
10 that year.

11 It's up to its counsel and its  
12 committees to decide what marketing and/or  
13 research needs to be funded and how much will be  
14 needed for administrative expenses. With that  
15 dollar amount in hand, the Council should be able  
16 to set the assessment within limits provided in  
17 the order based on the estimate of the upcoming  
18 accessible crop.

19 The budget needs to be done before the  
20 fiscal year begins. However, this proposed  
21 schedule will give the Council flexibility to  
22 meet at its convenience, i.e. in the spring or

1 summer. Alternatives, such as having the  
2 Council meet once a month before the beginning of  
3 the fiscal year was considered, but the Council  
4 might get information later than that. So we  
5 opted for more flexibility.

6 Also, because of the nature of the  
7 production area being so large, we felt  
8 flexibility would be important to the Council,  
9 allowing the Council for example to meet in  
10 conjunction with other industry meetings or  
11 conferences since in many cases many Council  
12 members would be in attendance at those meetings  
13 or conferences.

14 Section 986.60 makes it clear that the  
15 Council ultimately has the authority to make the  
16 budget with the approval of the Secretary of  
17 Agriculture.

18 As for other expenses, expenses other  
19 than those for marketing or research, such as  
20 administration, at this time it would be  
21 presumptuous for me to say what they might be  
22 since I don't know if I'll be on the Council and

1 I don't know exactly what might be required in  
2 the way of staffing to carry out the mandates of  
3 the Council. I would hope and expect the Council  
4 to minimize expenses so as to optimize the funds  
5 that can go for marketing, research, promotion,  
6 handling authorities and data gathering.

7 Would you like me to proceed on to the  
8 next section?

9 Q Yes, sir.

10 A 986 --

11 JUDGE GUTHRIDGE: Just give us -- last  
12 week, so it'll be section-by-section, so I think  
13 that'd be -- I think worked pretty well that way.

14 MR. DAVIS: Yes, Your Honor, if that's  
15 the way you'd like to proceed.

16 JUDGE GUTHRIDGE: Yeah. And I want to  
17 go, at this point, if the USDA has any question  
18 about his opening testimony. It might be  
19 appropriate time to ask about that now.

20 So, USDA, do you have any questions  
21 about either the opening -- Mr. Willson's opening  
22 statements or the exhibits, the entire section

1 60?

2 (Pause.)

3 MR. HILL: One moment, Your Honor.

4 (Pause.)

5 MS. SCHMAEDICK: Melissa Schmaedick,  
6 USDA. Is this on?

7 MR. HILL: It's working, yeah.

8 MS. SCHMAEDICK: Okay.

9 CROSS-EXAMINATION

10 BY MS. SCHMAEDICK:

11 Q Good morning, Mr. Willson. Thank you  
12 for your testimony. When you described this  
13 Section 986.60 budget, you -- I think you  
14 mentioned that it was through the calculation of  
15 the budget that you would then I guess arrive at  
16 a recommended assessment rate. Can you further  
17 describe kind of the process or the calculation  
18 that you see being involved in that  
19 determination?

20 A Well, I think the first thing that the  
21 Council needs to do is establish a program and  
22 try to get an idea of how much money they need to

1 raise. Based on data that's gathered about  
2 upcoming crop and maybe last year's pricing, you  
3 know, from that, based on the -- and we'll talk  
4 about this a little bit later, based on the  
5 amounts for each particular type of -- you know,  
6 native versus improved versus seedling, we can  
7 set a range -- set a price within that range that  
8 would arrive at that dollar amount that you're  
9 trying to raise based on basically assumptions  
10 that may or may not be right.

11 Q So if I'm understanding correctly, you  
12 would sort of come up with your ideal amount that  
13 you need in terms of money to cover all of the  
14 expenses related to the activities of the  
15 program?

16 A Yes.

17 Q And then you would also take into  
18 consideration the anticipated production?

19 A Right.

20 Q And then you would sort of do a  
21 calculation where perhaps you would divide the  
22 funds needed by production to arrive at a per

1 pound rate?

2 A That's my understanding of the way it  
3 would work, yes, ma'am.

4 Q Okay. And just to clarify then, the  
5 assessments that are collected under program, is  
6 it fair to say that those assessments actually  
7 fund the activity of the program?

8 A Yes.

9 Q Okay. I'm just trying to clarify it  
10 for the record.

11 A Okay.

12 MS. SCHMAEDICK: No further questions.

13 MS. VARELA: Jen Varela, USDA.

14 BY MS. VARELA:

15 Q Good morning --

16 A Hey.

17 Q -- Mr. Willson. Just to follow up on  
18 what Melissa was saying, and also just to clarify  
19 for the record, Is it your impression that these  
20 assessments, when collected, remain under the  
21 name of the Council to be used for those  
22 purposes, that it's not going to the USDA?

1           A       Yes.

2           Q       Thank you.

3                    JUDGE GUTHRIDGE:  Are there any more  
4  USDA questions?

5                    (No response.)

6                    JUDGE GUTHRIDGE:  Mr. Quirós?

7                                REDIRECT EXAMINATION

8                    BY MR. QUIR S:

9           Q       Mr. Willson, would you like to  
10  continue with your testimony in Section 986.61?

11           A       Okay.  As you can see, 986.61  
12  assessment, Section (a) establishes that the  
13  first handler shall pay the assessment.  That  
14  assessment is calculated to cover the Council's  
15  proposed expenditures much as I guess we just  
16  discussed.

17                                It should be noted that the  
18  establishment of a Federal Marketing Order does  
19  not infringe upon any state programs now in  
20  effect.  For example, Georgia has a check-off  
21  program and could continue this program even if  
22  an FMO is passed.

1           Each handler shall pay that pro rata  
2 share of the amount they handled as the first  
3 handler during the fiscal year compared to the  
4 total quantity handled by all first handlers.  
5 This formula seems fair, predictable, and is  
6 similar to those used in other FMOs.

7           The payment of assessments will be  
8 based on the budget and does not have to be  
9 adjusted even if parts of the expenditures in the  
10 budget are not made for some reason. It could be  
11 cumbersome if assessments were changed based on  
12 actual expenditures and would be a burden for  
13 handlers. So we don't anticipate changing -- but  
14 it could happen -- in the middle of the season.

15           (a) also establishes -- 961 --  
16 986.61(a) also establishes the concept of the  
17 inter-handler transfer, which will be discussed  
18 later in Section 986.62.

19           Your Honor, did you want to stop after  
20 every section?

21           JUDGE GUTHRIDGE: No --

22           THE WITNESS: This is (a). Just



1 the --

2 JUDGE GUTHRIDGE: -- I think --

3 THE WITNESS: -- the larger sections?

4 Okay.

5 JUDGE GUTHRIDGE: Last week it seemed  
6 to work fairly well to take the entire section.

7 THE WITNESS: Okay. 986.61(b)  
8 establishes that there shall be three different  
9 base rates for in-shell pecans. The three  
10 categories are native or seedling, improved, and  
11 substandard.

12 It's generally expected that the  
13 improved rate will be higher than the native or  
14 substandard. This simply reflects the market.  
15 Good quality improved nuts sell for more than  
16 good quality natives or seedlings in most cases.  
17 And substandard is just what it says, it's an  
18 improved or native pecan that has one or more  
19 defects that might cause it to trade at a reduce  
20 price.

21 986.61(c) establishes the range of  
22 assessments that the Council can use for the

1 three classifications, improved, native or  
2 seedling and substandard. These ranges will be  
3 in place for four years and the Council can set  
4 the actual assessment within these ranges based  
5 on the budget.

6 These ranges were arrived at by  
7 working backwards from what was reasonably  
8 believed would be a sufficient amount of funds to  
9 conduct an effective marketing and research  
10 program. It also was our intention to try to  
11 keep the assessment at less than 2 percent of the  
12 average price paid for each category of pecan.  
13 Different ranges were discussed in order to reach  
14 that goal, recognizing different price levels for  
15 different types of nuts, improved, native or  
16 substandard.

17 Different levels of assessment were  
18 considered. The ones that we adopted were  
19 proposed because they were the most likely to be  
20 accepted by handlers and growers, and as noted  
21 above, were less than 2 percent of the average  
22 grower prices paid based on historical data.

1           986.61(d) gives the Council the option  
2 after four years of changing the rate of  
3 assessment for each category of nuts. The  
4 assessment rates shall not exceed 2 percent of  
5 the average of all prices for each of the three  
6 classifications.

7           It should be noted that one of the  
8 stated purposes of this Federal Marketing Order  
9 is to obtain better data about crop size, prices  
10 and disposition. The average pricing used to  
11 change assessment rates could come from that, or  
12 barring good Council data, from USDA figures  
13 which are published at the end of each crop year.

14           We believe that the 2 percent limit  
15 will give comfort to all parts of the industry,  
16 growers, handlers, shellers, that the rate is not  
17 subject to unlimited increases. It was  
18 determined that 2 percent was fair, it was not  
19 too large, but allowed flexibility in the  
20 industry that thought it needed more funded to --  
21 if the industry thought it needed more money to  
22 accomplish its purposes. It also provides

1 financial room for growers and handlers to  
2 continue to pay for state check-off programs.

3 It was estimated that had the FMO been  
4 in place last year at rates currently being  
5 considered, somewhere between 4- and \$6 million  
6 would have been raised, which would have been  
7 around 1 percent based on the prior year's  
8 prices. Therefore 2 percent could potentially  
9 allow the industry to raise 8- to \$10 million  
10 based on last year's numbers.

11 Section 986.61(e) makes it clear that  
12 the Council, with the approval of the Secretary,  
13 can adjust assessments to address changed  
14 circumstances, provided said adjustments are  
15 within parameters set forth in the FMO. For  
16 example if there were a crop failure for whatever  
17 reason, the Council, with the Secretary's  
18 approval, could raise or lower assessment in such  
19 cases of budget shortfalls or other unforeseen  
20 circumstances.

21 Personally, I would hope that the  
22 Council would have sufficient reserves to cover

1 any budget deficits and not have to resort to  
2 raising the rate during the middle of any fiscal  
3 year. As we talked about, that would be  
4 cumbersome.

5 Section 986.61(f) allows the Council  
6 to borrow up to 50 percent of projected  
7 assessment revenue for the year if sufficient  
8 funds are not available the first part of the  
9 fiscal year until such revenue is available from  
10 assessments. The FMO recognizes that in any  
11 given year there may not be funds available  
12 immediately for administration and other  
13 operations, and therefore it does allow for the  
14 borrowing of funds.

15 This recognizes the reality of the  
16 marketplace. Payment of assessments will be  
17 lowered, and in some of the parts of the annual  
18 cycle -- handlers may want to pay in advance  
19 during some parts of the year and if there are  
20 cyclical shortfalls, the Council may need to  
21 borrow funds -- borrow to fund operations until  
22 later assessments come in. And 50 percent we

1 feel would give the Council enough flexibility  
2 while preventing future Councils from borrowing  
3 too much.

4 986.61(g) gives the Council the right  
5 to impose late payment changes and/or interest  
6 rate charges if assessments are not made in a  
7 timely manner as prescribed by the Council. We  
8 hope this would give handlers an incentive to  
9 remit assessments on time. Late charges would be  
10 determined by the Council and set high enough to  
11 encourage timely payment, but not so high as to  
12 be punitive. We anticipate a likely interest  
13 rate could be prime plus 1 or 2 percent.

14 986.61(h) addresses assessments on  
15 handler inventory. This is a key provision to  
16 tracking data and assessment collections. One  
17 goal of the Council is to assess the entire crop  
18 in the fiscal year in which it was harvested. In  
19 practice, some handlers will carry over product  
20 into the new crop or fiscal year. In order to  
21 assess the whole crop each year, this inventory  
22 must be assessed.

1           And we set the assessment date at  
2 August 31. We felt like this was a good bright  
3 line date occurring near the end of the fiscal  
4 year and just before harvesting of a new crop.  
5 It would also mean we get the assessment for a  
6 whole crop in the same fiscal year, with the  
7 exception of growers warehousing inventory, which  
8 we will discuss.

9           Section 986.61(I) deals with grower  
10 inventory and is similar but not identical to the  
11 previous section. Again, it reflects the  
12 Council's desire to assess the entire crop and it  
13 addresses practices in the industry, namely that  
14 some growers may choose to hold inventory under  
15 the next production year.

16           Under the Grower Act, as you know,  
17 handlers are assessed, growers cannot be  
18 assessed, therefore this section provides that  
19 grower inventory held on August 31 will no longer  
20 be eligible for inter-handler exemption. The  
21 first handler that handles such inventory will be  
22 deemed the first handler and will pay the

1 assessment, even if that entity might otherwise  
2 be eligible for inter-handler exemption.

3 How will this work? We anticipate the  
4 handler will have to report which crop year that  
5 he's reporting on. Again, nuts from the prior  
6 year warehoused by a grower will not be eligible  
7 for inter-handler transfer. As in Section  
8 986.61(h), August 31 was chosen because, again,  
9 it's a good bright line date occurring near the  
10 end of the fiscal year and just before the  
11 harvest of the new crop. These transactions will  
12 be properly reflected on forms that will be  
13 drafted by the Council with help of USDA.

14 The last sentence of 986.61(I) gives  
15 flexibility to the Council, in conjunction with  
16 the Secretary, to revise the terms of this  
17 paragraph in case this process is cumbersome in  
18 application.

19 MR. QUIR S: That's all we have at  
20 this point on Section 986.61, Your Honor.

21 JUDGE GUTHRIDGE: Does the USDA have  
22 any questions?



1 (Pause.)

2 MS. VARELA: Jan Varela, USDA.

3 RECROSS-EXAMINATION

4 BY MS. VARELA:

5 Q Can you hear me all right, Mr.

6 Willson?

7 A Yes, ma'am.

8 Q Let me try to move this a little more.

9 Okay. I just want to go through a couple of  
10 points in your testimony. Thank you very much  
11 for trying to describe what's kind of a  
12 complicated section.

13 Going back to paragraph (d) when you  
14 were describing the ranges there, I think I heard  
15 you say you could change the assessment after  
16 four years. But were you describing changing the  
17 range within which the assessment would be set?

18 A My understanding is -- well, yes.

19 Q Okay.

20 A In effect, yes, by --

21 Q Okay. Just wanted to --

22 A -- 2 percent --

1 Q -- make sure I'd written --

2 A -- yes, it could be --

3 Q -- thing down.

4 A -- it could be higher than that two  
5 to three cents for improves.

6 Q Okay. Thank you. And then moving  
7 down to the next paragraph, (e), I just wanted to  
8 hear a little more of your understanding about  
9 when those rates could be changed. I thin you  
10 mentioned that this gave you the authority to do  
11 it in the middle of the term if necessary in an  
12 emergency. But do you believe this section is  
13 also the part of the order that gives you the  
14 authority to set the -- a different rate every  
15 year if you need to?

16 A Well, my understanding is that, yes,  
17 you could change the rate during the season. I  
18 would hope that we would not have to do that,  
19 but --

20 Q Sure. But my question is, is this  
21 also the language that lets you do it before the  
22 season?

1           A       I'm not sure if it's in this section  
2 or another one, but --

3           Q       Okay. That's fine. And then on to my  
4 next question. Oh, I was curious about the  
5 section on advance assessments, advance payment  
6 of assessments. You had mentioned that Georgia  
7 has a grower assessment, and I was just curious  
8 to understand if advance assessments are ever  
9 paid under that program.

10          A       I highly doubt it.

11          Q       Okay.

12          A       Not to my knowledge.

13          Q       Those are usually after the fact.

14          A       Yes, ma'am.

15          Q       Okay. And then moving on to some of  
16 the -- in (h) and (I) we talk about what's been  
17 referred previously as the August 31 rule. Can  
18 you give us a little more information on why that  
19 date was so important and maybe some of the other  
20 options you considered and how the Board settled  
21 on these two particular provisions, why these are  
22 so important to getting your assessments in.

1           A       Well, August 31 really is the end of  
2 a crop year. There -- in some parts of the  
3 country there are varieties that they will be  
4 harvesting in the middle of September. Most of  
5 the production though generally comes in October  
6 and November in the east and the west.

7                    But the August 31 -- I don't remember  
8 all the different dates that we decided -- I  
9 think we looked at September 31 [sic], but  
10 just -- we really decided August 31 really was  
11 the end of one year and the beginning of another  
12 based on harvest, is my understanding.

13                   What was the other part of the  
14 question?

15           Q       I was curious as to if you had  
16 considered any other dates in terms of --

17           A       We did.

18           Q       -- the need for that?

19           A       We did, but, again, we came back to  
20 this one because of the timing of the crop.

21           Q       And as somebody who is both growing  
22 and shelling and selling into the retail market,

1 why is it important for your business to be able  
2 to differentiate between pecans that came from  
3 one year or another?

4 A Well, if you want me to speak  
5 personally about my business, we -- any raw  
6 product that we sell in our catalogue is all new  
7 crop. We do use -- I always hate the term old  
8 crop, but that's what they generally call it --  
9 we will use old -- last year's crop in our baked  
10 goods and roasting. But, you know, a lot of  
11 folks want new crop pecans and that's just the  
12 main reason that we do.

13 Q All right. So it is a part of the  
14 normal course of business that somebody selling  
15 pecans might not want to pay the same price for  
16 something that was older?

17 A Yes. Although oftentimes the reason  
18 a grower might hold it over is the anticipation  
19 that next year's prices may be higher so they  
20 might get a little more for their in-shells.

21 Q And would that maybe happen if you had  
22 a shorter crop than expected that --

1           A       Very well could.

2           Q       Okay.

3           A       Very well could.

4           Q       Okay.  And thank you for those  
5 clarifications.  I do want to back track a little  
6 more.  Sorry to be a little out of order.

7           A       Yes.

8           Q       But one of the things that is very  
9 unique to the order that you all have proposed is  
10 the three tier structure of assessments with the  
11 improved, the native seedlings and the  
12 substandards.  So if you could, we'd like to hear  
13 a little more about how you all settled on those  
14 tiers, why those were important to the Board to  
15 define, and maybe some of the alternatives that  
16 were considered in coming up with these tiers.

17          A       I'm going to answer your last question  
18 first.  I think one of the alternatives was just  
19 to assess everything the same.  But we quickly  
20 realized that that wouldn't fly with the native  
21 growers.  Generally an improved variety is just  
22 that, it's bred, propagated because it has

1 superior characteristics.

2           Generally it's a larger nut, not  
3 always, but it's generally a larger nut that gets  
4 a higher kernel shell out. And bottom line is,  
5 shellers are looking for the amount of meats that  
6 they can get out of one pound of in-shell, and so  
7 obviously if you get 60 percent or 55 to 60,  
8 that's of more value to them than a nut that -- a  
9 smaller nut that they might get 30 to 35 percent.

10           And that -- I mean you have some  
11 natives that -- I was telling somebody, You go to  
12 a Texas pecan grower show and you can see some  
13 natives that are small, you know, they're 500 to  
14 a pound. And those are very hard to shell and --  
15 but the -- so the natives generally do not bring  
16 the price.

17           So on a percentage basis the native  
18 growers feel like they'd be paying a higher  
19 percentage than improved, so we tried to put a  
20 structure in place whereas it leveled that a  
21 little though, but if you read the economic  
22 analysis that the economists did, it appears that

1 even at the rates at 1-1/2 and 2-1/2, that if  
2 that were used in your assumptions, the natives  
3 still would be paying maybe a little higher  
4 percentage.

5 But substandard, again, is a reject  
6 that comes out of cleaning plant operation. And  
7 they vary all over the board. You can have, in a  
8 plant like ours where we're trying to get the  
9 very highest quality out, we blow them very hard  
10 in our cleaning plant, and we might take out a  
11 nut that's 45 to 46 percent. It might bring a  
12 little more than, you know, 30 percent, but still  
13 blowouts are different and they're all over the  
14 board.

15 But generally substandard is that, and  
16 it doesn't need to be assessed at the same high  
17 rate in our opinion. So that was kind of our  
18 thinking. Does that answer your question?

19 Q Yes. Yes, it does. Thank you very  
20 much. But you brought another question to mind.

21 A Uh-oh. Darn.

22 (General laughter.)



1 BY MS. VARELA:

2 Q Sorry. You're an expert, I have to  
3 take --

4 A I know.

5 Q -- advantage of your time here. You  
6 alluded to the idea that what's kind of defined  
7 as substandard might vary from sheller-to-  
8 sheller, or that -- but --

9 A More from grower-to-grower I think.

10 Q Okay.

11 A The sheller knows what he's getting,  
12 so he'll pay appropriately.

13 Q So in that kind of process of  
14 separating, one processor might have a  
15 different -- I think you referred to the force  
16 you were using on the blowouts -- do you envision  
17 that would be difficult, or is it just really  
18 easy for the industry to kind of have a  
19 consistent idea of what those substandard pecans  
20 are, or is that just a very objective measure  
21 that's going to be a little difficult to  
22 implement?

1           A        I would say it's somewhat objective.  
2           It may be difficult, but I think it's something  
3           we're going to have to work through, but --

4           Q        And it might be something that the  
5           Council can provide some guidance on for the  
6           industry.

7           A        And it may be -- yes, it may be  
8           something that the Council would look at down the  
9           road.

10          Q        Okay. That's very helpful

11          A        Yes, ma'am.

12          Q        Thank you. And I think the final item  
13          within this section that I still have a few  
14          questions on is the concept of warehousing.  
15          We've heard a little testimony on this already,  
16          but obviously it was important enough to be  
17          mentioned more than one time in your language.

18                    First, could you help me distinguish  
19          between grower warehousing and handler  
20          warehousing in terms of how might they be  
21          different and how would tracking the volume in  
22          those two areas be different?

1           A       Well, as I said earlier, grower  
2       warehousing is generally done in anticipation of  
3       higher prices later.

4           Q       Okay.

5           A       A grower's going to sell when he  
6       thinks he can get the most for his pecans. A  
7       handler might warehouse for a variety of reasons.  
8       If he's, you know, warehousing because, you know,  
9       has shellers or further handlers or China or  
10      whoever he's sending them to has a schedule, he  
11      might warehouse for that purpose.

12          Q       Okay.

13          A       Tracking, we're hoping that the  
14      industry, the Council, and I think some of our  
15      language addresses data gathering, and that's  
16      been one of the problems in the industry is we  
17      don't feel like we're always getting the greatest  
18      data. Part of it I think is the fact that we're  
19      stretched out over this large production area.

20                    But hopefully the Council can  
21      establish a program to where we can get better  
22      data so that we can track what's in various

1 warehouses. Right now we report -- handlers  
2 report cold storage holdings and that's published  
3 every month. But there's some questions about  
4 those numbers. So hopefully we can get better  
5 data when this marketing order is in place.

6 Q Okay. Just to finish up with the idea  
7 of warehousing, you mentioned the provisions that  
8 allow transfer between handlers, the inter-  
9 handler transfer, which I know we'll get to a  
10 little more information on in a little bit, so I  
11 don't want to be too premature.

12 But I'm curious about the possibility  
13 of a handler having some inventory that isn't  
14 assessment yet, and how the Council is defining  
15 that un-assessed inventory, because I think in  
16 the definition of warehousing in Section 41, that  
17 defines warehousing overall as un-assessed  
18 inventory.

19 And I think we might have discussed a  
20 clarification to this earlier, but I wanted to  
21 get kind of your perspective on how that would be  
22 addressed. If we've defined warehousing as being

1 un-assessed, is it your understanding that there  
2 could be some handler inventory that is assessed  
3 and some that is un-assessed that might --

4 A By the same handler?

5 Q -- all be called warehoused.

6 A Yes, I think you could have both.

7 Q Okay. We just want to make sure that  
8 that's what's happening in the industry.

9 A Yes.

10 Q Okay. So you would support an  
11 adjustment to -- or a clarification within that  
12 definition to address the idea that we might have  
13 both un-assessed and assessed inventory being  
14 warehoused?

15 A You talking about changing the  
16 language of --

17 Q We had discussed at an earlier hearing  
18 clarifying that definition of warehousing.

19 JUDGE GUTHRIDGE: By that  
20 definition --

21 MS. VARELA: Sure.

22 JUDGE GUTHRIDGE: -- she's referring

1 to --

2 MS. VARELA: And that is --

3 JUDGE GUTHRIDGE: -- Section 986.41.

4 MS. VARELA: -- Section 986.41.

5 BY MS. VARELA:

6 Q Sorry, I should have brought that up  
7 first so you could look at it.

8 A Warehousing means to hold un-assessed  
9 inventory. Oh. Yeah, I would think that would  
10 be fine. Yeah.

11 Q Yeah, I just wanted to --

12 A Because --

13 Q -- make sure that change was -E

14 A -- you could -- I see what you're  
15 saying. You could have a handler that had  
16 assessed and un-assessed inventory.

17 Q Okay. Thank you for revisiting that  
18 with us.

19 A Okay.

20 Q I think that is all I have for you.

21 MS. VARELA: Are there any other  
22 questions on this section?

1 JUDGE GUTHRIDGE: Are there any more  
2 USDA questions?

3 MS. VARELA: Nothing else on this  
4 section. Thank you.

5 JUDGE GUTHRIDGE: Mr. Quirós?

6 FURTHER REDIRECT EXAMINATION

7 BY MR. QUIR S:

8 Q Yes, Mr. Willson, thank you for taking  
9 us through a complex section. There was a  
10 question Ms. Varela asked you about Sections (h)  
11 and (I). Is one of the reasons that you want to  
12 have that information on August 31 from the  
13 handlers and growers so that you can make sure  
14 that the assessments are applied to the right  
15 crop year --

16 A Yes.

17 Q -- in case the assessment rate  
18 changes?

19 A Yes.

20 Q Thank you. We talked about the tiers  
21 of assessments, there being three tiers of  
22 assessments as proposed. Do those assessment

1 rates as currently proposed reflect what you  
2 think are the relative values of each type of  
3 nut?

4 A Yes, I think they do.

5 Q So you believe that the improved, in  
6 general terms, generally gets a higher price and  
7 the native --

8 A Right.

9 Q -- seedling and substandard get lower  
10 prices.

11 A Right.

12 Q Is that correct?

13 A That's correct.

14 Q And that went into the thinking of the  
15 American Pecan Board when --

16 A It did.

17 Q -- they drafted that section? Thank  
18 you. You mentioned that there can be some  
19 confusion, but I wanted to ask you, is there much  
20 chance of there being any confusion in terms of  
21 identifying the improved, native and substandard  
22 nuts when a sheller receives them, and being able



1 to apply the correct assessment to those?

2 A There could be some gray areas, but I  
3 think for the most part a sheller would  
4 understand and the grower would understand what  
5 the sheller was buying and the grower was  
6 selling, so.

7 Q Q

8 Thank you. And this is an important area  
9 with regard to monies being charges. We have the  
10 power to be able to assess --

11 A Right.

12 Q -- those rates. Do you think it  
13 might be in the future that the American Pecan  
14 Board, in conjunction with the USDA, might  
15 envision proposing regulations as issues comes up  
16 that they feel need more clarification with  
17 regard to this section?

18 A Yes, sir.

19 Q But right now you think it's clear as  
20 a general --

21 A I think it's --

22 Q -- but you think right now it's clear

1 as a general statement?

2 A I think so, yes.

3 Q Thank you. We talked about a little  
4 bit about the grower inventory and the  
5 warehousing inventory as well. And I know you'll  
6 get to it in a few minute, but isn't it important  
7 that for purposes of 986.65, this is the data  
8 gathering section that we'll talk about later,  
9 that we have this important information at the  
10 end of the year which we are able to get through  
11 this assessment process?

12 A It's certainly important to a lot of  
13 segments in the industry that would like better  
14 data for making business decisions going forth in  
15 the new year, yes, sir.

16 Q Okay. So this data that we get on  
17 August 31 helps with that process --

18 A Yes, sir.

19 Q -- of reporting to the Secretary and  
20 reporting --

21 A Yes.

22 Q -- to the industry the carry in

1 inventories --

2 A Yes.

3 Q -- et cetera. Thank you.

4 MR. QUIR S: No further questions on  
5 this section from the Proponent Group.

6 JUDGE GUTHRIDGE: Are there any more  
7 USDA questions?

8 (No response.)

9 JUDGE GUTHRIDGE: Mr. Quirós?

10 BY MR. QUIR S:

11 Q Yes, Mr. Willson, if you'd please walk  
12 us through the next section, which is Section  
13 986.62 --

14 A Okay.

15 Q -- for handler transfers.

16 A This is a goodie. This section  
17 discusses -- excuse me, 986.62 discusses inter-  
18 handler transfers, and is, in my opinion, key to  
19 making the entire program work. There are  
20 hundreds, possibly thousands of handlers. The  
21 first handler is defined as those who actual  
22 procure the nuts from the grower. This might

1 include hardware stores, gas stations, mom and  
2 pop retail outlets that just buy a small number  
3 of what we call yard crop pecans over here, and  
4 many more.

5 This provision will assist in  
6 collecting the assessment from these smaller  
7 operations that may only buy a couple hundred  
8 pounds of pecans in a given year, as they can ask  
9 the next handler to pay. Since one of the goals  
10 of the Council is to maximize the amount  
11 collected at the least cost, the concept of the  
12 inter-handler transfer was written into the FMO  
13 and it really reflects the way the industry  
14 works. We only want to collect an assessment  
15 once, but we do want to collect it.

16 In our discussion with handlers, many  
17 pointed out in the industry some handler transfer  
18 nuts to other handlers for accumulation or  
19 additional processing before the nuts are sold to  
20 the final user. This section of the order allows  
21 any handler to transfer the obligation to pay the  
22 assessment to the next handler, as long as the

1 proper paperwork has been filled out.

2 It also spells out that the Council,  
3 with approval of the Secretary, will establish  
4 methods and procedures, including the necessary  
5 reports, for the documentation of such transfers.  
6 The Council would expected to have input from  
7 handlers and USDA when devising the various forms  
8 needed for inter-handler transfers.

9 Theoretically the assessment -- the  
10 obligation to pay the assessment could be passed  
11 more than once, as long as the proper paperwork  
12 is maintained. This was discussed at length at  
13 various meetings with handlers and shellers, and  
14 they support it.

15 Q Mr. Willson, I think that we may have  
16 made a mistake in drafting Section 986.62 in the  
17 first sentence. I'm not sure if that reference  
18 should be 986.61(I) or 986.61(h). Would you --

19 A I'm sorry, what --

20 Q -- mind -- this is in the first  
21 sentence of 986.62. I can't decide if that  
22 section reference should be 986.61(I) or 61(h).

1       Would you mind if we revisit that issue at a  
2       later time so that we can --

3               A       Sure.

4               Q       -- make sure that the cross-reference  
5       is appropriate?

6               A       Yes, sir.

7               Q       Thank you. Thank you.

8               A       Yes, sir.

9                       MR. QUIR S: We have no further  
10       questions of this witness at this time, and we  
11       reserve any questions until after the USDA has  
12       asked.

13                      JUDGE GUTHRIDGE: Does the USDA have  
14       any questions?

15                      MS. VARELA: Jan Varela, USDA.

16                      FURTHER RECROSS-EXAMINATION

17                      BY MS. VARELA:

18               Q       Mr. Willson, I want to go back to a  
19       portion of your testimony where you mentioned the  
20       least cost being applied in the process to maybe  
21       some of the smaller handlers. I just want to  
22       clarify that -- is it your impression that you're

1       trying to ease the burden overall, not  
2       necessarily a monetary cost, maybe also time and  
3       effort that it might take a very small entity,  
4       like you mentioned the hardware store who's just  
5       collecting sales from yard crop.

6           A       Well, I think the cost -- you're  
7       talking about where I said one of the goals was  
8       the Council was to maximize the amount collected  
9       at the least cost --

10          Q       Yes.

11          A       -- to the Council.

12          Q       All right. The cost to the Council.  
13       Okay.

14          A       If the Council is collecting thousands  
15       and thousands of handler inventory -- I mean  
16       receipts, reports, whatever.

17          Q       And that might be --

18          A       I think that would be more --

19          Q       -- within compliance?

20          A       It would be more burdensome though.

21          Q       Okay.

22          A       And --

1 Q Understood.

2 A And quite frankly you might have a  
3 little more trouble collecting if you tried to  
4 get every little individual mom and pop. It  
5 would be difficult.

6 Q Okay. Thank you for that  
7 clarification. The only other portion of this  
8 section that I wanted to get a little more  
9 information on was -- I think it's the second --  
10 well, it might just still be the first sentence  
11 here. Yep, I think it's just one long sentence.  
12 Are you looking at 62 right not? Yeah, it's up  
13 there.

14 A I am.

15 Q Okay. This language here that says,  
16 Any assessments or other marketing order  
17 requirements, can you speak a little to what you  
18 understand some other marketing order  
19 requirements to be?

20 A Where are you reading? Let's see --

21 Q It's the -- towards the end of that  
22 first sentence.



1           A       Any assess --

2           Q       May transfer in-shell pecans to  
3 another handler for additional handling.

4           A       Any assessments or other marketing  
5 order requirements. I'm not sure what --

6           Q       Okay.

7           A       -- what that refers to.

8           Q       Well, let me clarify --

9           A       All right. I sure --

10          Q       -- my question. I'm sorry, that was  
11 a little discombobulated. The order has a number  
12 of requirements in addition to merely paying  
13 assessments. And we've talked about some of  
14 those, like record keeping, also I think a little  
15 later on when we get into marketing policy and  
16 reporting and the potential for great in size  
17 requirements.

18                   I'm curious to hear your view of how  
19 those might play into this transfer, because I  
20 want to know how you would apply this language to  
21 those other potential requirements. Is the  
22 handler only passing on the ability to have to

1 pay the assessments, or are they also passing on  
2 the ability to move some pecans that maybe have  
3 not met say a size requirement for the next  
4 handler to have to meet that requirement?

5 A I --

6 Q Does it --

7 A -- I really don't think we were  
8 trying to address that in this particular  
9 sentence. I mean I think transferring the  
10 requirement to pay the assessment transfers any  
11 obligations on that handler to the next handler.

12 So I --

13 Q So you intend this to kind of have  
14 maximum flexibility --

15 A Yes.

16 Q -- to allow the industry to --

17 A Yes.

18 Q -- use it.

19 (Pause.)

20 MS. SCHMAEDICK: Melissa Schmaedick,  
21 USDA.

22 BY MS. SCHMAEDICK:

1           Q       Not to belabor the point, just for  
2 clarification.

3           A       Yes, ma'am.

4           Q       So you mentioned that there are  
5 several small entities that maybe act as an  
6 accumulator in the market. Is that correct? The  
7 hardware store example, they receive pecans?

8           A       Yes.

9           Q       Okay. So the inter-handler transfer  
10 allows those small entities to receive pecans,  
11 but then pass the assessment burden on to a  
12 larger handler.

13          A       A larger accumulator, yes, ma'am.

14          Q       So if there were grade or quality  
15 standards in effect, that hardware store could  
16 also pass on the burden of meeting that grade and  
17 quality standard --

18          A       I see what you're saying, yes.

19          Q       -- to the larger handler.

20          A       Yes.

21          Q       And that would be allowed for under  
22 this section 986.62, inter-handler transfer?

1           A       Yes.

2           Q       Is that the intent --

3           A       Yes.

4           Q       -- of the Board?

5           A       Yes.

6           Q       Thank you.

7           MS. SCHMAEDICK: No further questions.

8           JUDGE GUTHRIDGE: Are there any other  
9           USDA questions?

10          MR. DAVIS: No, Your Honor.

11          JUDGE GUTHRIDGE: Mr. Quirós?

12          MR. QUIR S: Thank you, Your Honor.

13          FURTHER REDIRECT EXAMINATION

14          BY MR. QUIR S:

15          Q       Following up on that question, it  
16           might be the case that some of those smaller  
17           accumulators wouldn't have a cleaning plant. Is  
18           that correct?

19          A       True. Yes, sir.

20          Q       And so being able to grade out those  
21           pecans in the way that a cleaning plant might  
22           enable them in a mechanized way would be more of

1 a challenge.

2 A Yes.

3 Q So this section, the inter-handler  
4 transfer section, 986.62, really does ease the  
5 burden on small accumulators, does it not?

6 A It does.

7 Q And though the cost is low for them to  
8 file the paperwork, this alleviates them also  
9 from the paperwork in such case, except for the  
10 transfer form itself.

11 A Yes.

12 Q Thank you. Ms. Varela was asking you  
13 some questions regarding perhaps the future, if  
14 you want to think about it, and there's a  
15 section, for instance Section 986.69, which talks  
16 about handler authorities in the future. So for  
17 instance if the Council required handlers, let's  
18 make up an example, to grade their pecans in the  
19 transfer process, this language that Ms. Varela  
20 was pointing out, And any assessments or other  
21 marketing order requirements, could come into  
22 play in that instance --

1 A Yes.

2 Q -- could it not?

3 A Yes, it could.

4 Q So for instance if the requirement or  
5 regulations passed by the Council said, When  
6 you're passing them, you need to say what grade  
7 they are, what size, that would fall under this.  
8 Is that correct?

9 A Yes.

10 Q So that does give us the maximum --

11 A Yes.

12 Q -- flexibility to conform with the  
13 other portions. Thank you very much, Mr.  
14 Willson.

15 MR. QUIR S: No further questions at  
16 this time, Your Honor.

17 JUDGE GUTHRIDGE: Does the USDA have  
18 any more questions?

19 MS. SCHMAEDICK: Melissa Schmaedick,  
20 USDA. These are really big.

21 (General laughter.)

22 MS. SCHMAEDICK: Okay. I think I got

1 it now. All right.

2 FURTHER RECROSS-EXAMINATION

3 BY MS. SCHMAEDICK:

4 A Mr. Willson, I'm going to try to walk  
5 through a scenario here and see if you can  
6 explain the American Pecan Board's intent. But  
7 in the assessment language it says, Any -- it  
8 basically implies that the first handler would  
9 pay an assessment -- pay the assessment rate. Is  
10 that correct?

11 A Yes.

12 Q So I want to think about a scenario  
13 where you have grade and size regulations in  
14 effect. Is there potential for a first handler  
15 to receive pecans and perhaps handle them to a  
16 certain point, but not meet the grade and size  
17 regulation? For example a handler could receive  
18 the pecans, clean them and maybe shell them, but  
19 not further process them to meet the grade and  
20 size regulation?

21 And let me explain the -- why I'm  
22 asking this question.

1           A        Okay.

2           Q        I'm wondering, if there are grade and  
3 size regulations in effect, there's -- is there a  
4 potential for one handler to receive let's say  
5 just for example 100 pounds of pecans, and if the  
6 grade and size regulations were applied, maybe  
7 only 80 pounds of that 100 would meet the minimum  
8 grade and quality standards. Should the  
9 assessment be applied on the 100 pounds or on the  
10 80 pounds? And if it should only be applied on  
11 the 80 pounds, should that assessment be  
12 collected on the handler that does the grading  
13 and sizing so that the assessment is not placed  
14 at the -- on the 20 pounds that do not meet?  
15 Does that clarify?

16          A        It clarifies it, but, Ms. Schmaedick,  
17 at this point I don't I could tell you how that  
18 would be done. I think that would be future  
19 Councils that would set these grade and size  
20 standards. I don't -- I'm trying to think of  
21 examples in our business now where that scenario  
22 might have played out, and I'm just -- so I don't



1 think I can answer that question honestly, no.

2 Q Okay. Well, let me ask another  
3 question. Is it the intent that the assessment  
4 be collected on -- only collected on pecans that  
5 meet any minimum grades and size standards that  
6 are in effect?

7 A The idea is to collect on all pecans.  
8 I would anticipate in your scenario if 80 pounds  
9 were met, that the others might fall under the  
10 substandard and would be assessed that way. But  
11 I'm just try to think ahead, but I really don't  
12 know.

13 Q Well, that's a very helpful answer.  
14 Thank you.

15 MS. SCHMAEDICK: No further questions.

16 JUDGE GUTHRIDGE: Is there any more  
17 USDA questions?

18 (No response.)

19 JUDGE GUTHRIDGE: Mr. Quirós?

20 MR. QUIR S: Yes.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. QUIR S:

1           Q       Mr. Willson, would you walk us through  
2 Section 986.63, contributions?

3           JUDGE GUTHRIDGE: Before you do that,  
4 Mr. Quirós, I actually have a little  
5 clarification just for my own mind here.

6           MR. QUIR S: Please, Your Honor.

7           JUDGE GUTHRIDGE: You mentioned the --  
8 something like a hardware store that might  
9 collect a couple hundred pounds of -- and I think  
10 the term is yard crop.

11          THE WITNESS: Yes, sir.

12          JUDGE GUTHRIDGE: And that would --  
13 that hardware store, that would -- would that be  
14 an accumulator under the definitions of the --

15          THE WITNESS: It would be a handler.

16          JUDGE GUTHRIDGE: Okay.

17          THE WITNESS: Accumulator applies to  
18 someone that --

19          MR. QUIR S: We'll put this definition  
20 up --

21          THE WITNESS: Oh, the definition.

22 Okay.

1 MR. QUIR S: -- just to assist you,  
2 Mr. Willson.

3 JUDGE GUTHRIDGE: Wait, I guess --

4 THE WITNESS: I was going to give you  
5 my definition of --

6 JUDGE GUTHRIDGE: -- that's less  
7 important -- that's really not what I want to ask  
8 you about, though. But would that hardware store  
9 generally be getting that small of an amount that  
10 the hardware store is going to get early in the  
11 crop year?

12 THE WITNESS: Probably not, because  
13 generally yard crop is just -- waits till the  
14 crows and the other critters knock the nuts off  
15 the trees, they're not shaken. I mean there's a  
16 big -- in Georgia there's a large what we call  
17 yard crop, which is those that aren't  
18 commercially farmed.

19 JUDGE GUTHRIDGE: Well, would it be --

20 THE WITNESS: So, it's --

21 JUDGE GUTHRIDGE: Would it be at the  
22 very end of the crop year, so when this August 31

1 date might hit?

2 THE WITNESS: Oh, no, no, no, no, no,  
3 no. I'm sorry.

4 JUDGE GUTHRIDGE: So it would be  
5 well --

6 THE WITNESS: I'm sorry. Georgia  
7 harvests generally the second week in October.  
8 They might start coming in the end of October,  
9 first of November, something like that. No, you  
10 would be talking --

11 JUDGE GUTHRIDGE: But it's highly --

12 THE WITNESS: -- about next summer.

13 JUDGE GUTHRIDGE: -- highly unlikely  
14 that this hardware store would have --

15 THE WITNESS: No, they wouldn't.

16 JUDGE GUTHRIDGE: -- that crop still  
17 on August 31.

18 THE WITNESS: Yes, sir.

19 JUDGE GUTHRIDGE: Okay. Thank you.

20 BY MR. QUIR S:

21 Q Mr. Willson, just to clarify that,  
22 take a look at the definition of --

1 A Right.

2 Q -- accumulator, which is Section  
3 986.61. If you'll take a quick look at it.

4 A Yes, sir.

5 Q Let me know when you're finished.

6 A All right.

7 Q So in the example that the Judge gave  
8 you, a seasonal business like a hardware that  
9 takes in yard pecans, they would be an  
10 accumulator, wouldn't they?

11 A Well, from other persons, yes.

12 Q Yes. Thank you. And then that brings  
13 them as an accumulator, then they would be a  
14 handler as well.

15 A Right.

16 Q Is that correct?

17 A Right.

18 Q Thank you. That's a seasonal business  
19 for a lot of those small accumulators, isn't it?

20 A Yes.

21 Q And in -- specifically in this area  
22 don't many of the yard crop collectors, these are

1 the growers that have those, that's -- we used to  
2 call that Christmas money. Is that correct?

3 A Yes.

4 Q Thank you.

5 MR. QUIR S: No further questions,  
6 Your Honor, on this definition.

7 JUDGE GUTHRIDGE: Any more USDA  
8 questions?

9 (No response.)

10 JUDGE GUTHRIDGE: Okay. All right.  
11 Sorry for the interruption there.

12 MR. QUIR S: That's okay, Your Honor.

13 BY MR. QUIR S:

14 Q Section 986.63, contributions. Mr.  
15 Willson, tell us why you all included that in the  
16 proposed Federal Marketing Order.

17 A This section merely states that the  
18 Council is authorized to accept contributions  
19 both from within and out of the production area,  
20 provided that any such contributions are free  
21 from encumbrances or restrictions and made  
22 according to the law. And it anticipates that

1 the Council might at some point solicit  
2 contributions.

3 MR. QUIR S: No further questions at  
4 this time, Your Honor.

5 JUDGE GUTHRIDGE: Are there any USDA  
6 questions?

7 (No response.)

8 JUDGE GUTHRIDGE: Mr. Quirós?

9 MR. QUIR S: Thank you, Your Honor.

10 BY MR. QUIR S:

11 Q Mr. Willson, can I ask you to turn  
12 your attention to Section 986.64, accounting.  
13 Would you walk us through what the American --

14 A Yes, sir.

15 Q -- Pecan Board was intending by this  
16 section?

17 A Yes, sir. In discussion with industry  
18 organizations and individual members, concerns  
19 were raised that assessments in excess of  
20 expenses should not be hoarded, but instead  
21 should be returned to those assessed. This  
22 section was drafted to address those concerns and

1 to make clear what would be done with all  
2 assessments, including those in excess of  
3 expenditures.

4 986.64(a) describes in detail what can  
5 be done with assessments in excess of expenses.  
6 These include, one, they can be used as a  
7 reserve, provided that reserves are not already  
8 in excess of three years anticipated expenses.  
9 Second, to cover deficits incurred during periods  
10 when expenses exceed receipts of assessments on  
11 had. Three, to defray expenses when, for  
12 whatever reason the order or part thereof has  
13 been suspended or not operating. Or, four, to  
14 cover expenses incurred in the liquidation of the  
15 organization.

16 986.64(b) addresses what will be done  
17 with assessments in excess of amounts needed for  
18 liquidation in the event the order is terminated.  
19 In essence it provides that the Secretary will  
20 dispose of the funds to the extent possible by  
21 returning funds to those assessed. The language,  
22 to the extent practical -- excuse me -- was



1 included to cover situations where perhaps the  
2 handler assessed might be out of business or  
3 cannot be located.

4 986.64(c) states that the assessed  
5 funds can only be used for purposes specified in  
6 the order. This prevents the Council from making  
7 unnecessary expenditures. This is common sense,  
8 but we want to make clear to industry that the  
9 funds will be used only for the purposes it has  
10 agreed to in advance, and further that the  
11 Council and its members must at all times be  
12 prepared to report to the Secretary on all  
13 receipts and expenditures. The last clause of  
14 986.64(c) was included to help ensure  
15 transparency and accountability.

16 986.64(d) requires all Council members  
17 who leave office, either by removal at the end of  
18 his or her term, to account for receipts and  
19 disbursements, and to return all organizational  
20 property and funds to the Council and to sign all  
21 needed paperwork to effectuate the return of all  
22 such property. The property referred to in this

1 section is any and all property related to the  
2 Council's work, including of course actual funds,  
3 but also information, data and intellectual  
4 property.

5 986.64(e) makes the provision for the  
6 appointment by the Secretary of a trustee to  
7 receive and hold property in the event of a  
8 suspension or termination of the order or other  
9 times the Secretary deems necessary.

10 Q Thank you, Mr. Willson.

11 JUDGE GUTHRIDGE: No further --

12 MR. QUIR S: No further questions,  
13 Your Honor.

14 JUDGE GUTHRIDGE: Does the USDA have  
15 any questions?

16 (Pause.)

17 MS. SCHMAEDICK: Melissa Schmaedick,  
18 USDA.

19 FURTHER RECROSS-EXAMINATION

20 BY MS. SCHMAEDICK:

21 Q Mr. Willson, in looking at 986.64,  
22 accounting, paragraph (a)(2), you state that

1 reserves could be collected so that they equal  
2 approximately three fiscal years expenses. Can  
3 you talk about the American Pecan Board's  
4 discussion about why three fiscal years was  
5 identified as the reserve limit? Why not one,  
6 why not one-and-a-half?

7 A I honestly don't remember that  
8 discussion.

9 Q Well, then --

10 A I think -- I mean we just -- I think  
11 we just don't want there to be excess reserves  
12 sitting there that we're not using. But I don't  
13 remember the specific discussion of that.

14 Q Okay. Thank you. If you would turn  
15 your attention to paragraph (b) of 986.64, the  
16 last sentence -- this is if there's a  
17 termination, you would refund any assessment  
18 monies held to handlers. And the last sentence  
19 there says, To the extent practical such funds  
20 shall be returned pro rata to the persons from  
21 who such funds were collected. Can you explain  
22 what pro rata means?

1           A       It means their share.

2           Q       Their share?  Okay.

3           A       Their percentages.

4           Q       Thank you.

5                   MS. SCHMAEDICK:  No further questions  
6 for me.

7                   MS. VARELA:  Jan Varela, USDA.

8                   BY MS. VARELA:

9           Q       Just to follow up a little more.

10           That's fine that you can't recall the exact  
11 discussion on three.

12           A       Okay.

13           Q       I'm not --

14           A       You're not going to let me off on that  
15 one.

16           Q       -- trying to criticize there.  But  
17 given your experience with other organizations  
18 that are handling industry money, does the three  
19 years seem reasonable in terms of money that you  
20 might need to keep the Council going in case of a  
21 problem with the crop?

22           A       Well, if we had a couple of -- you

1 know, if we had a couple of bad crop years in a  
2 row --

3 Q Sure.

4 A -- I would think three years would  
5 keep it going adequately.

6 Q And in your experience have other  
7 organizations had to rely on reserves to keep  
8 running in short years?

9 A Most other organizations, these pecan  
10 associations don't have a lot of reserves.

11 Q And so did that make it important to  
12 you all to make sure that you had a good reserve  
13 base? Is that one of the benefits of having the  
14 Council?

15 A It is, as long as we want to keep this  
16 program in place and the growers want to continue  
17 it. We want to anticipate off years where we  
18 don't have a marketing year one, and promotion,  
19 and down here the next year. So hopefully the  
20 reserves would even out that.

21 Q Thank you very much.

22 A Yes, ma'am.

1 MS. VARELA: No further questions from  
2 me.

3 JUDGE GUTHRIDGE: Any other USDA  
4 questions?

5 (No response.)

6 JUDGE GUTHRIDGE: Mr. Quirós?

7 MR. QUIR S: No further questions on  
8 that section, Your Honor.

9 JUDGE GUTHRIDGE: I have one.

10 (General laughter.)

11 JUDGE GUTHRIDGE: The 64 refers  
12 specifically to the assessments. Would the  
13 treatment to the assessment funds also be --  
14 happen to any contributions that were received  
15 under .63, would the same -- would they be  
16 subject to the same treatment?

17 THE WITNESS: That's a good question.  
18 I hadn't thought about it, but I would think so,  
19 yes, sir. In other words, would we --  
20 termination or whatever, would we give them back  
21 or -- I would think so.

22 JUDGE GUTHRIDGE: Okay.

1 THE WITNESS: Yes.

2 JUDGE GUTHRIDGE: Mr. Quirós?

3 MR. QUIR S: Thank you, Your Honor.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. QUIR S:

6 Q Section 986.65, Mr. Willson, entitled  
7 marketing policy. Would you review for us  
8 what --

9 A Yes, sir.

10 Q -- the intent was of the American --

11 A Yes, sir.

12 Q -- Pecan Board with this section?

13 A Before I get to the specific  
14 provisions of 986.65, as a handler/grower in this  
15 industry for over 35 years, as I think we  
16 mentioned this earlier, I don't think that there  
17 has been accurate data on the size of the pecan  
18 crop in the pecan market. These estimates  
19 usually are cobbled together from different  
20 segments of the state and national organizations.

21 They usually -- not usually, they  
22 often reflect organizational biases. It's kind

1 of a given in the industry that growers want high  
2 prices, they estimate low; sellers want lower  
3 prices, they predict big harvests. So oftentimes  
4 crop estimates are wildly inaccurate.

5 I think more accurate market data  
6 could assist my business and every other business  
7 in the industry. It's currently difficult to  
8 make informed pricing decisions and to make  
9 accurate business plans because of the lack of  
10 accurate crop information. One of the goals of  
11 the proposed FMO is accurate market information  
12 and Section 986.65 addresses the type of  
13 information we hope to collect and distribute to  
14 the Secretary and the industry.

15 The first paragraph of 986.65, the  
16 first sentence requires the Council to prepare  
17 for the Secretary each fiscal year a report and  
18 recommendation on the marketing policy of the  
19 Council for the next fiscal year. This will  
20 require the industry to adequately analyze its  
21 forecasted production demand and marketing outlet  
22 for the coming year where this analysis of the



1 Council will be used to set the assessment rate.

2 The next sentence in the first  
3 paragraph of 986.65 is key. It specifies that  
4 the Council must approve the report and  
5 recommendation by a two-thirds vote. The reason  
6 this is key is that no one faction of the  
7 Council, be it grower or sheller, can force  
8 through a plan without buying from the other  
9 group.

10 Two-thirds vote requires that 12  
11 members of the Council vote for a plan for it to  
12 be recommended to the Secretary. With nine  
13 grower and six sheller members, the math dictates  
14 that the groups work together. This is  
15 referencing back to Section 986.55(c) where we  
16 talk about super majority voting.

17 The last part of this line says, Where  
18 applicable on an in-shell basis. The reason for  
19 this is traditionally the pecan industry and the  
20 USDA have reported the crop on an in-shell basis.  
21 Meats are converted back to in-shell on a  
22 percentage basis, in some cases established by

1 the shelling industry and by definition in 986.42  
2 by weight. Therefore when possible we want to  
3 use the industry norm.

4 986.65(a) calls for estimates of  
5 grower and handler cleaned production. The  
6 segments are sometimes overlooked and we're  
7 trying to cast a broad net to get all the  
8 information on the crop size that we can.

9 986.65(b) discusses disappearance.  
10 This is essentially a report on product that is  
11 lost between growing the nuts and getting them  
12 into the stream of commerce. This can happen in  
13 a number of ways. Two prime examples would be  
14 blow outs at the cleaning plant that are not  
15 commercially marketable, and milling loss at the  
16 shelling level. That's a term you might call  
17 shrinkage in general.

18 986.65(c) concerns estimates of  
19 improved versus native seedling versus  
20 substandard. As we've talked earlier, this is  
21 important since each of these categories has a  
22 different pricing point. So estimates of this

1 would yield better data and different future  
2 assessment collections that may affect our  
3 budget.

4 986.65(d) concerns an estimate of  
5 handler inventory on August 31. Again, this is  
6 an area that has not often been counted, but  
7 which might have an affect on the market price of  
8 nuts in this and upcoming years.

9 986.65(e) discusses the estimate of  
10 un-assessed inventory. While we have reports on  
11 actual assessments, this will attempt to identify  
12 the quantity of nuts in the system which has not  
13 been assessed. Nuts in the inter-handler process  
14 or held by growers.

15 986.65(f) is estimates of trade  
16 supply. This is a cumulative report of all  
17 pecans in a given year, shelled and in-shell.  
18 This information about the whole crop will be  
19 valuable information in making decisions and  
20 future business plans.

21 986.65(g) refers to the preferable  
22 handler inventory. It's a term that has been

1 used in the pecan industry, but has been used in  
2 other FMOs. It's the industry's best estimate of  
3 the amount of nuts that handlers will need in  
4 inventory in the coming year to meet their  
5 marketing goals when added to the anticipated new  
6 crop that will be harvested after October 31.

7 986.65(h) projected prices in the new  
8 fiscal year is the Council's best estimate of  
9 what prices should be in the upcoming year based  
10 upon all market data that has been collected.  
11 Such information will be extremely helpful to  
12 growers and handlers in arriving at a reasonable  
13 price.

14 986.65(I) refers to competing nuts  
15 supplies. Pecans are just one of many nuts, and  
16 are not sold in a vacuum, and must compete  
17 against these other nuts. Information on  
18 competitive nut supplies can affect pecan pricing  
19 and will help growers and shellers make more  
20 informed decisions on pricing.

21 986.65(j), any other relevant factors  
22 is a catch-all that will allow the Council to

1 report on other factors that may affect supply  
2 and pricing. Examples might be drought  
3 conditions in certain growing regions, insect and  
4 pest problems, increase in the cost of  
5 production, such as fuel or fertilizer.

6 That's --

7 Q Thank you very much, Mr. Willson. Mr.  
8 Willson, you mentioned the correlation to  
9 986.55(c). We'll get to that in just a minute,  
10 but this is a two-thirds vote that you've set,  
11 and that will always require growers and shellers  
12 to vote together, will it not?

13 A Yes, sir.

14 Q Okay. It's that important, isn't it?

15 A It's important.

16 Q Okay. And you anticipate not only  
17 this information being made available to the  
18 Secretary as required in here, but also to the  
19 industry as well.

20 A Absolutely.

21 Q Thank you.

22 MR. QUIR S: No further questions at

1 this time, Your Honor.

2 JUDGE GUTHRIDGE: Does the USDA have  
3 any questions?

4 MS. SCHMAEDICK: Melissa Schmaedick,  
5 USDA.

6 FURTHER RECROSS-EXAMINATION

7 BY MS. SCHMAEDICK:

8 Q Mr. Willson, in describing 986.65,  
9 marketing policy, you used a couple of terms that  
10 we've seen in previous witness testimony, but I'm  
11 wondering if you could also share your thoughts  
12 on those terms so that we can get a better  
13 understanding of them. The terms that I'm  
14 speaking of specifically are trade supply. If  
15 you could look at 986.38, which is the definition  
16 of trade supply.

17 MR. QUIR S: And, Mr. Willson, we'll  
18 have it up there on the board in just a second.

19 THE WITNESS: Okay.

20 (Pause.)

21 BY MS. SCHMAEDICK:

22 Q And I'll just read it into the record

1 so that we know what we're talking about.  
2 986.38, trade supply, states, Trade supply means  
3 the quantity of merchantable in-shell or shelled  
4 pecans that growers will supply to handlers  
5 during a fiscal year for sale in the United  
6 States and abroad.

7 And then that term, trade supply,  
8 draws on the term merchantable pecans, which is  
9 986.26, and I will read 986.26, paragraph (a)  
10 into the record. It says, In-shell, merchantable  
11 in-shell pecans means all in-shell pecans meeting  
12 the minimum grade regulations that may be  
13 effective pursuant to 986.69, authorities  
14 regulating handling.

15 So just to give you a bit of  
16 background, based on my understanding of previous  
17 witness testimony, merchantable pecans -- there's  
18 a relationship between merchantable pecans and  
19 any grade and size regulations that may be in  
20 effect. Is that your understanding of 986.26?

21 A Yes, I think so.

22 Q So my next question is, if there are

1 no minimum grade and size regulations in effect,  
2 what does merchantable pecans mean?

3 A It means any pecan that someone in the  
4 trade is willing to purchase, or willing to sell.

5 Q Okay.

6 A I mean if we don't have standards,  
7 there are still standards in the industry that  
8 people go by.

9 Q Okay.

10 A I mean if the Council doesn't  
11 specifically set grade and size standards.

12 Q Okay. Well, I'm needing that  
13 clarification to understand the term trade supply  
14 which relies on the quantity of merchantable  
15 pecans. So it's important to understand that, if  
16 I'm understanding your statement correctly, the  
17 American Pecan Board intends to say that even if  
18 there are no grade and size regulations in  
19 effect, merchantable pecans means the pecans that  
20 are being bought --

21 A Bought and sold.

22 Q -- and sold.



1           A       Yes.

2           Q       Okay.  So hold that thought.  I know.

3       I apologize.

4           A       That's all right.  It's all right.

5           Q       I don't intend to torture you.

6                    (General laughter.)

7                    BY MS. SCHMAEDICK:

8           Q       So look at the term, 986.12, which is  
9       disappearance.  So, and I'll read that into the  
10      record as well.  It says, Disappearance means the  
11      difference between the sum of grower-cleaned  
12      production and handler-cleaned production, and  
13      the sum of available supply of merchantable  
14      pecans and merchantable equivalent of shelled  
15      pecans.

16                    So I'm -- you mentioned that  
17      disappearance means -- or is sort of the industry  
18      term for shrinkage, it's kind of what is lost.

19          A       Right.

20          Q       Right?

21          A       Yes, ma'am.

22          Q       But I'm trying to understand this

1 definition. Does this definition clearly capture  
2 that intent of what is lost? Because it says the  
3 sum of grower-cleaned production and handler-  
4 cleaned production. So if it's grower-cleaned  
5 and handler-cleaned, is that speaking to the  
6 product, the volume of product after that  
7 shrinkage has already been taken into  
8 calculation? And --

9 A I guess I'm not really -- I mean I  
10 know how the process works, but I'm -- maybe this  
11 language is a little confusing to me, but I  
12 mean -- I'm sure you all discussed this the other  
13 day with Randy. Right? So -- under definitions.

14 But, you know, I really don't know how  
15 to answer your question. I know that there is  
16 shrinkage or loss at various levels in the  
17 process, and, you know, if that's not going into  
18 the stream of commerce, that's not going to be  
19 assessed to my understanding, the way we defined  
20 what will be assessed.

21 Q So let me approach it a little bit  
22 differently. So in marketing policy -- let's

1 just talk on a sort of theoretical concept level.

2 Okay? Just to capture the intent.

3 A Okay.

4 Q So marketing policy, is it -- it's my  
5 understanding the marketing policy is supposed to  
6 allow the future Council to basically carry out  
7 an analysis of the industry and all factors that  
8 contribute to supply and demand. Is that  
9 correct?

10 A That's correct.

11 Q And so in the list of elements that  
12 are given in 986.65, marketing policy, the intent  
13 there is to capture all of those elements related  
14 to supply and demand. Is that correct?

15 A Yes.

16 Q Okay. And included in these factors  
17 you want to account for disappearance, which you  
18 intend to be shrinkage, or they -- I think you  
19 described it as the difference between what comes  
20 out of the orchard and what goes into the stream  
21 of commerce.

22 A Right.

1 Q Right?

2 A Right.

3 Q Okay. So -- and you want to look at  
4 trade supply, which I believe is the amount of  
5 production produced in the production area that  
6 is available to go into the stream --

7 A Right.

8 Q -- of commerce.

9 A Right.

10 Q Okay. So based on those conceptual  
11 clarifications, would you feel that if clarifying  
12 changes are necessary to make sure that the terms  
13 disappearance, trade supply and marketing policy  
14 and merchantable pecans all work together to meet  
15 your intent, or the Board's intent, would  
16 clarifying changes be acceptable to you under  
17 those conditions?

18 A You're talking about the future  
19 Council being able to make those changes?

20 Q In terms of --

21 A You're not talking about us rewriting  
22 the law now, I mean as it's written, or are

1       you -- I mean --

2               Q       Would you be comfortable with --

3               A       I mean I would be comfortable  
4       clarifying those phrases, yes, ma'am, because  
5       obviously there's some confusion here.

6               Q       Okay. So one of the tasks that USDA  
7       has is to make sure that we're understanding  
8       clearly what you're intent is.

9               A       Right.

10              Q       And that if there are areas that need  
11      clarification to accurately capture your intent,  
12      that those modifications --

13              A       Yes.

14              Q       -- could be made.

15              A       Yes.

16              Q       So I'm asking your permission to do  
17      that.

18              A       Yes.

19              Q       Okay. Thank you.

20                      MS. SCHMAEDICK: No further questions.

21                      JUDGE GUTHRIDGE: Are there any more  
22      USDA questions?

1 MS. VARELA: Jan Varela, USDA.

2 BY MS. VARELA:

3 Q I'm sorry, Mr. Willson --

4 A No.

5 Q -- I, again --

6 A No.

7 Q -- need your expertise. I'm looking  
8 at this first section with the estimate of  
9 grower-cleaned and handler-cleaned production,  
10 and it's been made very clear that estimates of  
11 production overall would be of the utmost value  
12 to the industry. I don't question that at all.

13 So my question is more along the lines  
14 of helping me understand in a practical sense how  
15 those types of production -- or, sorry, those two  
16 types of estimates are different from each other,  
17 and how they might actually be approached. So  
18 I'm looking at -- we want an estimate for the  
19 fiscal year, and in the marketing policy, as I  
20 understand it, and correct me if this is not your  
21 understanding, is that we're looking forward to  
22 the next fiscal year, we're trying to make an

1 estimate --

2 A Yes.

3 Q -- for the coming year. And  
4 understandably you want to do that before the  
5 season starts because you're setting your budget  
6 and you're annualizing that.

7 Is your idea that -- I'm trying to get  
8 it practically how would that type of estimate  
9 make the distinction between how much is going to  
10 be cleaned at the grower level and how much is  
11 going to be cleaned at the handler level. Would  
12 it be maybe based on previous experience or just  
13 understanding which sources of cleaned pecans  
14 come from growers?

15 I imagine it might vary by region  
16 because you have different sized operations. But  
17 I'm just trying to make the distinction between  
18 the two and how we know which volume is being  
19 cleaned at the grower level and what proportion  
20 is usually coming from being cleaned at the  
21 handler level. Is that very confusing?

22 A That's very confusing. But, no, I

1 think --

2 (General laughter.)

3 BY MS. VARELA:

4 Q Okay. I'm sorry.

5 A -- you know, ultimately we just want  
6 to get accurate data --

7 Q Okay.

8 A -- and one of the problems, as we've  
9 talked about, is we're stretched from California  
10 to North Carolina, and it's just very hard to,  
11 you know, to get the various regions to go out  
12 and look, you know, one, it's pistachios,  
13 almonds, they're all right there together. They  
14 can get out there with a -- and do a fairly  
15 accurate analysis. And the bottom line, it  
16 doesn't really matter, if we get accurate data,  
17 whether it is handler-cleaned or grower-cleaned  
18 or where. Right now, as we talked about, we're  
19 just getting estimates from all different parts  
20 of the industry. It starts in June in Louisiana-  
21 Arkansas-Mississippi meeting and then it goes to  
22 Texas and then the National Pecan Shellers



1 meeting. Everybody comes out with their own  
2 idea.

3 I honestly can't tell you how it's  
4 going to work. My mind's not -- I can't --

5 Q Oh, that's --

6 A -- I haven't really sat down and  
7 thought about it, but the Council's going to have  
8 to come up with a way to get good accurate data  
9 from all the various groups and put it together  
10 and come up with a consensus number that the  
11 entire industry can live with.

12 USDA has tried to do that, they work  
13 through the state associations in the fall, they  
14 survey growers in the spring, they survey  
15 shellers, and they come out in July with a final  
16 estimate, which we were able to get them to --  
17 you know, there's a couple of years where they  
18 didn't even do that.

19 But they're estimating again. It may  
20 be that we wind up assisting that effort in a  
21 better way and -- because I think USDA is still  
22 going to come out with their numbers, but I would

1 anticipate relying more on this Council to get  
2 that information. But as for your question about  
3 whether grower or handler, I don't know that  
4 that matters.

5 Q So just to sum that up --

6 A Yeah.

7 Q -- the important part for you is that  
8 total number. It's not --

9 A Yes.

10 Q -- the proportion either.

11 A I'll give you an example, every year  
12 we go to the National Shellers meeting in  
13 September, and they put up the final numbers from  
14 USDA. There are people that -- in that group,  
15 that really follow the numbers, a couple of  
16 them you've heard from.

17 Bruce Caris, he's really -- and they  
18 look at -- they follow the crop, they look at  
19 anticipated crop, look at carry-in, which is  
20 what's being left over either at the sheller  
21 level or at the grower level. Generally at that  
22 point, by August 31 or whatever, nuts handled at

1 the grower level -- or nuts still in-shell at  
2 that level are not as big a proportion.

3 They estimate what's coming in from  
4 Mexico and other sources, either shelled meats or  
5 is converted back to in-shell again. At the end  
6 of the day, they estimate consumption and try to  
7 come up with, you know, what we're going to have  
8 as a pot load of nuts to service the industry for  
9 the coming year.

10 Q And just so that I'm clear, that total  
11 would be the bulk of the trade supply, if not --

12 A Yes.

13 Q -- all of it. You know, we see in  
14 paragraph (f) there that you might take into  
15 consideration some other information.

16 A I think the pecan industry can't  
17 afford to turn its back on any kind of  
18 information we can get --

19 Q Right.

20 A -- if it clarifies the situation.

21 Q So the analysis, the future Council  
22 when it presents that analysis, it has the

1 flexibility to say the trade supply we know of is  
2 this total production --

3 A We think it's this, yes.

4 Q -- and maybe if you can find reliable  
5 estimates of imports --

6 A Right.

7 Q -- you might also include that --

8 A Right.

9 Q -- in the analysis.

10 A Yes.

11 Q Okay.

12 A I would think so, yes.

13 Q That's very helpful. Thank you --

14 A Thank you.

15 Q -- very much.

16 MS. SCHMAEDICK: Melissa Schmaedick,  
17 USDA.

18 BY MS. SCHMAEDICK:

19 Q Mr. Willson, earlier in your testimony  
20 you spoke about accumulators. Can I ask you a  
21 question about accumulators?

22 A Yes.

1 Q So in your work with the American  
2 Pecan Board, were you present during discussions  
3 about the proposed make-up of the Council?

4 A Yes.

5 Q And so you're aware that there is a  
6 seat for an accumulator?

7 A Yes.

8 Q So in the discussions of the Pecan  
9 Board, American Pecan Board, was it discussed --  
10 are there any eligibility requirements for an  
11 accumulator? Can it be any entity that  
12 accumulates, or does it have to be a pure  
13 accumulator? Was there a discussion about that?

14 A I don't recall whether we set any  
15 limits on it or not. You mean size or --

16 Q Well, for example we've heard a lot of  
17 testimony about folks who are growers and  
18 handlers, sometimes they're shellers, sometimes  
19 they're accumulators. We have persons, or  
20 individuals in the industry that fill many  
21 different roles.

22 A Yes.

1           Q       And, again, as I understand it,  
2           sometimes you have a person that accumulates on  
3           the side, and you have other people who the only  
4           thing they do in the pecan industry is  
5           accumulate. So when the Board was talking about  
6           the Council and the type of interests and  
7           representation that they wanted on the Council --

8           A       Yes.

9           Q       -- with regard to that accumulator  
10          position, what is the interest that the Board is  
11          looking for? Is it looking for a pure  
12          accumulator or could it be any accumulator?

13          A       No, my understanding is the grower,  
14          whether he be an accumulator of some sort, and a  
15          sheller, that we were looking for someone that is  
16          purely an accumulator, maybe has a yard crop,  
17          maybe have a tree in his yard or something, but  
18          one that primarily makes their income from buying  
19          and selling, a broker for example, that type of  
20          thing, rather than grower or sheller.

21          Q       Okay.

22          A       A sheller is a handler, but they -- or

1 can be an accumulator, but they represented as  
2 shellers.

3 Q Thank you. So again, for clarity  
4 sake, would it be appropriate to make that  
5 clarification that an accumulator needs to be --  
6 their primary interest needs to be accumulating?

7 A I don't know that that would be  
8 helpful or not.

9 Q So if we were to project 10 years into  
10 the future, and you had an individual who was a  
11 grower, a sheller and an accumulator, and they  
12 wanted to fill that accumulator seat, would you  
13 want the ability to say, The intent was that seat  
14 needs to be filled by a pure accumulator?

15 A That would be my preference, but I  
16 don't -- you know, I can't speak for the rest of  
17 the Council, whoever they might be.

18 Q Okay. And so to your recollection  
19 there wasn't a clear discussion on what that  
20 should be, or if there should be anything? And  
21 it's okay if --

22 A I'm sorry, I honestly --

1 Q -- you don't remember.

2 A -- don't remember an exact  
3 discussion, but --

4 Q Okay.

5 A All right. Okay.

6 A Sorry. Sorry.

7 JUDGE GUTHRIDGE: Are there any more  
8 USDA questions?

9 MS. SCHMAEDICK: Yes, Your Honor, just  
10 a moment, please.

11 (Pause.)

12 JUDGE GUTHRIDGE: Could --

13 THE WITNESS: After this section.  
14 After this section.

15 JUDGE GUTHRIDGE: After -- okay. Mr.  
16 Willson would like a break after this section.

17 THE WITNESS: After this, yeah, before  
18 we get to conclusions or whatever.

19 MS. SCHMAEDICK: Oh, sure. Okay.

20 Well, we just have one other point that we hope  
21 that maybe your experience with the American  
22 Pecan Board could help clarify. If you could



1 turn to 986.47, alternate member, and I have a  
2 question that is specific to paragraph (c), and  
3 I'll read that into the record.

4 MR. DAVIS: Give me just one second  
5 and I'll get it up for you, I think.

6 (Pause.)

7 BY MS. SCHMAEDICK:

8 Q I'll go ahead and read it into the  
9 record. In the event any member of the Council  
10 and their alternate are both unable to attend a  
11 meeting of the Council, any alternate for any  
12 other member representing the same group as the  
13 absent member may serve in the place of the  
14 absent member.

15 So in previous testimony it was  
16 explained that this was sort of a provision for  
17 an alternate of the alternate.

18 A That's what it sounds like.

19 Q And sometimes in other marketing  
20 orders we end up in a situation where there's  
21 confusion of who -- which alternate can serve for  
22 which other alternate.

1           So my question for you is, it says  
2 here that it has to be the same group as the  
3 absent member, but if you look at the structure  
4 of the proposed Council, you have large and small  
5 entities, large and smaller growers and large and  
6 small shellers, and then you have those divided  
7 up by region. So is the -- in your opinion and  
8 based on your recollection of the Board  
9 discussions, is it -- is the preference that the  
10 size of the entity, is that the group  
11 classification?

12           A       You're trying to define group?

13           Q       Right. I'm trying to understand.

14 Like if you have a small grower that's missing  
15 from Region 1, do you replace that person -- the  
16 alternate with another grower from Region 1, or  
17 with another small grower from Region 2?

18           A       No, another grower from Region 1.

19           Q       Grower from Region 1. So it's the  
20 region you want to keep all together.

21           A       Yes.

22           Q       And then the grower interests from

1       Region 1 and the sheller interests from Region 1  
2       together.

3             A       Right.

4             Q       And it doesn't matter if you have a  
5       small grower alternate sitting in for a large  
6       grower member.

7             A       That would -- we would try to have a  
8       small grower sitting in for a small grower.

9             Q       You would try. But in the event that  
10       you can't, and I appreciate that this maybe  
11       sounds like, you know, splitting hairs, but --

12            A       I suppose anything is possible. So,  
13       yeah, I mean it could, but --

14            Q       Okay. So the intent then of the  
15       Board --

16            A       You're -- whether group means region  
17       or whether group means size is what you're  
18       asking.

19            Q       Correct.

20            A       I would say it means both, but it's  
21       not clear.

22                    JUDGE GUTHRIDGE: What Ms. Schmaedick

1 seems to be getting it is there would be --  
2 there's only -- there's -- as I understand it,  
3 there's a smaller grower member and a small  
4 grower alternate from each --

5 THE WITNESS: Region.

6 JUDGE GUTHRIDGE: -- region.

7 THE WITNESS: Yes, sir.

8 JUDGE GUTHRIDGE: But if neither the  
9 small grower member nor the small grower  
10 alternate from a region is available, then we get  
11 to the alternate to the alternate situation. In  
12 that case there would not be another small grower  
13 from that region, small grower alternate, but  
14 there would be a large grower alternate. Would  
15 that large grower alternate be able to sit in for  
16 the small grower member? Is that --

17 MS. SCHMAEDICK: Thank you for that  
18 clarification. Yes, that's my question.

19 JUDGE GUTHRIDGE: That's what you're  
20 getting at.

21 THE WITNESS: I would think so.

22 JUDGE GUTHRIDGE: And that that would

1 be --

2 THE WITNESS: Yes.

3 JUDGE GUTHRIDGE: -- more important  
4 than taking a small grower alternate from another  
5 region and putting --

6 THE WITNESS: Region trumps size.

7 MS. SCHMAEDICK: Okay.

8 JUDGE GUTHRIDGE: Okay.

9 MS. SCHMAEDICK: Thank you. That's --

10 THE WITNESS: You're welcome.

11 MS. SCHMAEDICK: -- clear and helpful.

12 No further questions.

13 JUDGE GUTHRIDGE: Are there any more  
14 USDA questions on this section?

15 MS. SCHMAEDICK: Your Honor, do we  
16 need to take a break?

17 JUDGE GUTHRIDGE: Should we take the  
18 break now, or are you --

19 MR. QUIR S: Your Honor, I have just  
20 a few more questions --

21 THE WITNESS: Oh. That's fine.

22 MR. QUIR S: -- in response to 40 --

1 in response to this last section before he gets  
2 to his conclusions. Should we finish those now?  
3 It'll just be a minute.

4 JUDGE GUTHRIDGE: Yes.

5 THE WITNESS: That's fine.

6 MR. QUIR S: Thank you, Mr. Willson.

7 THE WITNESS: Unless it prompts them  
8 to ask more questions.

9 (General laughter.)

10 JUDGE GUTHRIDGE: Of course it will.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. QUIR S:

13 Q Let's stay on 986.47(c).

14 A Oh, back to --

15 Q Yeah, just take a quick look and  
16 refresh yourself on that --

17 A All right. Yes.

18 Q -- .47(c) which Ms. Schmaedick just  
19 asked you about.

20 A Right.

21 Q Take a moment to review that, please.

22 A Uh-huh. (Perusing document.)

1 Q You read it?

2 A Yes, sir.

3 Q Thank you, Mr. Willson. It has been  
4 described as an alternate's alternate in the  
5 past, the but process there is intended to be  
6 fair, is it not?

7 A Yes.

8 Q And so the idea of having someone from  
9 another group was to do as best you could to  
10 replicate the Council member's seat for which  
11 they're sitting in.

12 A Yes.

13 Q Is that correct?

14 A Yes.

15 Q Thank you. And there -- in this  
16 language, though it may seem confusing, it's also  
17 intended to be flexible, is it not?

18 A Yes.

19 Q Depending on who's there at the  
20 meeting at the time.

21 A Yes.

22 Q Right? If there's a quorum issue and

1 people may be available, they may not be  
2 available to do that.

3 A Yes.

4 Q Is that correct?

5 A Yes, yes.

6 Q Thank you. In other organizations  
7 that you're a member of, we're talking now on the  
8 question of who chooses the alternate's  
9 alternate, and under the organizations that  
10 you've been a member of, is it your past  
11 experience in those situations that the chairman  
12 chooses who would sit in in those instances?

13 A Yes and no. The Shellers Association  
14 sometimes is just somebody from the southeast  
15 that's there and if someone else is missing, they  
16 sit in, so.

17 Q With the guidance here that any  
18 alternate for any other member representing the  
19 same group would -- oftentimes that would --  
20 somebody' got to make that decision.

21 A Right.

22 Q Would it likely be the chairman that



1 makes that decision?

2 A Yes.

3 Q Thank you. Let's turn to Section  
4 986.1, accumulator, please.

5 A 986 point what?

6 Q Yes, sir, the definition --

7 A Which one?

8 Q -- of accumulator.

9 JUDGE GUTHRIDGE: 986 point --

10 MR. QUIR S: One.

11 JUDGE GUTHRIDGE: -- one.

12 MR. DAVIS: It's up there also.

13 THE WITNESS: Okay. All right.

14 BY MR. QUIR S:

15 Q You mentioned that the -- you thought  
16 that it would likely be a pure accumulator that  
17 would be chosen for the at large accumulator  
18 seat, did you not?

19 A I did.

20 Q But the definition gives the Council  
21 appropriate flexibility, does it not?

22 A It does.

1           Q       Okay. Thank you. Now I'd like you to  
2           turn to section 986.65, the intended section.  
3           Yes, 65, subsection (a). There was a question  
4           there about the estimate about the grower-cleaned  
5           production and the handler-cleaned production.  
6           Take a moment to review that, please.

7           A       All right.

8           Q       Well, maybe let's set a basis for this  
9           first. In 986.14, fiscal year is from October to  
10          September, is that not true?

11          A       Yes.

12          Q       Thank you. So the -- before 986.65,  
13          the first sentence requires that this report be  
14          made before the end of each fiscal year to the  
15          Secretary. Is that correct?

16          A       Yes.

17          Q       So that would mean before the end of  
18          September in a normal fiscal year calendar. Is  
19          that correct?

20          A       Yes.

21          Q       Thank you. And so in (a) where it's  
22          talking about the estimate of the grower-cleaned

1 production and handler-cleaned production in the  
2 area of production for the fiscal year, that  
3 refers to the then current fiscal year.

4 A Yes.

5 Q I just wanted to make sure we were --  
6 there is a -- we've talked about projections of  
7 the next year, but this is information that we  
8 need to get from the past fiscal year.

9 A From the past year, yes.

10 Q So we will have approximately,  
11 depending on when that reports given between nine  
12 and probably eleven-and-a-half months of data to  
13 get that --

14 A Yes.

15 Q -- information. Is that correct?

16 A Yes.

17 Q And that's also why we established in  
18 986.61(h) and (I) those August 31 dates, so we  
19 could get that information to include that. Is  
20 that correct?

21 A Yes, sir. Yes, sir.

22 Q Thank you very much.

1 MR. QUIR S: No further questions of  
2 this witness at this time on this section.

3 JUDGE GUTHRIDGE: Are there any USDA  
4 questions?

5 No questions?

6 MR. DAVIS: Right.

7 JUDGE GUTHRIDGE: Is that the end of  
8 his testimony or --

9 MR. QUIR S: No, sir, he -- I think he  
10 wished to take a break before he gave his  
11 conclusion, Your Honor. I think we'll only  
12 have --

13 THE WITNESS: About 10 minutes?

14 MR. QUIR S: -- 10 minutes or so,  
15 depending on questions after he comes back.

16 JUDGE GUTHRIDGE: It's 10:03 right  
17 now, let's come back 10:15.

18 THE WITNESS: Thank you, Your Honor.

19 (Whereupon, a short recess was taken.)

20 JUDGE GUTHRIDGE: All right. Back on  
21 the record.

22 Mr. Quirós, before you go on, could I

1 ask a question of Mr. Willson about this  
2 alternate thing?

3 MR. QUIR S: Oh, please, Your Honor.

4 JUDGE GUTHRIDGE: I could envision a  
5 situation where the small/large differential is  
6 more important than the regional differential,  
7 and were -- if neither a smaller grower nor the  
8 alternate for a region is able to attend a  
9 meeting, whether that delegate, or that member  
10 might think that that viewpoint would be better  
11 reflected by a small grower alternate from  
12 another region rather than a large grower  
13 alternate from their region, would there be  
14 flexibility that would permit them -- permit the  
15 member and delegate to designate their alternate?

16 THE WITNESS: I think the way that  
17 reads, it does allow for that flexibility, yes --  
18 excuse me -- yes, sir.

19 JUDGE GUTHRIDGE: Okay. Thank you.

20 FURTHER REDIRECT EXAMINATION (RESUMED)

21 BY MR. QUIR S:

22 Q Mr. Willson, have you had an

1 opportunity to receive and read Exhibit 23 to  
2 these hearings, which was an executive summary of  
3 the economic analysis of the implementation of a  
4 Federal Marketing Order for pecans prepared by  
5 Dr. Marco Palma?

6 A Yes.

7 Q Thank you. And I understand that you  
8 have some thoughts that you wanted to share as a  
9 grower with the hearing.

10 A Okay. As I've said, I've read, I  
11 think I mostly understand and agree with Dr.  
12 Palma's economic conclusions that an FMO for  
13 pecans should increase pecan prices. And I agree  
14 with his analysis that the benefit should  
15 outweigh the cost of said program.

16 He shows that when assuming an  
17 assessment rate at the mid-point of the range for  
18 improved at two-and-a-half cents and native at  
19 one-and-a-half cents, when compared to prices  
20 paid to the grower, results in -- it results in  
21 an average cost of about 1-1/2 percent to the  
22 grower.

1           Using generic promotion demand  
2           increase, which he does of 1-1/2 percent, yields  
3           an average return of 6.3 percent to the improved  
4           grower and 3.6 percent to the native grower.  
5           Obviously the benefits outweigh the cost of these  
6           assumptions. And I think he's shown similar  
7           benefits that will accrue to the handler, and  
8           therefore I agree with his conclusions.

9           I further believe that the Council's  
10          authority, through its product-handling authority  
11          regarding quality, size, packaging of pecans will  
12          improve prices. Further handling regulation  
13          after full Council review can only help to  
14          increase the attractiveness and desirability of  
15          our product. Again, I feel the benefits gained  
16          will more than offset any added cost.

17          I feel that the authorities granted in  
18          986.68 and 69 are essential and beneficial to the  
19          pecan industry. One other benefit of the FMO's  
20          collection of pecan product data for publication,  
21          and the one other benefit is, the FMO's  
22          collection of pecan product data for publication

1 and delivery to the USDA and the industry, for  
2 too long, as I've stated earlier, this industry  
3 has operated without accurate data in supply and  
4 demand and pricing and inventory.

5 An important benefit of the proposed  
6 FMO is data collection for the benefit of all  
7 industry participants, growers, handlers and  
8 consumers.

9 Would you like for me to go on with my  
10 comments --

11 Q Yes, sir.

12 A -- and conclusions?

13 Q Yes, sir.

14 A Therefore, I am in favor of an FMO for  
15 pecans. Some of my reasons are we need a unified  
16 voice for this entire industry. For too many  
17 years disparate factions of this industry have  
18 gone on their own way doing their own thing.  
19 While certainly helpful, these -- none has been  
20 able to raise the kind of dollars that we think  
21 an FMO will raise. Our research has been limited  
22 and scattered.



1                   Secondly, we need to stimulate  
2 domestic demand and prices. Things are good  
3 right now for the grower with China buying a high  
4 percentage of the US crop, but what happens if  
5 this suddenly is turned off? There is already  
6 concern about this year's export to China with  
7 the crack down on corruption in China we've all  
8 been reading about recently.

9                   On top of this, do the results of some  
10 of the Chinese increase in purchasing is in  
11 response to higher prices. There have been tens  
12 of thousands of acres planted across the pecan  
13 belt in the last few years. Supply is increasing  
14 and will continue to increase. We need to  
15 stimulate demand here at home, and we feel the  
16 FMO would do that.

17                   We've discussed this three or four  
18 times already, we need better measurements and  
19 market information. The order gives the  
20 authority to the Council to do just this. I've  
21 been attending National Pecan Sheller Association  
22 meetings for about 20 years, and I can't think of

1 a meeting where the issue of obtaining good data  
2 was not mentioned.

3 Several times NASS has been there and  
4 been on the program. That's the National  
5 Agricultural Statistical Service. Part of the  
6 problem, as we have discussed earlier, is that  
7 this industry is spread out over such a large  
8 area, from California to North Carolina, with  
9 each state doing its own gathering and reporting  
10 of data. Hopefully the FMO will help unify this  
11 effort.

12 The authorities allowed the Council  
13 under 986.67 through 69 should help improve pecan  
14 products for all parties and help pecans compete  
15 more effectively with other tree nuts.

16 Finally, as I have noted earlier, I  
17 have been a member of most organizations related  
18 to pecans over the last 30-plus years, and have  
19 seen some really good research and promotion come  
20 from these organizations. This FMO is not  
21 designed to conflict with other groups' efforts,  
22 but to complement them and cover other issues.

1 Thank you.

2 JUDGE GUTHRIDGE: Mr. Quirós?

3 MR. QUIR S: No further questions at  
4 this time.

5 JUDGE GUTHRIDGE: Does the USDA have  
6 any more questions? Mr. Hinman?

7 MR. HINMAN: Yeah, Don Hinman, USDA.

8 FURTHER RECROSS-EXAMINATION

9 BY MR. HINMAN:

10 Q Mr. Willson, thank you for your very  
11 thorough testimony. Just one clarifying  
12 question. In your reference to Dr. Palma's  
13 study, you mentioned 6.3 and 3.6. I believe that  
14 you spoke the words percent.

15 A I'm sorry.

16 Q Did you mean six point -- I believe  
17 you said 6.3 and 3.6 percent. Did you mean 6.3  
18 and 3.6 cents?

19 A Cents. I'm sorry. Yes.

20 Q Good. Thank you for that  
21 clarification.

22 MR. HINMAN: No further questions.

1 JUDGE GUTHRIDGE: Any more USDA  
2 questions?

3 (No response.)

4 JUDGE GUTHRIDGE: Mr. Quirós?

5 MS. VARELA: I have some. I'm sorry.

6 JUDGE GUTHRIDGE: Oh, I'm sorry.

7 MS. VARELA: Sorry. Jen Varela, USDA.

8 JUDGE GUTHRIDGE: Got to be quick.

9 (General laughter.)

10 MS. VARELA: All right.

11 BY MS. VARELA:

12 Q Mr. Willson, could I have you look at  
13 Section 986.19, to handle, the definition of  
14 handle.

15 A 986.19? To handle.

16 Q Yes.

17 A Yes, ma'am.

18 Q To handle.

19 A All right.

20 Q I believe in describing your business,  
21 I believe I heard you use the phrase toasting.

22 A Okay.

1           Q       And I wanted to make sure that -- I  
2 wanted you to take a look at this definition,  
3 which includes to receive, shell, crack,  
4 accumulate, warehouse, roast, pack, sell,  
5 consign, transport, export or ship, I mean you  
6 can see it up there behind you.

7           A       Yes.

8           Q       Is toasting synonymous with something  
9 in this definition, like roasting?

10          A       It is.

11          Q       Okay. That's fantastic. And if it  
12 wasn't, in here we have kind of catch-all  
13 language that say, Or otherwise put into the  
14 stream of commerce. Does this definition, as you  
15 look at it, does it capture pretty all the  
16 ways --

17          A       Yes.

18          Q       -- the industry is putting pecans  
19 into the market?

20          A       It gets -- I would say so, yes.

21          Q       It's pretty exhaustive.

22          A       Yes.

1 Q Okay. And do you see any potential to  
2 need to add to this, or are you satisfied that  
3 going into the future this will still cover all  
4 of the handling just going on the market?

5 A I'm satisfied at this point, yes.

6 Q Okay. And I just had -- regarding  
7 this definition, I just had one kind of question  
8 within the question, and I think we actually have  
9 a separate definition that's included here with  
10 pack, which includes cleaning, grading or  
11 otherwise preparing for market.

12 Can you give us some examples of how  
13 that term is used in the industry, where in that  
14 process of getting things to market pack might  
15 come in. Like in your experience what's the  
16 context for packing? Is it handling a raw  
17 product still or is usually used in terms with  
18 handling something that's gone through some more  
19 processing?

20 A I think it can be either one.

21 Q I can be either. Okay.

22 A At the grower level it would be in

1 the, you know, the supersack, at the shell level  
2 it might be in a 30-pound box, or roaster, the  
3 same thing, so, yes.

4 Q So it can definitely vary --

5 A Yes.

6 Q -- depending on where it's used in  
7 the process. Okay. Thank you. That helps clear  
8 some things up for me.

9 JUDGE GUTHRIDGE: Are there any more  
10 USDA questions?

11 MS. VARELA: I do. I'm sorry, I do  
12 have one more.

13 THE WITNESS: Okay.

14 BY MS. VARELA:

15 Q It's just that I know you know a lot  
16 of things, Mr. Willson.

17 A Don't be sorry.

18 (General laughter.)

19 BY MS. VARELA:

20 Q I want to move into the section we had  
21 on procedures and just see if you can help tie  
22 some things up for me there. And I'm going to

1 try to get the section number for you.

2 (Pause.)

3 JUDGE GUTHRIDGE: Are you talking  
4 about 55?

5 MR. QUIR S: Procedures, 55.

6 BY MS. VARELA:

7 Q Fifty-five. Okay.

8 A 986.55, is that what you said?

9 Q Yes. And we have had some testimony  
10 on this so I'm not going to ask you to describe  
11 all of them. But you did mention the need for  
12 the two-thirds vote in a couple of different  
13 instances. And if you could look at the kind of  
14 paragraph 1 that outlines the actions of the  
15 Council that do require that two-thirds vote.

16 Do you -- first of all, do you recall  
17 some of the conversations where the Board  
18 discussed what needed to fall under this section?

19 A Do I recall some -- yes.

20 Q Yes. Could you just give me your --  
21 kind of your opinion on why these that are listed  
22 here in particular are important enough to



1 require a two-thirds majority?

2 A You want me to take them --

3 Q I should have said super majority, I'm  
4 sorry.

5 A You want me to take them one at a time  
6 or you just -- I mean I think what --

7 Q You can group them together if that's  
8 easier.

9 A Anything that's, you know, that's  
10 important enough to call for a major change or  
11 vote, we just felt like that the super majority  
12 was called for such that one section of the  
13 industry might not try to take advantage of the  
14 other.

15 I think you've been with us long  
16 enough that you understand the history of the  
17 industry, and we feel like we're at a critical  
18 point where we've gotten growers and shellers to  
19 talk together and work together, and we're  
20 excited about that prospect. But, you know,  
21 history is long. People remember things.

22 So we just felt like having a super

1 majority on important issues was important. And  
2 I don't need to go over these one at a time, but  
3 I think the Board felt -- the American Pecan  
4 Board felt like these were the areas that would  
5 require that, rather than just a simple majority.

6 Q And beyond that, this section right  
7 here also indicates that that discussion would  
8 have to take place at an in-person meeting. Can  
9 you give me a little more background on why you  
10 think in-person is so important?

11 A You could see what the other person's  
12 looking like rather than just hearing him. I  
13 just think when --

14 Q Sure.

15 A -- when you're making important  
16 decisions, face-to-face is obviously better than  
17 a conference call. You lose a lot in a  
18 conference call.

19 Q And I see that you do have, further up  
20 in this section, there is the option to have some  
21 meetings by a conference call.

22 A Right.

1           Q       So was the intent there that there is  
2 a certain amount of flexibility the Council needs  
3 to operate, but these particular pieces were just  
4 too critical --

5           A       Yes.

6           Q       -- to not have some extra pounds on.

7           A       We're trying to give flexibility in  
8 meetings and conference calls just again because  
9 of the nature of the production area. And I do  
10 anticipate that this Council would try to meet  
11 maybe in conjunction with others, because a lot  
12 of people do go to some of these national  
13 meetings and state meetings, so. It doesn't have  
14 to though.

15          Q       Okay. Okay. And I think I just  
16 have --

17          A       Yes.

18          Q       -- one more question for you. Could  
19 you look at Section 986.49, called acceptance?

20          A       Okay.

21          Q       Do you recall discussing this concept  
22 when the proposed language was being put

1 together?

2 A Not specifically, but let's --

3 Q And it's also up behind you. So in  
4 practical terms, how would you describe that this  
5 section is carried out? Why is this language  
6 included here, and how do you envision this  
7 process happening in terms of a potential member  
8 accepting their position?

9 A You mean how are we going to go about  
10 choosing the -- or -- this is just talking about  
11 the acceptance, that they --

12 Q Right. The kind of --

13 A -- that they shouldn't be asked if  
14 they're not willing to serve. Right?

15 Q Correct. And so is it your  
16 understanding that that potential member will  
17 provide some information before everything is  
18 signed off on, and that there will be kind of --

19 A I would think so, yes.

20 Q -- a couple of steps. Okay. Thank  
21 you very much.

22 MS. VARELA: I think that's all I

1 have.

2 MR. HILL: Brian Hill. I'll try and  
3 be quick, Your Honor.

4 THE WITNESS: Yes.

5 BY MR. HILL:

6 Q Could you just please --

7 JUDGE GUTHRIDGE: Take your time,  
8 whatever time you need.

9 MR. HILL: Okay.

10 BY MR. HILL:

11 Q Could you just please explain what you  
12 feel the importance of contributions could be?

13 A You mean outside of the assessment?

14 Q Yes, 986.63.

15 A Well, I mean contributions can be  
16 important just to show that other parts of  
17 industry or related industries believe in what  
18 we're doing. I don't know about other FMOs,  
19 whether they get any -- I personally can't see us  
20 getting a lot of that.

21 We certainly could solicit it from,  
22 you know, affiliated industries that make a lot

1 of money off pecan growers and shellers. And in  
2 some cases we -- I know in some of the  
3 organizations we have had some voluntary  
4 contributions made by some of those members. So  
5 they could be a very important part. It could  
6 add significant numbers.

7 Q And if you do receive these  
8 contributions, what do you think the importance  
9 of making sure that they are free of  
10 encumbrances?

11 A Oh, we wouldn't accept anything if  
12 somebody signed something to it. So that's very  
13 important.

14 Q Would it be important to the  
15 confidence of the stakeholders in your industry?

16 A Yes.

17 Q I just do want to look at one last  
18 thing here, and I'll let you go. If you look at  
19 986.61(h) or (I), if you'll go to (I), and if  
20 you can read the last sentence. I can read it  
21 for you.

22 A In terms of this paragraph?

1           Q       Right. Yes, the terms of this  
2 paragraph may be revised subject to the  
3 recommendation of the Council and approval of the  
4 Secretary. I'm just going to contrast that with  
5 some other language that we have in this order.  
6 Let's go to say 986.45(c). And it says there  
7 that Council may recommend, once again subject to  
8 the approval of the Secretary, revisions to the  
9 above requirements for grower and sheller seats  
10 to accommodate changes within the industry.

11                   Okay. So one last section, I promise,  
12 986.32(b), which is regions. You see that?

13           A       Yes, sir.

14           Q       And there it says, With the approval  
15 of the Secretary, the boundaries of any district  
16 may be changed pursuant to Section 986.58,  
17 reapportionment and redistricting. If you  
18 notice, in that last language it makes no mention  
19 of the Council, whereas the other provisions did  
20 make mention of the Council subject, once again,  
21 to the approval of the Secretary, but it makes  
22 mention of the Council.

1           Do you expect those sections to work  
2 the same, the approval sections? Are we  
3 expecting -- or was it the Board's intent that  
4 Section 986.32 work the same as say Section  
5 986.61(I) at the end, the last sentence?

6           A       Yes.

7           Q       Okay. And if it's not clear, to the  
8 extent that it's not clear, would you be fine  
9 with a clarifying change if it's needed?

10          A       I would think so, yes, sir.

11          Q       All right.

12                   MR. HILL: I have no further  
13 questions.

14                   JUDGE GUTHRIDGE: Are there any more  
15 USDA questions?

16                   (No response.)

17                   JUDGE GUTHRIDGE: No? Mr. Quirós?

18                   MR. QUIR S: No further questions of  
19 this witness, Your Honor.

20                   JUDGE GUTHRIDGE: Does anyone in the  
21 audience have any questions for Mr. Willson?

22                   (No response.)



1 JUDGE GUTHRIDGE: No? So, Mr.  
2 Willson, you're excused.

3 THE WITNESS: Thank you, sir.

4 (Whereupon, the witness was excused.)

5 MR. DAVIS: Your Honor, the Proponent  
6 Group recalls Randy Hudson.

7 JUDGE GUTHRIDGE: All right.

8 (Pause.)

9 JUDGE GUTHRIDGE: Welcome back, Dr.  
10 Hudson.

11 THE WITNESS: I wish I could say it's  
12 an honor to be back.

13 (General laughter.)

14 JUDGE GUTHRIDGE: I'm sure it is.  
15 You're still under oath for this hearing, so I  
16 don't need to administer the oath again.

17 THE WITNESS: Yes, sir.

18 (Witness was previously sworn.)

19 JUDGE GUTHRIDGE: Mr. Davis?

20 MR. DAVIS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. DAVIS:

1 Q Let's kind of begin at the beginning.  
2 Please state your name and spell it for the  
3 record.

4 A Randy Hudson, R-A-N-D-Y H-U-D-S-O-N.

5 Q And where do you reside?

6 A [REDACTED] Ocilla, O-C-I-L-L-  
7 A, Georgia [REDACTED].

8 Q Dr. Hudson, you testified at some  
9 length about your background and experience in  
10 the pecan industry while you were in Las Cruces,  
11 because it's possible somebody did not know you  
12 in Las Cruces. So in Georgia I do not think we  
13 need to go into all of your background, because  
14 you are very well known in the industry here.

15 A Probably known too well.

16 (General laughter.)

17 BY MR. DAVIS:

18 Q But why don't you for -- to lay a  
19 foundation for your discussion of some of the  
20 sections we're going to go into this morning,  
21 tell the Court and the audience here your  
22 background in pecan organizations in general and

1 in the American Pecan Board in particular.

2 A Well, I've been in the pecan business  
3 all my life, I guess since birth. And one of the  
4 things, and one of the very early lessons that we  
5 learned was that, you know, we're pretty much on  
6 our own as a grower. You produced a crop and  
7 then you tried your best to sell it, and  
8 depending upon the relationships that you've had  
9 in the processing side of the industry for the  
10 most part, depending upon just how well you were  
11 at marketing your crop.

12 And regrettably being a small grower  
13 for a number of years, and not having perhaps the  
14 connectivity to the processing side of the  
15 industry, it was quite a chore. In fact, I've  
16 said this for a long time, I remember as a young  
17 guy in the pecan business growing one of the best  
18 Schley pecans, which is a paper shell pecan, and  
19 then literally hauling it around all over the  
20 state of Georgia in essence begging somebody to  
21 buy it, and was eventually able to sell it for 16  
22 cents a pound. So that was the state of our

1 industry. I guess that probably was about 45  
2 years ago.

3 Now since that time, and getting  
4 involved on a much larger scale, I have served as  
5 the past president of the Georgia Pecan Growers,  
6 I was on the Board prior to that. Four years ago  
7 a discussion started in regards to trying to  
8 organize our industry and the potential positive  
9 impact that that might have.

10 At that time I presented a paper at  
11 the Southeast Pecan Growers in regards to the  
12 beneficial effect that organizing our industry  
13 could have, particularly on the growers, but not  
14 just for the growers but also for processors,  
15 just how it might help stabilize our industry,  
16 increase our prices and help us with demand. And  
17 so since that point in time I have served in  
18 working toward developing this Federal Marketing  
19 Order in conjunction with other pecan leaders  
20 from around the country.

21 Q Well, and you were selected to go on  
22 the Board of the American Pecan Board. Is that

1 correct?

2 A That's true, yes.

3 Q As a part of your duties as a Board  
4 member, did you attend various industry meetings  
5 and organizations and talk with the members about  
6 what a Federal Marketing Order might look like  
7 for pecans?

8 A Yes, we did. In fact, I'll be quite  
9 honest with you, when we first started the  
10 discussions, and I'll never forget this, and I  
11 may have mentioned this in Las Cruces, we had a  
12 meeting in Biloxi of all places, but in Biloxi,  
13 at a casino, by the way. And the discussion came  
14 about about a marketing order. And we were, for  
15 the most part, predominantly a group of growers  
16 who were discussing what our industry might could  
17 be.

18 And quite honestly, that was a very  
19 contentious meeting in that we really didn't know  
20 what we wanted to be, we just knew that our  
21 history, if we continued to repeat it, we were  
22 doomed to the same future. So we knew we needed

1 to do something, but we didn't really know what.

2 But there were enough guys from across  
3 the country there at that meeting that day, from  
4 New Mexico, Mike Adams was there from Texas, guys  
5 out of the mid-South were there, and then  
6 representatives out of the southeast, many of who  
7 are here today and who you will hear the next few  
8 days. Finally decided that we were going to get  
9 together and we were going to do the best that we  
10 possibly could to try to unify our industry. But  
11 at that time we really didn't know what we wanted  
12 to do. We just knew we wanted to do something.

13 And under the guidance of some  
14 individuals, we put together a loosely-held  
15 council and decided that the best place for us to  
16 go decide what we wanted to be was Washington.  
17 And one of our first trips was to Washington to  
18 just explore the opportunities that existed in  
19 regards to organizing an industry like ours.

20 Q Now, again, for the record, and  
21 there's been some mention of it today, in the  
22 early organizing days what was this group

1 referred to? This was the US Pecan --

2 A US Pecan Council.

3 Q Okay.

4 A And it was made up of an equal number  
5 of growers and shellers.

6 Q Okay. And then, what, some issue came  
7 up about some confusion about that name though,  
8 and that was the group that --

9 A Right.

10 Q -- just changed its name to the  
11 American Pecan Board. Is that correct?

12 A Right. Its connotations in regards to  
13 council and US as opposed to American and so we  
14 were advised that perhaps to better indicate what  
15 we were all about and what we were trying to do,  
16 that American Pecan Board was perhaps a better  
17 term.

18 Q And then again for this record, the  
19 American Pecan Board is what is also referred in  
20 these proceedings as the Proponent Group. Is  
21 that correct?

22 A Yes, we are the Proponent Group.

1           Q       Okay. Let's go back just a little bit  
2 to that meeting in Washington. As a result of  
3 that meeting with officials at USDA, did your  
4 group kind of reach a consensus on which  
5 direction you should go among the various options  
6 that were being considered at that time?

7           A       Immediately no, because at that time  
8 we all had opinions as to what we thought we  
9 might want to be. And quite honestly we had some  
10 who wanted a check off, who really wanted it --  
11 once the definition was outlined, wanted a  
12 marketing order. And then we had some folks that  
13 said they wanted a marketing order, who in turn  
14 wanted a check off. And it was just really a  
15 misunderstanding of the different opportunities  
16 that existed that could help our industry.

17                   And so with the leadership of USDA,  
18 and they did a wonderful job, we just really  
19 could not have gotten where we are today without  
20 the support of the USDA. With the support of the  
21 USDA and with considerable deliberations not only  
22 among the growers and shellers and support



1 entities, but also with our lawyers, who played a  
2 very important role, we felt like that a Federal  
3 Marketing Order was the best solution for what we  
4 were trying to accomplish.

5 Q Okay. Well, once that kind of idea  
6 began to form, did the Board then start an  
7 outreach program, going around talking to various  
8 industry groups and individuals?

9 A Yes, we did. In fact, at last  
10 count -- I don't know how many meetings I've been  
11 to, but there's people in this room that's been  
12 to a lot more than I have. I can tell you --

13 Q Just in round number I mean.

14 A In the 30s to 50 meetings from  
15 regional meetings to individual grower meetings.  
16 You know, here in the east we have the  
17 Southeastern Pecan Growers, we have a Georgia  
18 Board, we have a Georgia Commodity Commission,  
19 and then we have probably, I don't know, 30, 40  
20 grower meetings a year, where the opportunity  
21 existed to talk about, you know, to talk about  
22 the opportunities.

1 I can tell you this too, and we all  
2 should be proud of the diligence at which growers  
3 from across this country have contributed their  
4 time, effort and considerable amount of money. I  
5 know that on the American Pecan Board some have  
6 not received any compensation at all.

7 And the in-kind contributions that  
8 they have made to get this Board to where it is  
9 today, has gone into thousands of dollars, more  
10 than \$30,000, that they have contributed to get  
11 this process to where it is today. So many hours  
12 of contributed time, labor, expenses working to  
13 try to develop a proposal that we felt like would  
14 be accepted by the industry as a whole.

15 And that was a very important part of  
16 this. We felt like to have a successful order,  
17 or a successful plan that would unify our  
18 industry, that it couldn't just be a bunch of  
19 growers because of the importance that the  
20 processing industry plays in the overall business  
21 model. By the same token it couldn't just be  
22 processors. And if we wanted our industry to be

1 strong, you know, for our children and our  
2 grandchildren, then we had to unify the industry  
3 as a whole, and that was our mission from the  
4 very beginning, to try to do that.

5 Q And again, just for the record to make  
6 it clear, these meetings did they take place from  
7 sea to shining sea? I mean did you cover the  
8 production area in these meetings?

9 A Literally from sea to shining sea.  
10 Mike Adams, from California to the Carolinas, I  
11 mean to be honest with you, before this process  
12 started I had never been to Las Cruces, New  
13 Mexico. And now I've averaged in the last three,  
14 four years being in Texas and Las Cruces at least  
15 two if not three times a year discussing this.

16 Q Okay. Do you anticipate -- and my  
17 next question, you personally attended meetings  
18 in the western region, in the central region and  
19 in the southeastern region.

20 A Yes. And not only did I go to these  
21 meetings, but also as a token of how important  
22 unanimity was as a country, I actually joined

1 their associations, and they did likewise. And I  
2 think that was really unique too.

3           Regrettably, historically, you know,  
4 we had these adversarial relationships between  
5 growers and shellers, and we haven't tried to  
6 hide that from anyone. I mean this relationship  
7 was contentious, more so than the east and in the  
8 west. But it was more than just that. It was  
9 also growers. We didn't talk to each other. I  
10 mean really the growers in the east were  
11 competing against the growers in the west, and so  
12 we didn't really want to share a whole lot  
13 because quite honestly we were competing most  
14 years for price.

15           In the east we tried our best to lock  
16 up the gift pack business and the early large nut  
17 business, and the guys in the west very closely  
18 held their relationships with the shelling  
19 industry. So -- and they did a really good job  
20 of it. So these kind of issues not only divided  
21 us as processors and growers, but also as growers  
22 competing against each other.

1           Q       Now during this phase of the process  
2 were you listening to the growers and the  
3 handlers -- and the shellers, excuse me, and  
4 getting input from them for what they would want  
5 in this proposed order if it went forward?

6           A       Certainly, and that was pretty much --  
7 we all understood -- and by we all I mean both  
8 growers and processors -- understood that if we  
9 were going to make this thing work, we had to be  
10 willing to listen to each other. And we had to  
11 be willing to accept maybe some very contentious  
12 concepts that heretofore we probably would not  
13 have accepted.

14                   And it was just -- and it was really  
15 part of this mediated process of all trying to  
16 get a point where quite honestly where we trusted  
17 each other. And that was a real big issue of  
18 trust. It was really interesting too when we  
19 first set the first US Pecan Council with an  
20 equal number of growers and shellers sitting  
21 around a table trying to decide what the future  
22 of this industry might look like.

1           The first couple of meetings were  
2 contentious at best. I mean quite honestly there  
3 was this nature of -- we just -- where are we  
4 going to go? I mean really how are we going to  
5 get this much of folks with such different  
6 concepts about what this industry ought to be  
7 together.

8           And I've said this before, and I said  
9 it in testimony in Las Cruces, once we learned to  
10 trust each other and once we gained confidence  
11 that we were trying to do what was best for our  
12 industry, I do not know of a single vote that we  
13 had as a Board on parts of this order where we  
14 didn't -- when the final discussion was over and  
15 we took a vote, where it was not unanimous. And  
16 I think that speaks highly of how hard we worked  
17 together to try to develop a marketing order that  
18 we felt like that we could get the industry to  
19 accept.

20           Q       Well, now, somewhere along this  
21 continuum as you were listening to information,  
22 you probably turned to the issue of actually

1       trying to draft this proposed market order. Is  
2       that a correct statement?

3             A       Yes, we did.

4             Q       We have heard something about a rule  
5       drafting meeting or something in Washington, DC.  
6       Could you tell us approximately -- was there  
7       such a meeting, when did it occur, did you  
8       participate?

9             A       Yes, I did, but the rules and the  
10       drafting of these rules was sort of a continuum  
11       process. I mean we sat down and obviously a  
12       formal meeting where we voted and developed the  
13       process. But for the most part it was a  
14       continuum of trying to develop the rules, modify  
15       the rules to the point that it wasn't just  
16       acceptable, that it was something we can  
17       understand. And even then it sometimes gets  
18       rather complicated.

19            Q       As we've seen. In this process were  
20       you trying to incorporate what you had heard in  
21       this listening tour and the concerns that you had  
22       heard from the growers, shellers, large and

1 small?

2 A Yes. That was exactly the position we  
3 were taking was that we wanted to make sure that  
4 this document was diverse. We wanted to ensure a  
5 level of diversity so that whether you were a  
6 large grower, a small grower, or a large sheller,  
7 a small sheller, that you were included as a part  
8 of this process. And we wanted to guarantee  
9 that.

10 Q Again, if you said it, I missed it,  
11 but approximately when was this rule summit in  
12 DC, if you remember?

13 A I'm sorry, all dates have kind of run  
14 together the last --

15 Q Kind of run together.

16 A -- three or four years.

17 Q All right.

18 A But you may want to refresh my memory  
19 on that.

20 Q I think we've heard testimony, and the  
21 record will speak for itself, but I believe it  
22 was in January perhaps of this year. I'm not



1 absolutely sure about that, but --

2 A Yeah, it was.

3 Q -- it was sometimes in and around  
4 that --

5 A Right.

6 Q -- time. Right?

7 A I couldn't remember if it was February  
8 or March. It seems like for the last three or  
9 four years time has just sort of flown by.

10 Q So, and then after this process starts  
11 did the Board publicize the drafts as they were  
12 being made and letting the members know kind of  
13 what the -- as this thing was taking shape kind  
14 of what it looked like?

15 A Yes. Yes, we did.

16 Q And how would you do that, how would  
17 you --

18 A Well, quite honestly there are no  
19 secrets in the pecan industry, I'm just going to  
20 tell you. In particular there were really no  
21 secrets in regards to developing the rules and  
22 policies for this market order. So generally

1 when we would -- as the Board would discuss a  
2 matter and then get ready to take it back to the  
3 rank and file to get their input, they already  
4 knew. I mean they generally already knew.

5 And here again it was a process of  
6 give and take, and so that all parties, all  
7 interested parties were given significant  
8 opportunity to have input.

9 Q Well, let's talk about those  
10 opportunities. Again, you've described kind of a  
11 tour of all the regions gathering input. Was  
12 there also a tour of the regions and different  
13 sections --

14 A Yes.

15 Q -- to discuss what was being  
16 formulated --

17 A Yes.

18 Q -- at the FMO level?

19 A Yes, there was. In fact, we made it  
20 a point, and I made it a point at that time. For  
21 a period of time I was also president of the  
22 Georgia Pecan Growers. And I wanted to make

1       sure that the Georgia Pecan Growers were involved  
2       in this process from the very beginning to the  
3       very end.

4                       Many of the growers in this room here  
5       I spoke with individually about certain  
6       components of the order.  Particularly those  
7       parts which might be most contentious in regards  
8       to what the assessment might be, or  
9       representation might be and those things.  So I  
10      made sure that the Georgia Pecan Growers knew  
11      first, because at that time I was representing  
12      Georgia Pecan Growers, as well as the growers in  
13      the southeast, but particularly the growers here  
14      in Georgia.

15                      And I don't know how many times the  
16      market order was brought up and discussed as a  
17      part of the Georgia meeting, both at the Georgia  
18      Pecan Growers Association meetings, but also with  
19      the Commodity Commission and with our annual  
20      Georgia Pecan Grower meeting.  But it's fair to  
21      say that at every meeting since we started this  
22      process, there has been at least some discussion

1 about this market order.

2 Q Did you also take advantage of  
3 technology that might be available to use and  
4 things, like websites and the like, to get out  
5 information?

6 A Yes, we did, with -- more with media,  
7 mass media and trying to make sure that perhaps  
8 growers who weren't connected to the associations  
9 in some way were made available -- or were  
10 made -- or had knowledge that this process was in  
11 the works and welcoming their input.

12 Q And then, again, I believe we've had  
13 some testimony about this. Did you take  
14 advantage of the industry publications, such as  
15 Pecan South --

16 A Yes.

17 Q -- or The Georgia Pecan magazines?

18 A Right. Pecan South out of Texas I  
19 would say probably in every edition for the last  
20 three year had some article about the process,  
21 where we were in the process. And I know that  
22 The Georgia Pecan Growers Magazine, for just

1 about every magazine edition we've had, I think  
2 we do four a year, for the last three years has  
3 had a section in regards to where we were and the  
4 processes that we were going through in  
5 developing this market order.

6 Q Mr. Hudson, do you believe that the  
7 industry was given a fair opportunity to have its  
8 input into what this Federal Marketing Order  
9 would look like?

10 A Certainly. I would say, yes, they  
11 have, and I can assure you that at least -- I  
12 mean I can't say I've heard from everybody, but I  
13 can tell you that at some point in time I had  
14 some calls, some quite contentious at times about  
15 certain provisions that were being progressed.  
16 So, yeah, we had plenty of input.

17 Q Do you feel that the proposed order,  
18 or should I say the order as proposed reflects  
19 the concerns and interests of the industry as you  
20 heard it in these many meetings?

21 A Yes, it does. It really does. And  
22 quite honestly, if you took our original

1 documents, as issues were being raised by  
2 constituents, the document would reflect those  
3 interests and those revisions, those subsequent  
4 revisions that occurred.

5 Q And as proposed do you believe that  
6 there is widespread support, both among the  
7 growers in the various regions and the handlers  
8 in the various regions as you have talked to them  
9 about this proposed order?

10 A Yes, I'm very proud to be able to say  
11 that where we are currently with the document  
12 that we have, that we have what I feel like is  
13 very strong consensus support.

14 Q Why don't we talk about some of those  
15 revisions right now? How about that? We are --

16 A Well, I would welcome that  
17 opportunity.

18 Q We are trying to move numerically  
19 through this order, and I'll say for the record  
20 that we ended on provision 986.65 with Mr.  
21 Willson, and I was a little bit concerned that we  
22 had skipped 66, but, in fact, there is no 66, so

1 we're going to move right on into Section 67 if  
2 you have that --

3 A Yes, I do.

4 Q -- in front of you. And it has a  
5 heading of Recommendation for Regulations. Why  
6 don't you just tell us in general terms what was  
7 the Board intending to do by having this Section  
8 67.

9 A This section specifically authorizes  
10 the Council to propose regulations to the  
11 Secretary after submitted the marketing policy  
12 required under Section 986.65 to in essence  
13 effectuate the policy of the Act.

14 Q And what is your understanding is the  
15 policy of the Act? What is --

16 A Well, it in essence gives us, or gives  
17 the Secretary authority to act.

18 Q And the Act, of course we're referring  
19 to the 1937 Act, and it's main goal or purpose is  
20 to add -- or lend stability to commodity --

21 A Yes.

22 Q -- prices. Is that correct?

1           A        To commodities, yes.

2           Q        Now what is the role or purpose of the  
3 marketing policy as it relates to recommending  
4 regulations?

5           A        Well, specifically it would allow us  
6 to collect data and that make regulations and  
7 implement regulations that are important to, in  
8 our case, the pecan industry.

9           Q        Now how would -- would regulations of  
10 this type be something that would be of high  
11 interest and would lead to a great deal of  
12 deliberation with the Council?

13          A        Yes, certainly it would.  If I might  
14 elaborate just one little bit here, in my  
15 opinion -- and I did this the other day and went  
16 off on a tangent and I got pulled back, as you  
17 might very well remember.

18                    But in regards to some very  
19 significant parts of this order, the ability to  
20 market, provide funds for research and education  
21 and then collecting of data is really the meat of  
22 this market order.  And so I would say



1 particularly this section, it relates -- allows  
2 us to be able to do the things that we really  
3 want to put this order in place for.

4 But now with that said, because of the  
5 make-up of our Board and the importance of the  
6 issues that we would be deciding, it's very  
7 important that these decisions be discussed open,  
8 in earnest, and that the Board would then vote on  
9 these issues. And to ensure, to ensure that  
10 we're doing the best for the industry as a whole,  
11 the super majority provision then comes into  
12 play. And that -- I think that is a very  
13 important part in regards to this authority.

14 Q And of course we've all --

15 A And that's -- right.

16 Q -- part of that's the 986.55 --

17 A (c)(1).

18 Q -- (c)(1) --

19 A Sections 8 through 10.

20 Q There we go.

21 MR. DAVIS: Your Honor, I believe  
22 those are all the questions I have on Section 67.

1                   JUDGE GUTHRIDGE: Does the USDA have  
2 any questions?

3                   MS. SCHMAEDICK: Melissa Schmaedick,  
4 USDA.

5                   CROSS-EXAMINATION

6                   BY MS. SCHMAEDICK:

7                   Q       Thank you, Dr. Hudson, for your  
8 testimony. With regard to Section 986.67, I want  
9 to start simply with the title, Recommendations  
10 for Regulations. And I want to -- you described  
11 in great detail the drafting process and the -- I  
12 guess the understanding that you have developed  
13 over time about marketing orders and how they  
14 work. Can you speak to why this section is  
15 called Recommendations for Regulations?

16                  A       Well, here again, ultimately the  
17 authority would lie with the Secretary. And so  
18 that a proposal that we might make, particularly  
19 if it was a contentious proposal that may in some  
20 way adversely affect the industry, I would say  
21 that in a position like that, the Secretary may  
22 very well have an opportunity to say, Now, look,

1 the regulations as proposed might need some  
2 additional consideration. So I would say that  
3 that would be my interpretation, and I may be off  
4 base there.

5 Q No, thank you, that's very helpful.  
6 So, again, when you were learning about marketing  
7 orders and how they operate, did you ever hear  
8 the term informal rule making? Do you recall  
9 that term? And if you don't, that's fine. I'm  
10 just curious.

11 A No.

12 Q No. Okay. So let me rephrase -- or  
13 let me develop my question then. So based on  
14 your understanding, is the role of the Council to  
15 have the ability to process and deliberate what  
16 types of regulation might be best for the  
17 industry, and how the most appropriate and  
18 intended affect on the industry, and then the  
19 role of that Council is to make that information  
20 known to the Secretary, is that what is meant by  
21 the recommendation process?

22 A Yes, I would suspect so.

1           Q       And then does the Secretary -- based  
2           on your understanding, does the Secretary then  
3           have the duty to make the recommendation known,  
4           the recommendation and I guess potential  
5           regulation known to the public, and is there an  
6           opportunity for the public to give feedback  
7           before that regulation comes into effect?

8           A       I'm sure that that would be the  
9           circumstance, yes.

10          Q       Thank you. So in essence does 986.67  
11         establish --

12          A       Sixty -- okay.

13          Q       986.67.

14          A       Right.

15          Q       Let me back up and rephrase this.  
16         When we -- when you were in the process of  
17         learning about marketing orders, did you ever  
18         hear the term tool box?

19          A       Yes, I did.

20          Q       And tools that were put into the tool  
21         box?

22          A       Yes.

1 Q And in that context, based on your  
2 recollection, do tools refer to authorities under  
3 the Act -- or under the marketing order?

4 A It could, yes.

5 Q Okay. So is this simply an authority  
6 that allows the Council to communicate its best  
7 recommendations to the Secretary for  
8 consideration and for public comment --

9 A Yes.

10 Q -- prior to implementation?

11 A Yes, that would be my interpretation.

12 Q Okay. Thank you.

13 MS. SCHMAEDICK: No further questions.

14 JUDGE GUTHRIDGE: Any more questions  
15 from the USDA?

16 (No response.)

17 JUDGE GUTHRIDGE: Okay.

18 MR. DAVIS: Thank you, Your Honor.

19 JUDGE GUTHRIDGE: Mr. Davis.

20 REDIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q Let's move on to 986.68, and that's on

1 the overhead here for you, authority for research  
2 and promotion activity. Take a second and  
3 refresh yourself with that provision.

4 A (Perusing document.) Yes.

5 Q Okay. And again, in general terms  
6 without -- we'll dive into some of the specific  
7 phrases here, but in general what was the Board's  
8 intent in proposing this section?

9 A Well, here again, I think this is  
10 probably one of the most -- well, is, in my  
11 opinion, the most important section, and really  
12 is that part of the order which -- that I feel  
13 most dear about, and that is that it authorizes  
14 the Council to engage in research and promotion  
15 which will aid all facets of the pecan industry,  
16 from production and agriculture, growing pecans,  
17 to distribution, marketing and packaging.

18 So, yeah, in my opinion this is  
19 perhaps the most important section in regards to  
20 what we're trying to do here. And that is to  
21 support the marketing of pecans and then  
22 hopefully have sufficient funds to conduct

1 research on pecans and education programs to  
2 effectuate that research. And we just have not  
3 had that in many years.

4 Q Let's go through a few of the clauses  
5 there in the first sentence. You see that the  
6 Council, with the approval of the Secretary, may  
7 establish or provide for the establishment of,  
8 the first is production research. What in your  
9 mind is production researching?

10 A Well, quite honestly production  
11 research to me is what allows us to make money.  
12 In other words, how we can reduce our input cost  
13 and produce a higher value, safer product. And  
14 in the last several years, I would say really  
15 since the mid '80s, if you look at monies that  
16 were available for research on pecans, they have  
17 just slowly dried up as result of continued  
18 budget cuts, both at the federal and state level.

19 Q Well, let me interrupt you there just  
20 to say, currently where, to the extent that there  
21 is any production research going on, where is  
22 that research taking place?

1           A           There are -- current research is being  
2 conducted by two USDA facilities, one in College  
3 Station, Texas, one in Byron, Georgia. And for  
4 the most part that is our USDA contribution to  
5 pecan research. Now there's token projects here  
6 and there, but for the most part that is the most  
7 significant funding.

8                       Now our land grant institutions and  
9 our 1890 institutions may have a pecan project of  
10 one nature or another. I know the University of  
11 Georgia has projects, they have them in Auburn,  
12 they have them at Texas A&M. There is some  
13 research going on in some 1890 colleges.

14                      But for the most part, to be able to  
15 have the level of research that we need to  
16 continue to promote and develop our industry, our  
17 industry has suffered for a number of years, as  
18 evidenced by the fact that our scientists just do  
19 not have sufficient funds to carry on a  
20 sustainable pecan project. So --

21           Q           Well, now of course we don't have the  
22 Council in place yet and we don't know who would



1 be on it, but would you see production research  
2 being sponsored by the American Pecan Council to  
3 be in conjunction with these existing efforts, or  
4 as a supplement to them, or kind of how would  
5 they --

6 A Right.

7 Q -- how would they fit together?

8 A Well, it'd be a complement. And I'll  
9 give you an example of this at two levels, one at  
10 a federal level and one at state level. A few  
11 years ago, and I think Dr. Lenny Wells was a part  
12 of this, I think Dr. Bill Goff was a part of  
13 this. The pecan industry submitted a national  
14 project proposal for pecans.

15 Q Submitted it to whom?

16 A The USDA for funding. And it was  
17 rejected. And the reason it was rejected was on  
18 the grounds that there wasn't sufficient industry  
19 support. At that time our industry was still for  
20 the most part localized in our states and there  
21 wasn't a broad multi-state support for a national  
22 research project.

1           Through the American Pecan Board and  
2           the fact that we would truly represent the  
3           industry as a whole nationwide, it would open up  
4           the opportunity to have true national efforts on  
5           research projects for pecans. And it would allow  
6           us to take monies, small amounts of monies, and  
7           then leverage them at the federal level for  
8           higher levels of money, so we could leverage up.

9           But then too for example, in both  
10          Texas and Georgia where we have Commodity  
11          Commissions, there currently are ongoing research  
12          projects that are being funded at the state  
13          level. And they're very important. And they're,  
14          for the most part, state specific, and I'll give  
15          you a good example of that. In Georgia we're  
16          having problems with scab, very high humidity, a  
17          lot of rainfall, we're getting scab and it's  
18          costing us a lot of money trying to control  
19          disease resistant scab.

20          So the state of Georgia is putting a  
21          token amount of money toward trying to help us to  
22          develop ways to control scab here in Georgia. On

1 the other hand, it's quite the opposite out in  
2 West Texas and New Mexico. They're having  
3 problem with water. And what their growers out  
4 there are doing are having research projects on  
5 trying to maximize and use more efficient use of  
6 water.

7 So there's opportunities here to have  
8 access to leverage up on a national level a  
9 national kind of initiative, as well as on state  
10 level have state targeted research projects that  
11 could in some part be supported through the  
12 national marketing order.

13 Q So again to summarize, you would  
14 envision some production issues being looked at  
15 on a national level, perhaps by people retained  
16 directly by the Council, but you also see that  
17 the Council could collaborate and cooperate with  
18 helping more localized research on localized  
19 problems.

20 A Yes.

21 Q And you think that you have the  
22 flexibility to do that in this marketing order?

1           A       Yes, we would.

2           Q       Okay. Good. Next, again, just going  
3 clause-by-clause, it says --

4                    JUDGE GUTHRIDGE: Mr. Davis, before  
5 you go on, could I ask a --

6                    MR. DAVIS: Oh, please.

7                    JUDGE GUTHRIDGE: -- questions of Dr.  
8 Hudson?

9                    I think you used the term 1890  
10 college.

11                   THE WITNESS: Yes.

12                   JUDGE GUTHRIDGE: What does that term  
13 mean?

14                   THE WITNESS: Those are minority  
15 colleges and universities that are funded  
16 separately under the Smith-Lever Act. In Georgia  
17 we have Fort Valley State, in Alabama it'll be --

18                   JUDGE GUTHRIDGE: Tuskegee probably?

19                   THE WITNESS: Tuskegee.

20                   MALE VOICE: Tuskegee, Alabama, yes.

21                   THE WITNESS: Tuskegee. So those are  
22 predominantly black institutions for historical

1 purposes, and do a lot of really good -- great  
2 research goes on there.

3 JUDGE GUTHRIDGE: Thank you. I just  
4 wasn't familiar with that term.

5 THE WITNESS: Yes.

6 MR. DAVIS: Thank you. I thought it  
7 was land grant, so I'm glad you clarified that  
8 though.

9 JUDGE GUTHRIDGE: He used land grant  
10 also --

11 MR. DAVIS: In the same sentence,  
12 yeah.

13 JUDGE GUTHRIDGE: -- and so --

14 MR. DAVIS: Thank you.

15 BY MR. DAVIS:

16 Q All right. We are moving on then  
17 again to just the preface. The beginning is that  
18 the Council, with the approval of the Secretary,  
19 may establish or provide for the establishment of  
20 marketing research that will go down -- and which  
21 will assist, approve or promote the marketing,  
22 distribution and consumption or efficient

1 production of pecans. What kind of marketing  
2 research are you envisioning?

3 A Well, to give you an example of  
4 marketing research, and I'll use a precedent a  
5 little piece of data that was collected a couple  
6 of years ago here in Georgia. For numbers of  
7 years in Georgia, through the Georgia Commodity  
8 Commission, we had hired a public relations group  
9 to market pecans. And a goodly portion of their  
10 marketing activities was spent around the holiday  
11 season, and for the most part we were marketing  
12 pecan pies and cakes.

13 Well, we were doing this at a time  
14 when the nation was changing on us. And so the  
15 foresight of our Commodity Commission was let's  
16 take a real good hard look and let's invest some  
17 money just to see where we should be spending our  
18 marketing monies. And so they did.

19 And what they found out was what most  
20 all of the yuppies around here, including my son,  
21 know, and that is that the eating habits of the  
22 American people are changing and they're going

1 away from eating pecan pies and eating snack  
2 foods that are healthy and rich with products  
3 that are high in antioxidants, like nuts.

4 And so at the same time we were trying  
5 to sell pecan pies, we should have been selling  
6 dry roasted, unsalted pecans in a small bag. And  
7 so that kind of research, targeted research into  
8 where we could spend our marketing monies would  
9 in essence effectuate some significant --  
10 hopefully drive some additional demand in  
11 marketing pecans.

12 And I hate to use this, but to tell  
13 you how smart I am, I'll never forget the night I  
14 first saw Colbert at the Super Bowl ad where he  
15 dressed up like a pistachio. And the first thing  
16 that came to my mind was that is absolutely the  
17 biggest waste of money I have ever seen in my  
18 life.

19 But then within two weeks they were  
20 saying that pistachio sales had increased some  
21 astronomical, like 15 percent. And it wasn't  
22 that he was sitting there with an eagle dressed

1 up like a pistachio, but it went public and went  
2 viral on every social media and literally sold  
3 millions of pounds of pistachios by having  
4 Colbert do something like that.

5 So I'm just saying that, you know,  
6 there are marketing opportunities out here that  
7 our industry has never touched. But what I do  
8 know is, that if we continue to try to sell pecan  
9 pies and cookies, that that is not going --  
10 that's not the future of our industry.

11 Q Well, and that many of your comments  
12 I think would also apply then to the other clause  
13 that's at the beginning of this, the marketing  
14 promotion. How -- is that correct? I mean some  
15 of the things you've been --

16 A Right. Yes.

17 Q -- talking about is research to kind  
18 of find out what --

19 A Right.

20 Q -- Americans want, but then promotion  
21 would be trying to market to those consumer  
22 desires, if that --



1           A       Exactly. Right. For promotional  
2 activities.

3           Q       And we talked about production  
4 research, some of it being local, some of it  
5 being national. The marketing is more likely to  
6 be a national project, is it not? It'll --

7           A       Yes. Yes, it would be. I very  
8 strongly suspect that our marketing activities  
9 would be national in scope, and quite honestly it  
10 would be in those areas of the United States  
11 north of the Mason-Dixon Line that have not been  
12 exposed to pecans. You know, after all of these  
13 years you get north of Virginia and west up into  
14 the northwestern states of the United States, and  
15 you just do not see pecans in the marketplace.

16          Q       We kind of skipped over, and I think,  
17 to be candid, you and I may have struggled a  
18 little bit with exactly what the clause,  
19 development projects. Was there any discussion  
20 of what would be development projects that the  
21 Council may recommend?

22          A       Yes, I can give you a good example of

1 a potential development project. For example,  
2 historically there are certain products of the  
3 pecan industry, and we talked about some of these  
4 in regards to very low quality pecans and what  
5 might be done with those.

6 In recent months really, and within  
7 the last year-and-a-half, there's been a  
8 considerable amount of discussion in regards to  
9 pecans, pecan flour, meal and oil, which can be  
10 extracted from really the by-products. Pecan oil  
11 can be made some of the most rancid pecans.

12 And there is a company in Fitzgerald,  
13 Georgia that was interested in getting into the  
14 pecan oil, meal and flour business. In fact,  
15 they've recently bought a flouring -- a very  
16 expensive machine to pulverize pecans to a flour  
17 so it could be blended into a smoothie as opposed  
18 to being meal and gritty and -- but to put into  
19 milk, make a pecan milk.

20 And what they found out was they did  
21 their business model and they modeled the value  
22 of the oil and the flour and found out that under

1 current market structure, that the meal, oil and  
2 flour was probably the most profitable side of  
3 the business, including the very top halves or  
4 pieces.

5 So that what was in essence considered  
6 to be almost a waste product a few years ago now  
7 may be more valuable than the very top quality  
8 product as we've perceived it in the past. So  
9 I'm saying those kinds of research opens up  
10 market opportunities that we can't even imagine  
11 today.

12 Q Okay. And for the benefit of --  
13 perhaps if there's someone that's not in the  
14 pecan industry here, rancid pecan does not  
15 necessarily mean the same like as rancid meat,  
16 does it? It's not spoiled necessarily, it's just  
17 not top quality?

18 A I've never -- let me put it this way,  
19 rancidity is a product in pecans, it is a product  
20 of moisture and breakdown of the nut. And a  
21 rancid -- a good high quality pecan is the best  
22 thing you've even eaten. A truly rancid pecan is

1 absolutely the worse thing you've ever eaten.

2 But that product is, when the oil is exacted, is

3 a marketable product.

4 Q Still has some value. Right?

5 A Still has value. As opposed to rancid

6 meat. The only thing you can do with that meat

7 is make dog food out of it.

8 Q So those are some of the kind of --

9 when you development projects, you were -- you're

10 envisioning development of new products, or

11 development of new uses for pecans that perhaps

12 we haven't thought of yet.

13 A Yes.

14 Q Okay. And again, those would be

15 national in scope and would benefit the entire --

16 A The entire --

17 Q -- industry.

18 A -- industry, yes.

19 Q Okay. Could the Council use an

20 assessment to fund specific research or promotion

21 projects to deal with a particular problem that

22 has arisen?

1           A       Yes, they could.

2           Q       So can you think of any examples,  
3 perhaps health scares or anything like that we  
4 may be able --

5           A       Yeah. Yeah, and I did mention this in  
6 earlier testimony. One of my biggest fears quite  
7 honestly in being in the pecan industry is that  
8 we do not have a national critical response team  
9 to some sort of health issue. If we were to have  
10 an E. coli or salmonella outbreak, we currently  
11 do not have a national response team in place.

12                   To my knowledge, I believe every other  
13 industry has a team. I know we drafted a plan.  
14 I think Dr. Lenny Wells might could address this  
15 in more detail a little later on. I think we have  
16 names on a piece of paper. But in regards to  
17 having identified significant parties to address  
18 an outbreak of E. coli or salmonella, which could  
19 devastate our industry, I mean it could bring our  
20 industry to its knees, we currently do not have  
21 that in place.

22                   And this -- one of the things we've

1 talked about, and Mike and I have talked about  
2 this, and -- with others, is that we need -- one  
3 of the first things we're going to do is try to  
4 put together a critical -- you know, national  
5 response team for a situation that might develop  
6 like that.

7 Q Would this authority, or as I think  
8 we've heard it referred to, a tool in the tool  
9 box, benefit small producers and handlers in this  
10 industry as well as large producers and growers?

11 A Certainly. You know, both, whether  
12 it's research on new products, or whether it's  
13 addressing a national instance with some sort of  
14 contamination, it would benefit all growers, and,  
15 in fact, all growers and processors.

16 Q Was this proposal, Section 68, what  
17 they discussed with producers in the industry  
18 prior to this hearing?

19 A Yes, it was. Here again, there is  
20 very little content that exists in this marketing  
21 order that has not been thoroughly discussed.

22 Q And would you have an opinion on what

1 would be the impact on the industry if this  
2 authority were not implemented?

3 A Yeah, I have a real good opinion of  
4 that. I mean all you've got to do is look back  
5 at the last 50 years. I mean we would go right  
6 back to doing what we've always done, which would  
7 be to grow pecans and hope that we could sell  
8 them.

9 And, you know, our biggest fear right  
10 now is we've got a little glitch going on with  
11 getting pecans into China, and in the absence of  
12 China in the market, we're looking at, you know,  
13 we're looking at 100 million pound surplus of  
14 nuts on the market. And if you could imagine  
15 what that would do to price, it would be  
16 devastating.

17 MR. DAVIS: I believe those are all my  
18 questions on Section 68, Your Honor.

19 JUDGE GUTHRIDGE: Are there any USDA  
20 questions?

21 MS. SCHMAEDICK: Melissa Schmaedick,  
22 USDA.

## 1                                 RE CROSS-EXAMINATION

2                                 BY MS. SCHMAEDICK:

3                         Q           Dr. Hudson, you just said something  
4                         that kind of made me recall the testimony of Ms.  
5                         Helen Watts. I don't think you were present for  
6                         her testimony though. But she talked about the  
7                         price of pecans in the marketplace vis-à-vis  
8                         other nut products currently in the marketplace,  
9                         and I believe she said that the pecan prices are  
10                        higher vis-à-vis those other nuts. Does that  
11                        sound accurate to you? We're talking at the  
12                        consumer level.

13                       A           Well, yeah, I have had an opportunity  
14                        the last few weeks to look at that, and that --  
15                        it is quite remarkable that it is. If you  
16                        look -- and what's confusing about that is that  
17                        prices at the grower level in many cases are  
18                        actually lower, but you get into the marketplace  
19                        and the price of pecans are higher. And I have  
20                        ideas about that too.

21                       Q           Okay. I would appreciate, if you're  
22                        comfortable sharing those ideas, because it was



1 confusing for me --

2 A Right.

3 Q -- and when you put that into the  
4 context of the issue you just brought up of --

5 A Right.

6 Q -- potentially having all this  
7 product that should go into the export market,  
8 but it might be here.

9 A Right.

10 Q How -- I mean how are we --

11 A Well --

12 Q -- what do you see happening?

13 A Well, and this is a very important  
14 point, and this even substantiates why -- more --  
15 why we need a market order. And that is lack of  
16 insufficient data to be able to develop a  
17 marketing strategy that's compatible with supply  
18 and demand.

19 For example, and I can show you a  
20 picture, I have it in my phone because when I saw  
21 it, it just irritated me beyond -- pecans --  
22 there's pecans being sold in Ocilla, Georgia, a

1 one-pound bag for \$16 a pound. Now in my little  
2 business out there, we're 5- or \$6 a pound  
3 cheaper than that.

4 And you ask yourself, you know, why is  
5 there that big a difference in the price at the  
6 commercial level than at my little business out  
7 here where we're selling it. And it all goes  
8 back to this, more than likely that supplier  
9 underestimated the level of demand that was going  
10 to be necessary to fill his contracts with this  
11 grocery store chain. So as a result of that, he  
12 purchased what he thought was sufficient supply  
13 to cover that demand.

14 Well, as the season went on, demand  
15 increased, supplies in his warehouse got smaller  
16 and so he started raising his prices in response  
17 to curb the amount of demand -- or supply that  
18 would be necessary to cover his customer, but at  
19 the same time have product on the shelf.

20 Another point too is that sometimes  
21 certain nuts are used as market makers. And  
22 regrettably, quite honestly, I think year pecans

1 were used as the market maker because there were  
2 opportunities for some really -- to be able to  
3 buy and to market at what some folks would have  
4 thought was a value less than what should have  
5 been the fair market value of pecans at that  
6 time, and so the pecans were used as a market  
7 maker.

8 JUDGE GUTHRIDGE: Excuse me. Dr.  
9 Hudson, what do you mean by the term market  
10 maker?

11 THE WITNESS: Well, you've got  
12 almonds, walnuts, pistachios and pecans all  
13 sitting on a shelf. And let's say you're long on  
14 almonds and so you --

15 JUDGE GUTHRIDGE: And by long on  
16 almonds you mean --

17 THE WITNESS: You've got a lot of  
18 almonds.

19 JUDGE GUTHRIDGE: -- you have a lot of  
20 them.

21 THE WITNESS: You've got a lot of  
22 almonds, you want to sell your almonds. So what

1 you want to do, if almond prices are higher and  
2 you've got a shelf full of almonds there, and you  
3 don't have a whole lot of pecans, and you want to  
4 push folks to almonds, what you do is you put  
5 pecans on the shelf at \$16 a pound. And they're  
6 going to look over there and say, My lord,  
7 pecans, \$16 a pound? Almonds are only \$10 a  
8 pound. I'm going to buy almonds.

9 So I think there's some of all of  
10 that. I think -- and I cannot grasp, and it's  
11 really beyond my education as a farmer to  
12 understand those levels of marketing. But I can  
13 tell you it goes on in the industry. And in the  
14 absence of having clear data in regards to supply  
15 and demand, we can't develop a business model.  
16 How do you do that?

17 And that is the reason why for 50  
18 years this industry has just wallowed in  
19 mediocrity, because you can't budget when you  
20 don't have the numbers to do so. And we just  
21 haven't had the numbers.

22 BY MS. SCHMAEDICK:

1           Q       Thank you. I appreciate your  
2 response.

3           MS. SCHMAEDICK: No further questions.

4           JUDGE GUTHRIDGE: Are there any more  
5 USDA questions?

6           MS. VARELA: Jan Varela, USDA

7           BY MS. VARELA:

8           Q       I have a brief one for you, Dr.  
9 Hudson, going back to the clause in there about  
10 marketing research and development projects. And  
11 in your discussion of developing the new markets  
12 for something like pecan flour and those  
13 alternative uses, could that section kind of  
14 cover not necessarily developing the product  
15 itself, but coming up with the types of projects  
16 and research you might need to figure out if  
17 there is a market for that product after it's  
18 been developed. Is that the type of situation  
19 you think could fall into that clause?

20          A       Yes, it would.

21          Q       And do you think it would important to  
22 be able to fund that to fill the gap between

1 developing a new product and putting money behind  
2 actual advertising for it?

3 A Yes, certainly so.

4 Q Thank you.

5 JUDGE GUTHRIDGE: Are there any more  
6 USDA questions?

7 MS. VARELA: No further questions.  
8 Thank you.

9 JUDGE GUTHRIDGE: Mr. Davis?

10 MR. DAVIS: Thank you, Your Honor.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q No further questions on that section.  
14 Let's move on to 986.69, which I believe may be  
15 the longest section we're going to talk with you  
16 about. And we can't get it all up at one time,  
17 but we'll kind of try to walk through it, if we  
18 can. But take a second and look at -- you have  
19 Exhibit 1 in front of you, don't you?

20 A (Perusing document.)

21 Q Section (a), let's focus on Section  
22 (a) for a second. It has four subparagraphs, and

1 if you could maybe perhaps just talk in general  
2 what is this section addressing and why did you  
3 include it?

4 A Where here again this section is  
5 extremely important in that in order to be able  
6 to gain the confidence in the industry, that we  
7 need a level playing field in regards to not only  
8 standardization in qualities or sizes of pecans,  
9 but also some standardized weights and measures  
10 and manners in which the product may very well  
11 be -- might very well be marketed into the  
12 marketplace. So this section allows us to do  
13 that.

14 Q Now, again, I don't think we need to  
15 put it back up, but we started your discussion  
16 with Section 67, which was a recommendation for  
17 regulations, and that seemed to be a general  
18 authority to allow the Council to propose  
19 regulations to the Secretary. This section kind  
20 of reiterates that authority, does it not, but  
21 just narrows the focus down to handling  
22 regulations. Is that --

1           A       Yes, it does.

2           Q       -- correct? But once again, it is a  
3 recommendation to the Secretary on implementing  
4 those regulations. Is that correct?

5           A       Yes. In fact, what we wanted to do  
6 was to make it very clear that although the  
7 Council has wide authority to regulate, that we  
8 regulated or addressed those issues, which in  
9 this case dealt with handling, packaging, sizing  
10 of products.

11          Q       And once again, would this be the type  
12 of action by the Council that requires the super  
13 majority, so --

14          A       Yes, it would.

15          Q       -- buy-in from all sections?

16          A       Yes, it would. Any time there is a  
17 decision that would require a change in the way  
18 that we're grading or packaging, that the  
19 industry would have to support that with a super  
20 majority.

21          Q       Are there any -- currently are there  
22 any industry standards on handling?



1           A           No, there are not. There are some  
2           general practices, common practices. But to just  
3           give you an example, some companies will sell  
4           shelled meats in a 28-pound box, boat box. Some  
5           companies will sell them in a 30-pound box.  
6           Boxes in all different sizes and dimensions.

7                        On a smaller scale I mean we sell a  
8           12 -- I mean a 16 ounce bag of pecans. Others  
9           sell 12 ounces or six ounces or two ounces, which  
10          is fine, there's no issue there, but it does  
11          become an issue at times in regards to pallet  
12          size, you know, number of cases per pallet,  
13          number of boxes or cases of pecans that you could  
14          get on a pallet, you know, whether it's 1200  
15          pounds to a pallet or 1500 pounds to a pallet.

16                      And so the opportunity, if the  
17          industry were to decide that some type of uniform  
18          specificity in regards to bulk boxes and the  
19          number of pallets per -- or number of boxes per  
20          pallet, and then resultingly the number of  
21          pallets that you might could get onto a  
22          container, that would, at some point in time, if

1 we went to some sort of uniform standards, would  
2 save money.

3 Because then if I were marketing  
4 pecans or someone else was marketing pecans to a  
5 customer and we talked in terms of a pallet or a  
6 box, that the uniformity -- they would know  
7 exactly what we were talking about.

8 Now here again at times, and I'm not  
9 saying that this happens often, but new customers  
10 will come into the business and they'll call and  
11 say, What will you sell me a case of pecans for.  
12 And if I'm pricing a 30-pound box and someone  
13 else is pricing a 28-pound box, then, you know,  
14 there's a possibility there's some confusion  
15 there. And I'm not saying this is a big issue,  
16 but here again it just really points to the kind  
17 of problems the industry's had in the past, and  
18 that is just non-uniformity when it comes even to  
19 packaging and boxing.

20 Q Well, but I think we have heard from  
21 some growers, I'm remembering some testimony in  
22 particular, that this lack of uniformity is

1 another example of lack of information at the  
2 buyer and seller level. You know, we're not  
3 always sure that they're talking apples-to-  
4 apples, oranges-to-oranges. And you alluded to  
5 that, somebody says they want a container --

6 A Right.

7 Q -- is that container 30 pounds or 28  
8 pounds.

9 A Or 28 pounds. Right.

10 Q So do you believe that some uniformity  
11 in this area would help the industry?

12 A Yes, certainly I believe that it  
13 would. It would at least make the dialogue  
14 easier in that when you started talking about  
15 certain quantities of pecans for trade, that if  
16 we had some uniformity that everyone would  
17 understand where we're being at.

18 But one other point too, and this  
19 would be -- address it on an international basis.  
20 We're asked to, at times, develop packaging for  
21 international sales. Well, it would be really  
22 nice if the industry was, in fact, unified, that

1 if I wanted to send a load of pecans to say  
2 Riyadh, Saudi Arabia and it needed to be in  
3 Arabic, that maybe there would be a standard  
4 template that we could use for exporting to Saudi  
5 Arabia, or if it needed to be in some other  
6 language as opposed to having to go out and  
7 develop this independently, just over and over  
8 again redeveloping the wheel just to do, you  
9 know, what should be standard commerce.

10 Q Would that kind of help and regulation  
11 assist small shellers as --

12 A Well, it would probably --

13 Q -- in particular?

14 A -- quite honestly it would probably  
15 have greater benefit to the smaller operators by  
16 having access to some of that information.

17 Q What type of specific quality issues  
18 do you anticipate may cause the need to  
19 regulate -- for regulation in the future?

20 A Well, that is a good question, because  
21 we commonly deal with quality issues. In fact,  
22 I'm involved with an episode right now of a

1 quality issue on an international level. And we  
2 currently don't have anybody to respond to that.  
3 There is no court, or no real remedy other than  
4 in court and that being a person going and trying  
5 to get someone to help decide an international  
6 case on quality. Or for that matter even a  
7 domestic on quality.

8 And the reason for that is that the  
9 standards that are currently being used here in  
10 the United States with USDA, although we have  
11 standards, it's such loosely held standards it's  
12 not nearly as applicable as it should be. In  
13 fact, one of the first pieces of information that  
14 we should take up as a Board would be to try to  
15 get more reliable pertinent quality standards  
16 into the industry.

17 Q And once again, do you think that that  
18 will be a topic that will take a great deal of  
19 discussion and collaboration among the various  
20 elements of the --

21 A Certainly, and like with container  
22 size and these other issues we've been talking

1 about, would require a lot of discussion among --  
2 particularly among the processors and it would  
3 require a super majority by the Board to be able  
4 to implement those standards. But I think we're  
5 all in favor of it, I really do. And I think  
6 I've heard that from the processing industry that  
7 we need, we need standards that would help  
8 industry.

9 Q Okay. And you've alluded to this,  
10 kind of the health issue, but would the ability  
11 to address quality issues provide authority for  
12 the Council to perhaps act as a unifying voice in  
13 the event that there were some kind of health  
14 scare involving the product?

15 A Yes, it would. It certainly would.  
16 And it's something that's very necessary.

17 Q Does the proposed authority allow for  
18 different regulations for different market  
19 destinations? In particular I guess I was  
20 looking at 69(a)(2).

21 A Yes, it does.

22 Q Do you think that that would be

1 valuable?

2 A Yes, it is.

3 Q And I think you alluded to one example  
4 in particular, is if you shipped something to  
5 Saudi Arabia, it has to have Arabic --

6 A Right.

7 Q -- printing on it. And perhaps we  
8 could address that. My next question I guess  
9 would be can you think of a quality problem that  
10 might be localized, or perhaps from one producer,  
11 but which nonetheless would affect the entire  
12 industry and for which the industry needs a  
13 unifying voice and standard?

14 A I'm sorry, repeat that?

15 Q Do you -- can you think of any kind of  
16 a situation where a quality problem may be either  
17 localized to a particular region, or to a  
18 particular producer, but nonetheless the results  
19 of that quality problem might adversely affect  
20 the entire industry, and therefore the entire  
21 industry needs a voice to speak on behalf of the  
22 industry?

1           A       Yeah. Yeah, certainly so. I mean as  
2 I mentioned earlier, all it would take is one E.  
3 coli outbreak and then we would have -- here  
4 again that would be disastrous for our pecan  
5 industry as a whole.

6           Q       And currently is there any  
7 organization that would speak for the industry as  
8 a whole if there was an outbreak?

9           A       Currently there's not. We do not have  
10 a unified voice.

11          Q       Can you think of any current need for  
12 improved packaging or containers?

13          A       Yes. Yes, there are, and, you know,  
14 I mentioned that. I really do believe that some,  
15 you know, some uniform packing standards -- you  
16 know, USDA, number one, really does not mean  
17 anything. No disrespect by the way. But that is  
18 kind of a catch-all term that's often used as a  
19 marketing opportunity, but doesn't mean anything  
20 in the pecan business. And so those kinds of  
21 terms, those kinds of terminology needs to be  
22 developed and then appropriately identified, and



1 then used in the market -- used in the industry.

2 Q Do you believe that the authorities  
3 that are provided for here in Section 69 would  
4 improve the marketability of pecans, and if so,  
5 how?

6 A Yes. Yes, they will. And the way  
7 that they will is that it will give the American  
8 and world consumer confidence in what they're  
9 buying. And I'll say this again, and no  
10 disrespect to anybody, as I've said many times,  
11 with all due respect, I went over to Albany,  
12 Georgia here a while back, and sitting there in a  
13 bin was the biggest pile of rancid pecans I've  
14 ever seen. And I wanted to make sure they were  
15 rancid, so I bought one of them just to be sure.  
16 And, yeah, they were rancid.

17 And the bad -- the sad thing about  
18 that is, is I called the manager and I said,  
19 Look, hey, these things are rancid. And he said,  
20 How do you know? I said, Well, I can look at  
21 them and tell they're rancid. These things were  
22 rotten. And he said, No, they're not, sir.

1           And so I just let him -- but anyway,  
2           the point is, that kind of product hurts us,  
3           hurts our industry because a new -- a person  
4           buying those would take them home, and if they've  
5           never eaten pecans before, they'd open them up  
6           and they might eat them, but they'd never eat  
7           another one. And that is the kind of product --  
8           it has value, but certainly it shouldn't be  
9           sitting out being sold at a very discounted price  
10          to the public as a high quality US number one  
11          pecan. It just -- that kind of sale should never  
12          occur.

13           Q           And if I've heard your testimony here,  
14          if the industry is hoping to break into new  
15          markets, this quality, as you go into new  
16          markets, is probably more important than in our  
17          existing markets. Would you agree with that?

18           A           Right. I agree with that. And I can  
19          certainly -- I certainly agree with that. You  
20          know, it's one thing to sell somebody something  
21          that's of lesser quality, as long as they know  
22          it. If you tell someone, Look, this nut is of

1 lesser quality and that's the reason why you're  
2 getting it cheaper.

3 But to sell someone something that  
4 it's not, and there's no labeling specifications  
5 on the bag stating that this product is amber or  
6 something, then I think we're hurting the  
7 industry as a whole. So regulations and  
8 standards would help us with that product -- with  
9 that problem.

10 Q Well, now of course this section just  
11 gives the authority to propose these regulations,  
12 but we don't actually --

13 A Right.

14 Q -- have the regulations. But you  
15 would agree in general there may well be some  
16 cost that would be incurred by the industry if  
17 reasonable regulations are put in place. Is that  
18 correct?

19 A Yes, there would be some cost.

20 Q But do you have any belief that -- how  
21 the benefits may balance with those costs?

22 A Well, here again, you know, it would

1 probably be a bigger expense on a smaller  
2 producer, on a smaller manufacturer initially.  
3 But long term it would offset that expense with  
4 consumer confidence and a willingness to buy the  
5 product. So I think probably as a nit it would  
6 probably come out over time as being pretty even.

7 Q Now if there were regulations  
8 implemented, would there also be a need for  
9 inspection, a certification process to ensure  
10 compliance?

11 A Yes, there would be.

12 Q Does this proposed program have that  
13 authority?

14 A Yes, it does.

15 Q In particular --

16 A Federal State Inspection.

17 Q And then is that also provided for in  
18 986.54(g) and (h)? Do you have Exhibit 1 in  
19 front of you there?

20 A Yes.

21 Q Does it have the authority to ensure  
22 compliance and do inspections?

1           A       Yes, they do.

2           Q       If there's going to be this compliance  
3 and inspection program, do you have any idea what  
4 agency would carry out such?

5           A       It was my understanding it would be  
6 Federal State Inspection.

7           Q       There's obviously no industry  
8 inspection or compliance team available today, is  
9 there?

10          A       Yes, there is. I mean Federal State  
11 Inspection is an agency that is currently in  
12 existence.

13          Q       And you envision that these  
14 regulations would be provided to that agency and  
15 then they could help or conduct the --

16          A       Yes.

17          Q       -- inspection and compliance?

18          A       Yes. If given the authority.

19          Q       Look at subsection (c).

20          A       Catch me up. Now where are we?

21          Q       Subsection (c) of Section 986.69, the  
22 authority to regulate as put forward in the

1 subsection shall not --

2 A Well, wait --

3 Q And it's also --

4 A 986.69?

5 Q 69(c).

6 A (c). Yes, the authority to regulate  
7 is put forward in this subsection.

8 Q Just take a look at that, and what  
9 exactly was the Board intending to address here?

10 A (Perusing document.)

11 Q And I'll refer you to page 5 --

12 A Yes. Right. Well, I can tell you  
13 that in discussions that we had, that all of us  
14 had, in going around the country, this issue was  
15 probably the most widely held negative in regards  
16 to what we were trying to do.

17 And so what we wanted to do in regards  
18 to this is we wanted -- and the way we responded  
19 to this and have responded to this, is that we  
20 wanted to make it clear that the Council has wide  
21 authority to regulate. It cannot and will not  
22 regulate production by setting limits or reserve

1 pools or allotments.

2 Now other industries have tried this.  
3 There was a real conversation in meetings about  
4 this, but the growers and shellers in this  
5 country I can assure you are adamantly opposed to  
6 this concept. And so this statement clearly  
7 shows that we are not going to go in that  
8 direction.

9 Q And again, just to summarize, although  
10 the Board has got broad discretion in making  
11 recommendations on regulations, handling and  
12 perhaps some other areas, if there's any  
13 question, it's going to be interpreted to mean  
14 that they are not trying to restrict production  
15 in any way. Is that --

16 A Absolutely not.

17 Q -- fair to say?

18 A There will not be any volume  
19 regulations as a part of this market order.

20 Q Is there strong consensus in the  
21 industry on that issue?

22 A Yes, there is. I would say that at

1 all levels there's total unanimity on that point.

2 Q And for -- I guess this would apply to  
3 all of Section 69, not just Section (c), but was  
4 there -- were there other alternative considered  
5 as to how to reach a balance between any  
6 restrictions on production, no restrictions on  
7 production, as to how that would relate to  
8 handling and how were those discussions  
9 conducted?

10 A Well, they were pretty short-lived  
11 discussions quite honestly. And that is that  
12 there would be absolutely no production  
13 limitations in this regard.

14 Q Okay. We've had some discussion, I  
15 believe you were present for some of them, in our  
16 earlier sessions, but just pull up if you would  
17 Section 986.26, the definition of merchantable  
18 pecans. Take a second and familiarize yourself,  
19 and (a) and (b) are really kind of mirrors of  
20 each other, one deals with in-shell, so we can  
21 look at that, but merchantable in-shell pecans  
22 means all in-shell pecans meeting the minimum



1 grade regulations that may be effective pursuant  
2 to 986.69, the section we're talking about. Is  
3 that correct?

4 A Yes.

5 Q And then of course merchantable pecans  
6 is going to be one of the data points that the  
7 Board is going to try -- or, excuse me, the  
8 Council --

9 A Right.

10 Q -- will try to gather. And again,  
11 this is my question. Were you present for this?  
12 Could we address -- could we have an amendment to  
13 this that would clarify the situation of what  
14 happens up and until such time as these  
15 regulations are put into place, could we come up  
16 with an alternative definition of merchantable  
17 pecan?

18 A Yes, we could, and I would just say  
19 that, you know, my interpretation is that pecans  
20 that meet the regulations as outlined in 986.26,  
21 you know, they must meet a certain quality  
22 standard. And I guess to say that any additional

1 thoughts on that would be defined at some later  
2 point. And here again it would take unanimous  
3 consent -- not unanimous, super majority.

4 Q But since this term, merchantable  
5 pecans, is used in so many different places in  
6 these regulations, we probably do need to think  
7 about the eventuality of what if we have not yet  
8 developed those -- these regulations under 69 or  
9 it gets held up for some reason, and just come  
10 up -- address how we would define the term,  
11 merchantable pecans, until such time as effective  
12 regulations are put in place. Correct?

13 A Yes.

14 Q I'm not skipping around too much.  
15 Let's go back to 69 for a second now, in  
16 particular look at Section (b). We didn't touch  
17 on that, subsection (b) and subparagraphs (1) and  
18 (2). What was the intent of having this section?

19 A All right. Catch me up now. Where  
20 are we?

21 Q Let's go back to --

22 A I hate going back.

1 Q I know. It's -- we're not moving in  
2 the right direction here. Section 69(b),  
3 subsections (1) and (2). If you can --

4 A (b).

5 Q -- point that out -- there we go.

6 A (Perusing document.) Okay.

7 Q What were you -- what was the intent  
8 of the Board here in providing this section?

9 A Well, in my interpretation here, and  
10 I know that's some very shaky ground, but was to  
11 give us at least the opportunity to make changes  
12 if at some point in time it became necessary.

13 Q I think we've looked at some similar  
14 sections, and the word flexibility has been  
15 bandied around. Would you agree that this would  
16 give the Council flexibility in the event that  
17 some problem comes up in a regulation that's been  
18 proposed to the Secretary?

19 A Yes.

20 Q Okay. Thank you. And then finally on  
21 this section, if you'll just take a quick look at  
22 subsection (d).

1           A       Yes.

2           Q       And again, is this kind of an enabling  
3 section that authorizes the Council to make the  
4 recommendations under this section?

5           A       Yes, it does.

6           MR. DAVIS: I have no further  
7 questions on this section, Your Honor.

8           JUDGE GUTHRIDGE: Does the USDA have  
9 any questions?

10          MS. SCHMAEDICK: Melissa Schmaedick,  
11 USDA.

12                    FURTHER RECROSS-EXAMINATION

13                    BY MS. SCHMAEDICK:

14          Q       Dr. Hudson, when you were talking  
15 about under 986.69, authorities regulating  
16 handling, it would -- under (b) -- oh, I'm sorry,  
17 no, not under (b). Under -- never mind, I'll  
18 just explain it.

19                    You were talking about potentially if  
20 regulations were developed and put in effect,  
21 that there would be an inspection component with  
22 that --

1           A       Yes.

2           Q       -- to certify that the product is  
3 meeting the requirements. So my question -- I'm  
4 just trying to connect the dots here between  
5 various parts of the program, so going back to  
6 assessments, the initial premise of the  
7 assessment language says that first handlers  
8 would be assessed.

9                   But if there were an inter-handler  
10 transfer that moved pecans from one handler to  
11 another, and the assessment for that -- for those  
12 pecans was transferred, is there also the  
13 authority to transfer that inspection requirement  
14 to the receiving handler?

15                   MR. DAVIS: Can we get up inter-  
16 handler transfer?

17                   BY MS. SCHMAEDICK:

18           Q       I just want to make sure, if you have  
19 an inter-handler transfer, can that transfer  
20 include both the assessment obligation and the  
21 inspection and certification requirement? It may  
22 not need to, but can it?

1           A       Yes, I mean it can. It can. Yes, it  
2 can.

3           Q       Okay. That's all I needed. Thank  
4 you.

5                   MS. SCHMAEDICK: No further questions.

6                   JUDGE GUTHRIDGE: Are there any more  
7 USDA questions?

8                   MS. VARELA: Jen Varela, USDA.

9                   BY MS. VARELA:

10           Q       Just as a very quick follow-up to that  
11 last question. I think we have a good amount of  
12 evidence in that in speaking of how that inter-  
13 handling transfer would be documented.

14                   And just to make sure that we have a  
15 good background when we're developing some of the  
16 further rules and forms in doing that, do you  
17 think it would be important that any types of  
18 records there not only indicate who in that  
19 transaction is responsible for the assessment, or  
20 is it also going to be important for compliance  
21 and for record keeping to note if any of those  
22 other obligations have also been passed along?

1 Is that -- do you intend that that one set of  
2 documentation will include all of those details?  
3 Or do you think it would important to?

4 A Here again, it could. But now you  
5 need to understand this inter-handler transfer.  
6 You have hundreds of grocery stores and hard -- I  
7 mean hardware, who buy pecans in medicine bags, a  
8 pound. And then they just pour all of these into  
9 a large bin. And they make a note of the pounds  
10 they might have bought, they may or may not have  
11 made a note of who they bought them from.

12 There may or may not be a variety or  
13 grade more times than not associated with that.  
14 But rather it would come to the handler as just a  
15 hodgepodge of everything that might have come in  
16 that week.

17 JUDGE GUTHRIDGE: By the handler you  
18 mean that initial grocery store handler, that  
19 first handler in that context?

20 THE WITNESS: The intermediary handler  
21 to the handler in this case. And that's what --  
22 the question was in regards to intermediary

1 handler. Right?

2 BY MS. VARELA:

3 Q It could be --

4 A Well, also at handler level two,  
5 but --

6 Q It could be at the handler level or  
7 the accumulator level?

8 A Or any level.

9 Q Any.

10 A So if there had to be, particularly at  
11 the intermediary handler, some type of paper  
12 trail in regards to quality for every  
13 transaction, I just don't see that as being  
14 workable. It's not practical.

15 At the handler level on larger lots,  
16 yes. So I would just say that that would -- it  
17 could be done if that became a necessary part of  
18 the process. But I can tell you that it would be  
19 a very burdensome piece of paperwork.

20 Q But if I'm understanding you  
21 correctly, the ability to pass on some of those  
22 requirements to the larger later handling entity



1 would really relieve that small operator of what  
2 could be a really large burden that might even be  
3 difficult to comply with.

4 A Yes.

5 Q Okay.

6 A Yes. Absolutely.

7 Q Thank you.

8 MS. SCHMAEDICK: Melissa Schmaedick,  
9 USDA.

10 BY MS. SCHMAEDICK:

11 Q This may sound like a really silly  
12 question, but you've used the term medicine bag a  
13 couple of times, and in my world medicine bag is  
14 about two inches by two inches and you hang it  
15 around your neck. So what kind of a medicine bag  
16 are you talking about?

17 A My medicine bag might be a little  
18 bigger than that.

19 (General laughter.)

20 THE WITNESS: Maybe three inches by  
21 about four inches. Literally less than a pound  
22 of pecans.

1 BY MS. SCHMAEDICK:

2 Q And people deliver --

3 A Sell --

4 Q -- pecans --

5 A Yeah.

6 Q -- in that size bag.

7 A I don't know if you want this on the  
8 record, but we actually have a lady every day  
9 will start on one side of town walking toward our  
10 business picking up pecans off the street and  
11 sidewalks, and every day comes and you can tell  
12 when the nuts are falling because she may have a  
13 bucketful, and then some day she may have a  
14 medicine bagful. And we'll pay her --

15 JUDGE GUTHRIDGE: Your medicine bag or  
16 her medicine bag?

17 THE WITNESS: My medicine bag.

18 (General laughter.)

19 THE WITNESS: My medicine bag. But  
20 that's just the nature of the business. It's  
21 very -- at some level it's a very small quantity  
22 of trade.

1 BY MS. SCHMAEDICK:

2 Q Thank you. So now I'm going to ask  
3 what might be a little bit of a challenging  
4 question, but you've just described an individual  
5 that picks up pecans from the ground, on the  
6 street, and brings them to your place of  
7 business. If there are quality regulations in  
8 effect, is that going to impact the value of the  
9 pecans picked up off the street versus the value  
10 of pecans grown and harvested in an orchard?

11 A No.

12 Q Why not?

13 A Well, because if you've got quality --  
14 I mean she may very well be picking up some out  
15 of my orchard as she's coming across there.

16 (General laughter.)

17 THE WITNESS: And they're very high  
18 quality products. In which case I'm probably  
19 still not going to pay what they're worth, but  
20 she'll get a higher price than if she brings me  
21 some pecans over in late December that are molded  
22 and the quality is very poor.

1 BY MS. SCHMAEDICK:

2 Q Okay. Thank you.

3 MS. SCHMAEDICK: No further questions.

4 JUDGE GUTHRIDGE: Mr. Hill?

5 MR. HILL: Brian Hill.

6 BY MR. HILL:

7 Q So, Dr. Hudson, can you please look at

8 (b)?

9 A 986 point --

10 Q Six nine.

11 A -- 69(b).

12 Q Yes.

13 A Regulations.

14 Q So the language is a little bit

15 unclear for me so I just wanted to double check

16 this. (b)(1), it says, well, (b), regulations

17 issued hereunder may be amended, modified,

18 suspended, or terminated whenever it is

19 determined that, one, that such action is

20 warranted upon recommendation of the Council, or

21 other available information, or, two, that

22 regulations issued hereunder no longer tend to

1 effectuate the declared policy of the Act.

2 Is it your understanding that the  
3 Council can terminate -- amend, modify or suspend  
4 or terminate without the approval of the  
5 Secretary? Or would this necessitate the  
6 approval of the Secretary after the  
7 recommendation of the Council?

8 A It's my understanding that the  
9 Secretary would have be involved.

10 Q Thank you.

11 MR. HILL: That's all I have.

12 JUDGE GUTHRIDGE: Are there any more  
13 USDA questions?

14 MR. HILL: Right. I will ask that.

15 BY MR. HILL:

16 Q Would you be open to a clarifying  
17 change if that's not clear?

18 A Yes, we would.

19 JUDGE GUTHRIDGE: Now are there any  
20 more USDA questions?

21 (No response.)

22 JUDGE GUTHRIDGE: Mr. Davis?

1 MR. DAVIS: Your Honor, I note we're  
2 about to move into another section. This witness  
3 is only going to handle three more sections, but  
4 we are into the lunch hour. If you would like a  
5 break?

6 JUDGE GUTHRIDGE: I was noticing that  
7 myself, and I was going to ask you before you  
8 start the next section how much longer you -- how  
9 long do you think it will take to get through  
10 these next three sections?

11 MR. DAVIS: Probably a half hour,  
12 something like that.

13 JUDGE GUTHRIDGE: Well, I think we're  
14 all too hungry for that. How are you?

15 (General laughter.)

16 JUDGE GUTHRIDGE: Well, we'll recess.  
17 It's right now 12:17 on my watch. 1:30?

18 MR. DAVIS: 1:30 is --

19 MR. HILL: Yes --

20 MR. DAVIS: -- excellent. Thank you.

21 JUDGE GUTHRIDGE: Recess till 1:30.

22 (Whereupon, a lunch recess was taken.)

1 JUDGE GUTHRIDGE: Mr. Davis?

2 MR. DAVIS: Yes, Your Honor --

3 JUDGE GUTHRIDGE: You were involved in  
4 this one. Right?

5 MR. DAVIS: May it please the Court,  
6 yes, sir, we will continue on with Mr. Hudson,  
7 and I direct his attention and the Court's  
8 attention to 986.70, which we've put on the  
9 overhead here, handling for special purposes.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. DAVIS:

12 Q Take a second, Mr. Hudson, and  
13 familiarize yourself with these sections.

14 A (Perusing document.) All ready?

15 Q Yes, why don't you --

16 A Okay.

17 Q -- tell us the background on this  
18 section, please.

19 A Okay. You know, based on my  
20 experience and experiences with other industries  
21 I've had, we felt that it would be beneficial for  
22 the Council to have the flexibility to grant very

1 limited exceptions from the regulations provided  
2 in Section 986.69. This section provides for  
3 such exemptions and gifts, specific examples,  
4 such as situations where pecans are being donated  
5 to charity or for relief efforts or pecans are  
6 being handled for experimental purposes.

7 Q To your knowledge has members or  
8 representatives of the industry donated pecans  
9 under such circumstances in the past?

10 A Yes, we do fairly regularly.

11 Q What about that -- focus on that  
12 experimental purposes. What might you have in  
13 mind there?

14 A Well, I mean the most obvious would be  
15 using nuts for determining health benefits,  
16 comparative health relationships with other nuts,  
17 you know, used as samples to be given away to  
18 prominent groups, support groups, given away  
19 maybe in trade shows to just give folks a little  
20 taste of what a pecan might --

21 Q Well, we're focusing on --

22 A -- would be.



1 Q -- experimental purposes.

2 A Right, for experimental purposes.

3 Q And then I think earlier you talked  
4 about some product --

5 A Right.

6 Q -- development projects, things like  
7 that.

8 A Right.

9 Q Is that kind of what we're doing?

10 A Right.

11 Q Does this section allow products  
12 exempted for special purposes to go un-assessed?

13 A Yes, it does.

14 Q Well, it doesn't specifically address  
15 that, does it?

16 A No, it doesn't.

17 Q But you believe that it would probably  
18 in practice be un-assessed nuts.

19 A It could be.

20 Q Okay. Look at subsection (c) for a  
21 second. It basically says you can have this  
22 exemption --

1 A Right.

2 Q -- for other purposes which may be  
3 recommended.

4 A Right.

5 Q Why have that section?

6 A You know, what it does, it gives the  
7 Council flexibility that if there is some  
8 occasion that could arise that they could, in  
9 fact, handle pecans for that reason.

10 Q But it would have to be kind of in the  
11 same general tenor as the specific examples (a)  
12 and (b), relief --

13 A Right.

14 Q -- charity, experimental purposes.

15 A Right.

16 Q Did you find similar provision in  
17 other FMOs that you reviewed?

18 A Yes, we did.

19 Q Okay.

20 MR. DAVIS: Nothing further on this  
21 section, Your Honor.

22 JUDGE GUTHRIDGE: Does the USDA have

1 any questions?

2 MS. VARELA: Jan Varela, USDA.

3 FURTHER RECROSS-EXAMINATION

4 BY MS. VARELA:

5 Q I think this will just be a brief one.

6 Would you characterize at least the two or three  
7 examples set out there as uses that don't have a  
8 lot of commercial impact?

9 A Yes, they would be.

10 Q Thank you.

11 MS. VARELA: Any other questions for  
12 me?

13 THE WITNESS: Let me expand on that  
14 one minute. It doesn't have a significant amount  
15 of impact in regards to the amount of product  
16 being given away, but the opportunity to be --  
17 for purposes to participate at a level where  
18 there would be charity. There's a tremendous  
19 amount of benefit in that. If you understand  
20 what I'm saying.

21 BY MS. VARELA:

22 Q Let me see if I do. So it might not

1 be a large volume, is that one aspect of that,  
2 that it might not be a large volume coming off of  
3 the market, but it could be very beneficial in  
4 terms of perception of your industry --

5 A Yes.

6 Q -- to do that? Is that part of --

7 A Yes.

8 Q -- what you were getting at?

9 A Yes.

10 Q Okay. Thank you.

11 JUDGE GUTHRIDGE: I imagine it could  
12 also have a commercial impact for the ones that  
13 are used experimentally for a new -- something  
14 new that's developed from that could have a  
15 significant commercial impact for the --

16 THE WITNESS: That's absolutely  
17 correct, yes.

18 JUDGE GUTHRIDGE: But for the  
19 particular product that's being transferred for  
20 that purpose, it would have little commercial  
21 impact.

22 THE WITNESS: Right.

1 MS. VARELA: Understood. Thank you  
2 very much for the clarification.

3 JUDGE GUTHRIDGE: Are there any more  
4 USDA questions?

5 MS. SCHMAEDICK: Not at this time.

6 JUDGE GUTHRIDGE: Okay. Mr. Davis?

7 FURTHER REDIRECT EXAMINATION

8 BY MR. DAVIS:

9 Q The next section, if Mr. Quirós would  
10 put up Section 986.71, it's related to 70, but  
11 let's take a look at that. Heading, Safeguards.  
12 Why don't you explain the intent of the  
13 Council --

14 A Okay.

15 Q -- or the Board I mean with --

16 A This simply will be a safeguard to  
17 ensure that the provisions of Section 986.70 is  
18 not abused. And the Council can set up a system  
19 to check on the special handling exemptions to  
20 ensure product was handled and used for the  
21 approved purposes.

22 MR. DAVIS: We have no questions on

1 that, Your Honor.

2 JUDGE GUTHRIDGE: Does the USDA have  
3 any questions?

4 MS. SCHMAEDICK: Not on that section,  
5 Your Honor.

6 JUDGE GUTHRIDGE: Mr. Davis?

7 BY MR. DAVIS:

8 Q Okay. Let's move on to Section  
9 986.72, notification of regulation.

10 A Okay.

11 Q I think we -- you know, we've had  
12 testimony that in ever occasion it is the  
13 intention of the Council to recommend certain  
14 things to the Secretary. Does this section kind  
15 of close the loop, that the Secretary will then  
16 notify the Council and the industry as to what  
17 regulations have been --

18 A Yes, it does.

19 Q -- adopted. Right? Do you think --  
20 why is this notification process important?

21 A Well, you know, it's important that  
22 regulations, amendments and modifications be

1 promptly distributed to the industry for their  
2 knowledge. And it's to keep the industry  
3 informed.

4 MR. DAVIS: We have nothing further on  
5 that section, Your Honor.

6 JUDGE GUTHRIDGE: Does the USDA have  
7 any questions?

8 MS. SCHMAEDICK: Melissa Schmaedick.  
9 Not on this question. Thank you.

10 JUDGE GUTHRIDGE: Not on this section?

11 MS. SCHMAEDICK: Not on that section.

12 JUDGE GUTHRIDGE: Yeah. All right.  
13 Mr. Davis?

14 MR. DAVIS: Your Honor, I believe that  
15 those are the sections that Dr. Hudson was going  
16 to address. If I could wrap up in conclusion,  
17 those of us that were in Las Cruces got to hear  
18 Dr. Hudson voice his enthusiasm for this FMO in  
19 perhaps too colorful language. So perhaps I  
20 could ask Dr. Hudson if he could restrain himself  
21 somewhat in these proceeding --

22 (General laughter.)

1 MR. DAVIS: -- and tell first, do you  
2 support the FMO and if so, express your  
3 enthusiasm somewhat.

4 JUDGE GUTHRIDGE: He was out of town  
5 on that other --

6 MR. DAVIS: That's exactly --

7 (General laughter.)

8 JUDGE GUTHRIDGE: He's calm now, he's  
9 going to behave.

10 THE WITNESS: Yeah, I apologize to the  
11 Court for that, but, you know, after six hours of  
12 testimony, I don't know if I was so greatly  
13 enthused about the market order or just being  
14 enthused about being finished.

15 (General laughter.)

16 THE WITNESS: But, yes, I still share  
17 that, and, you know, this marketing order will  
18 lead our industry into the future. In the  
19 absence of this marketing order, we are doomed to  
20 relive the past, and that has been less than  
21 pretty.

22 MR. DAVIS: I have no further



1 questions, Your Honor.

2 JUDGE GUTHRIDGE: Does the USDA have  
3 any more questions?

4 MS. SCHMAEDICK: Melissa Schmaedick,  
5 USDA.

6 FURTHER RECROSS-EXAMINATION

7 BY MS. SCHMAEDICK:

8 Q Dr. Hudson, thank you for your  
9 testimony, and I'm wondering if I might be able  
10 to ask you a few questions to help clarify some  
11 sections that have also been testified by --  
12 testified to by others.

13 A I will do my best.

14 Q Okay. And again, my purpose of these  
15 questions is to just help clarify the record.

16 A Yes.

17 Q So could you turn to Section 986.46,  
18 Council nominations and voting. So what I'd like  
19 to do is just sort of recap my understanding of  
20 how this section has been described based on  
21 other testimony, and then ask for your input on  
22 some key elements.

1           I understand that there are three  
2 grower seats per region, and that seats one and  
3 seat two of grower seats are for growers with  
4 equal to or more than 176 acres of pecans. But  
5 under part 3, let's see, it would be (b)(3),  
6 nomination procedure for grower seats, it  
7 indicates that seat one the votes would be  
8 counted based on volume of production voted, and  
9 for seat two the votes would be tallied based on  
10 just the number of votes cast.

11           Can you explain based on your  
12 experience and involvement in American Pecan  
13 Board discussions why one seat is voted by volume  
14 and one seat is voted by number?

15           A       Yes, I can. Here again it goes back  
16 to a diverse representative Board. And what we  
17 wanted to ensure was that we had at least a large  
18 grower, a small grower, and then a grower elected  
19 by the greatest number of votes.

20           So by ensuring that we had one  
21 weighted on volume it would ensure that a large  
22 grower -- and we don't necessarily guarantee it,

1 but it would -- there'd be a fairly high  
2 probability that that person would be a large  
3 grower with a lot of acres, because a small  
4 number of growers with large acres would elect  
5 him based on volume of acres. On the other hand,  
6 it does not necessarily mean that popular vote  
7 would reflect a large grower being elected.

8 I would -- if you ask me how I see  
9 this thing perhaps occurring, sometimes large  
10 growers, you know, are not very popular because  
11 by the nature of their size they're very  
12 competitive. There's large growers out there --  
13 I mean small growers out there, medium sized  
14 growers that would be a lot larger if the large  
15 grower hadn't bought up their farm or rented out  
16 their land.

17 So I'm just saying we wanted to make  
18 sure that the large grower -- and in this case  
19 the medium sized grower and the small grower were  
20 represented. And we felt like this was the best  
21 way for this to occur.

22 Q Thank you. Now if I could ask you to

1 turn to 986.47, alternate member. Again, I'm  
2 wondering if you can go back and recollect the  
3 discussions that were had with the American Pecan  
4 Board. I want to focus on paragraph (b) of that  
5 Section 47 where it talks about -- oh, I'm sorry,  
6 it's not 47. It's 50. My apologies, term of  
7 office, 50.

8 MR. QUIR S: Just one second, Ms.  
9 Schmaedick, let me see if I can get it for the  
10 witness. Do you have a subsection, Ms.  
11 Schmaedick? Is it --

12 MS. SCHMAEDICK: 986.50, paragraph  
13 (b).

14 MR. QUIR S: A portion of it's on the  
15 screen, Mr. -- Dr. Hudson.

16 THE WITNESS: (Perusing document.)  
17 Okay.

18 BY MS. SCHMAEDICK:

19 Q Okay. So the first sentence of that  
20 paragraph (b), I'll read it for the record, says,  
21 Council members and alternates may serve up to  
22 two consecutive four-year terms of office. And

1 then it goes on to say, In no event shall any  
2 member or alternate serve more than eight  
3 consecutive years on the Council as either a  
4 member or an alternate.

5 However, if selected, an alternate  
6 having served up to two consecutive terms -- if  
7 selected, an alternate having served up to two  
8 consecutive terms may immediately serve as a  
9 member for two consecutive terms without any  
10 interruption in service. The same is true for a  
11 member who having serving up to two consecutive  
12 terms may serve as an alternate if nominated.

13 So it's the following sentence that I  
14 have a question about. A person having served  
15 the maximum number of terms as set forth above  
16 may not serve again as a member or an alternate  
17 for at least 12 consecutive months.

18 So my question is, and it's based on  
19 some confusion relating to different types of  
20 testimony we've heard. Does that statement, A  
21 person having served the maximum number of terms  
22 as set forth above, does that mean a person has

1 served as a member for eight years and then an  
2 alternate for eight years, and at that point they  
3 are required to take a 12-month break? Or does  
4 it -- I guess I'm just going to stop there. Is  
5 that what that means?

6 A My interpretation, which is probably  
7 erroneous, in which case my lawyers will -- is  
8 that you can serve two years -- two two-year  
9 terms as either/or the other.

10 MR. QUIR S: Four-year terms.

11 THE WITNESS: Two four-year terms,  
12 eight years. I'm sorry. Two four-year terms  
13 either as a member or an alternate. If either of  
14 those periods is interrupted as one or the other,  
15 then it allows you to serve a full term. If  
16 you're eight years as an alternate and then  
17 you're not selected as a member, you come off.  
18 If you're eight years as a member and you're not  
19 selected as an alternate, you come off. If  
20 you're eight years as an alternate and then you  
21 get elected as a member, then you have eight  
22 years is my interpretation. Now if I'm wrong --

1 BY MS. SCHMAEDICK:

2 Q Okay. So then taking it --

3 A But you -- it's not --

4 Q -- one step --

5 A -- it's not one or the other. And if  
6 you can understand this, is that the member, the  
7 member obviously is the one that is elected and  
8 for the most part has the authority and the  
9 alternate would serve in his place in the event  
10 that for whatever reason he could not serve. So  
11 he's not endowed, or she's not endowed with the  
12 full responsibility of the position.

13 So it would allow a person who is an  
14 alternate to also be elected as a member after  
15 this person were to fulfill the term. Now that  
16 is my interpretation.

17 Q Okay. So let me take it one step  
18 further. You have an alternate who serves eight  
19 years, they're elected as a member, they serve  
20 eight years.

21 A Right.

22 Q Can they turn around and serve as an

1 alternate again for eight years, or do they have  
2 to take a break?

3 A You would have to take a break. I  
4 don't know if it's they would have to take a  
5 break, or I need to take a break.

6 (General laughter.)

7 THE WITNESS: But it's one or the  
8 other.

9 BY MS. SCHMAEDICK:

10 Q Thank you. That --

11 A Do we need to parlay on this one or  
12 is -- no, that would be a break --

13 Q Okay. Thank you.

14 A -- is my understanding.

15 Q Thank you. That's helpful. And then  
16 I apologize for sort of ping-ponging back and  
17 forth, but if we could go back to nominations.  
18 We don't necessarily need to read the specific  
19 language I don't think. But let me just  
20 paraphrase what I believe I understand based on  
21 the testimony, is that each time there's a cycle  
22 of nominations --



1 JUDGE GUTHRIDGE: Okay. Which  
2 particular -- is this part of .46 you're  
3 talking --

4 MS. SCHMAEDICK: Nominations, this is  
5 nominations.

6 JUDGE GUTHRIDGE: Is it a particular  
7 subsection of .46 or --

8 MS. SCHMAEDICK: It's relating to  
9 986.46 and it would be under (b)(2), voting for  
10 nominees.

11 JUDGE GUTHRIDGE: All right. Thank  
12 you.

13 BY MS. SCHMAEDICK:

14 Q Okay. But just generally it's my  
15 understanding that in a nomination voting process  
16 a person elects to participate either as a grower  
17 or as a sheller. Is that correct?

18 A Yes, that is correct.

19 Q Okay. And that you're also looking at  
20 having half of your Council roll over every two  
21 years, it's what we at USDA commonly refer to as  
22 staggered terms.

1           A       Yes.

2           Q       So theoretically you could have votes  
3 occurring in a region -- or nominations occurring  
4 in a region every two years.

5           A       Yes.

6           Q       Okay. So if you have a person who is  
7 a grower/handler operation, and qualifies as a  
8 grower under the grower definition and as a  
9 sheller under the sheller definition, does that  
10 person get to elect a different -- to they get to  
11 self-identify differently every nomination?  
12 Could they be a grower one nomination and the  
13 next time around they're a sheller and then the  
14 next they're a grower? Or do they just say, I'm  
15 a grower and then they're always going to be a  
16 grower?

17          A       That is an excellent question.

18          Q       Thank you.

19                   (General laughter.)

20                   BY MS. SCHMAEDICK:

21          Q       And again, I'm just sort of posing the  
22 question. If you need to think about it and get

1 back to us, but that's something that we'd like  
2 to know.

3 MR. QUIR S: Five addresses it.

4 MR. DAVIS: Yes, it's under number  
5 five.

6 THE WITNESS: I know there's a  
7 designation, you have to designate. But I mean  
8 are you always --

9 MR. QUIR S: Yeah, take a look at  
10 five, I think it's salient definition.

11 (Pause.)

12 THE WITNESS: That is my  
13 understanding, that you must designate as either  
14 a grower or a sheller.

15 BY MS. SCHMAEDICK:

16 Q Okay. So to restate my question, the  
17 language in five reads, If a person is both a  
18 grower and a sheller of pecans, such person  
19 must -- or may not participate in both the grower  
20 and sheller nominations. Such person must elect  
21 to participate either as a grower or a sheller.  
22 So is this -- if you have nominations every two

1 years, does the term in this subparagraph (5),  
2 does nominations mean all nominations forever in  
3 existence under the order, or does it mean every  
4 cycle you declare?

5 JUDGE GUTHRIDGE: So if -- what you're  
6 asking is if someone -- if one of those persons  
7 declares as a grower this year, two years later  
8 are they still a grower and four years later  
9 they're still a grower, or can they change to be  
10 a sheller two years later?

11 BY MS. SCHMAEDICK:

12 Q Can they change to be a sheller?

13 MR. QUIR S: I think we're looking for  
14 the policy on that.

15 MS. SCHMAEDICK: Okay.

16 (Pause.)

17 THE WITNESS: I just wanted to check.  
18 At this point it's not clarified and that may  
19 very well be something that we would need to  
20 clarify in the future.

21 BY MS. SCHMAEDICK:

22 Q Thank you.

1 JUDGE GUTHRIDGE: Is that a  
2 clarification that would have to be made by the  
3 American Pecan Group --

4 MS. SCHMAEDICK: The Council?

5 JUDGE GUTHRIDGE: The Council itself  
6 or the -- what do they call it --

7 THE WITNESS: American Pecan Board.

8 JUDGE GUTHRIDGE: Board, yeah, I'm  
9 sorry. American Pecan Board as part of the  
10 development process of this regulation, or is  
11 that something the Council would address later I  
12 guess is what --

13 MR. QUIR S: There's a question about  
14 by-laws and regulations and how they fit. That's  
15 your question right now.

16 THE WITNESS: As we understand the  
17 process, this Board could, in this process, make  
18 a clarification, or perhaps they would decide  
19 that that's something that they could handle by  
20 regulation I believe. It's not clear as written.

21 BY MS. SCHMAEDICK:

22 Q Would it be correct to say that if a

1 person were able to switch identities every two  
2 years, that there might be some concern about --  
3 especially if that entity had a lot of volume,  
4 that that may impact how a vote -- the outcome of  
5 a vote. Would that be a potential concern?

6 A I don't think so. I don't think that  
7 that would be an issue on that basis, to try to  
8 manipulate the vote. I think it might become an  
9 issue if someone really had a burning desire to  
10 be on the Board, and so they weren't elected as a  
11 grower, and then because they wanted to be on the  
12 Board they elected to be voted on as a sheller.  
13 I mean I don't think that, and trying to  
14 recollect, I don't think that there would ever be  
15 a situation where that might occur to manipulate  
16 the vote.

17 Q Okay. But to recapture your  
18 comfortable or confident in that the way the  
19 proposed program is written, there is flexibility  
20 for the proposed counsel to create guidelines and  
21 what we loosely refer to as rules and regulations  
22 to ensure that this process is done in a fair and

1 consistent way.

2 A Yes, for sure. And I do believe, and  
3 just an opinion here, in the nature of our  
4 business if you're a grower, you want to be so  
5 identified as a grower. If you're a sheller, you  
6 want to be so identified as a sheller. If you're  
7 dimorphic, then oftentimes you have other issues  
8 at hand.

9 (General laughter.)

10 BY MS. SCHMAEDICK:

11 Q Okay. Thank you.

12 MS. SCHMAEDICK: I have no further  
13 questions. Thank you.

14 MR. DAVIS: I'm not going to ask to  
15 define dimorphic. We would like that ambiguity  
16 to remain in the record if we could.

17 JUDGE GUTHRIDGE: I know, I think Mr.  
18 Willson wanted an explanation.

19 (General laughter.)

20 MR. DAVIS: Do you have any questions,  
21 Your Honor?

22 JUDGE GUTHRIDGE: I do actually, two.

1 One on the -- you talked about -- well, for the  
2 two grower seat, one by volume of production and  
3 one by number of votes. And as you said, these  
4 large growers are probably the more competitive  
5 guys so I can envision the seats where the number  
6 one and the number two guy in a region are  
7 competing for that production seat. Is there an  
8 explanation in here on how that volume of  
9 production vote is calculated?

10 THE WITNESS: Yes, it is. It is  
11 identified, yes.

12 MR. DAVIS: I believe, Your Honor,  
13 within Exhibit 50, remember one of the draft  
14 ballots, they not only say they're -- that  
15 they're voting as a grower, but they put their  
16 volume on that form. So we would calculate it  
17 using that ballot I believe.

18 JUDGE GUTHRIDGE: But still I mean I  
19 don't -- I'm not sure that explains how that  
20 production -- how the -- what's the word again --  
21 the volume of production votes is calculated. I  
22 mean that -- if they put on their form what their



1 volume is each -- that each voter puts that on  
2 there?

3 MR. DAVIS: Yes.

4 JUDGE GUTHRIDGE: So then is the  
5 volume, the total volume from all those forms  
6 added up for candidate one, total volume for  
7 candidate two, that's all added up, and then  
8 whichever one of those is higher is the winner.  
9 Is that the way it works?

10 MR. DAVIS: Is that what you see, Dr.  
11 Hudson?

12 THE WITNESS: Yes.

13 MR. DAVIS: I think that's what their  
14 envisioning, yeah.

15 JUDGE GUTHRIDGE: Okay. Then the  
16 other thing is, and I don't know, maybe I'm the  
17 only one that keeps getting confused by this, but  
18 it seems to me that nomination is used in two  
19 different contexts. One, there's nomination, I  
20 want to run to be on the Council. And then so my  
21 fellow growers, or I nominate myself with two  
22 others I guess is how it works, and then there's

1 the election to become a nominee.

2 THE WITNESS: Yes.

3 JUDGE GUTHRIDGE: So, okay. I just  
4 wanted to make sure --

5 MR. DAVIS: The words --

6 THE WITNESS: Right.

7 MR. DAVIS: -- are used in that way,  
8 but --

9 THE WITNESS: Right.

10 JUDGE GUTHRIDGE: Is that the way they  
11 normally are in these marketing orders? Okay.  
12 So you folks won't have a problem with that.

13 MR. QUIR S: And, Your Honor, we did  
14 suggest two changes to clarify that.

15 JUDGE GUTHRIDGE: You folks being the  
16 Department of Agriculture persons.

17 (General laughter.)

18 MR. QUIR S: We would suggest two  
19 changes to make that clear.

20 MR. DAVIS: I think there will be some  
21 slight clarification on those issues also.

22 JUDGE GUTHRIDGE: Which issues?

1 MR. DAVIS: As a result of this  
2 process there would be -- we're going to try to  
3 make sure that those terms are distinguished as  
4 they're used in that section.

5 Your Honor, any further questions?

6 JUDGE GUTHRIDGE: No.

7 MR. DAVIS: Okay. I just wanted to  
8 state for the record that on behalf of the  
9 Proponent Group it has been our intention to put  
10 on testimony concerning each and every paragraph  
11 of Section 986, that would be from Section 1  
12 through Section 99.

13 With the conclusion of Dr. Hudson's  
14 testimony, we believe we have touched on each one  
15 of those sections. And would like if anybody --  
16 if anyone in the audience or the USDA thinks we  
17 have missed any of those, we would welcome that  
18 information. But we believe we have concluded.

19 JUDGE GUTHRIDGE: I've written down  
20 each section, but they're not in order, and I'd  
21 hate to have go back and go through them all,  
22 so --

1 MR. DAVIS: Well --

2 JUDGE GUTHRIDGE: -- I'd ask you all  
3 to figure that out.

4 MR. DAVIS: -- the record will remain  
5 open for another couple of days if anybody sees  
6 any.

7 JUDGE GUTHRIDGE: It's open till I  
8 think -- didn't we decide it had to open till  
9 August 31 for all the comments and everything?  
10 In the first day of the hearing, didn't we talk  
11 about that.

12 MR. HILL: I think we discussed on  
13 that day the briefing schedule.

14 JUDGE GUTHRIDGE: The briefing  
15 schedule.

16 MR. DAVIS: I believe that the  
17 record -- unless there's a carry over till this  
18 Thursday, it'll close on Wednesday, and that's --  
19 by Wednesday we would like to know if we have  
20 missed one of those paragraphs because we have  
21 witnesses available. I don't think we could  
22 reopen the proceeding after that because we'd

1 have to have notice and --

2 JUDGE GUTHRIDGE: Then I guess that  
3 would be up to you folks to resolve that and see  
4 if any --

5 MR. DAVIS: That's procedural I  
6 believe, but --

7 JUDGE GUTHRIDGE: Yes. I would  
8 think --

9 MR. DAVIS: -- but if it's not, they  
10 could say it on the record. It would not be ex  
11 parte if we said it openly.

12 JUDGE GUTHRIDGE: Right. I think the  
13 Proponent Group and the USDA attorneys could get  
14 together and just go through the numbers and see  
15 if you hit every number. Is that correct, Mr.  
16 Hill, or --

17 MR. HILL: I'm not sure if I can  
18 actually do that here, because I guess at that  
19 point I'd be alerting them to any deficiencies in  
20 their case at that point. I'm not sure --

21 JUDGE GUTHRIDGE: Okay.

22 MR. HILL: -- I'd be able to do so.

1 JUDGE GUTHRIDGE: I guess you'll have  
2 to -- Mr. Willson -- Mr. Davis, you'll have to --

3 MR. DAVIS: Well, for our purposes we  
4 believe we have touched all those, and if we go  
5 back through our notes and find something, we  
6 will bring up another witness. But right now we  
7 think we have concluded that. And with your  
8 permission, we'll let Dr. Hudson step down.

9 JUDGE GUTHRIDGE: Does the USDA have  
10 any more questions?

11 MS. VARELA: Yes, Jan Varela, USDA.  
12 I need to be a little taller so you can see me  
13 down here.

14 BY MS. VARELA:

15 Q I just have a few quick holes I'm  
16 trying to fill in here while we still have you,  
17 Dr. Hudson. If you could look at Section 986.51  
18 labeled vacancy, while we're still kind of  
19 talking about how different particulars fit into  
20 those terms of office, I'm just curious thinking  
21 back to the discussions of how the terms of  
22 office might be calculated and what the intent of

1 the Board was.

2 Is it your opinion that the intent was  
3 that a portion of a term that was filled as a  
4 vacancy would not count towards the maximum terms  
5 of office?

6 (Pause.)

7 BY MS. VARELA:

8 Q And if you don't recall that there was  
9 a discussion about that, that's fine too. I'm  
10 just trying to help fill some of those gaps.

11 A Hold on just a second while I think  
12 about this.

13 Q Sure. Well --

14 A Okay? Just --

15 (Pause.)

16 THE WITNESS: No one may serve more  
17 than eight years.

18 BY MS. VARELA:

19 Q Okay. And then just one more  
20 hopefully quick question regarding kind of  
21 eligibility and elections and that whole topic.  
22 Do you recall that I had asked Mr. Willson some

1 questions earlier about how the Council might  
2 deal with eligibility of accumulators?

3 A Yes.

4 Q Is that type of flexible area  
5 something that you think the Council might prefer  
6 to deal with through their authorities to have  
7 certain rules and regulations later on, that that  
8 might be something they can clarify and establish  
9 as they need to?

10 A Yes.

11 Q Okay. Thank you very much.

12 MS. VARELA: Those are all the  
13 questions from me.

14 JUDGE GUTHRIDGE: Are there any more  
15 USDA questions?

16 MS. SCHMAEDICK: Melissa Schmaedick,  
17 USDA. Just to clarify, we may have questions on  
18 sections in the upcoming days. So by answering  
19 no further questions at this point does not  
20 preclude us from asking questions later on, I  
21 would hope.

22 MR. DAVIS: We agree with that. Yeah,



1 sure.

2 MS. SCHMAEDICK: Okay. Thank you.

3 No further questions.

4 JUDGE GUTHRIDGE: There seems to be no  
5 objection from the Proponents on that, so fine.

6 BY MR. HILL:

7 Q Dr. Hudson -- this is Brian Hill by  
8 the way --

9 A Yes.

10 Q -- can you please look at 986.32.  
11 I'm going to ask you the same question I asked  
12 Mr. Willson. And on that particular page of the  
13 document there are several examples, which is why  
14 I'm choosing this page. On 32(b) it says, With  
15 the approval of the Secretary -- this is  
16 986.32(b) -- With the approval of the Secretary  
17 the boundaries of any district may be changed  
18 pursuant to 986.58, reapportionment and  
19 redistricting.

20 If you look on that same page in  
21 986.33, there's a slightly different  
22 nomenclature. And if you look at 986.45(c)

1 there's also slightly different nomenclature.  
2 I'll read (c) for you, The Council may recommend,  
3 subject to the approval of the Secretary,  
4 revisions to the above requirements for grower  
5 and sheller seats to accommodate changes within  
6 the industry.

7 So my question, it's the same question  
8 I asked Mr. Willson, 986.32 and 986.45(c), do the  
9 Board intend that the same -- that this would be  
10 the same process in voting, in making changes?

11 A Yes, we did.

12 Q Okay. And to the extent that there's  
13 any confusion, would you be open to clarifying  
14 changes if there needed to be?

15 A Yes, we would.

16 Q All right. Thank you.

17 MR. DAVIS: Well, let me --

18 MR. HILL: One last question.

19 BY MR. HILL:

20 Q And this does appear in several other  
21 sections throughout the document. Would you be  
22 open to making the same clarifying changes

1 throughout the document to make sure that they're  
2 all the same or similar and not that there's no  
3 confusion?

4 A Yes, we would.

5 JUDGE GUTHRIDGE: Are there any more  
6 USDA questions?

7 (No response.)

8 FURTHER REDIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q But I guess to -- since the draft  
11 person may be in the room here, in their defense,  
12 on -- if you look at Section 32, take a look at  
13 Section 32(b), it expressly incorporates the  
14 provisions of Section 58. Correct?

15 A (No audible response.)

16 Q Correct. And then if we -- for the  
17 record, was that yes? Section 32 incorporates --

18 A Yes.

19 Q -- the provisions --

20 A Yes.

21 Q -- of 58. And then if we look at 58,  
22 it starts off by saying that Council may

1 recommend, subject to the approval of the  
2 Secretary, so that recommendation by the Council  
3 is incorporated back into 32. Correct?

4 A That is correct.

5 Q But to Mr. Hill's point, it is always  
6 your intent that the Council will recommend and  
7 the Secretary will then take whatever action the  
8 Secretary wants. Correct?

9 A That is correct, yes.

10 Q Okay. So, all right. I believe  
11 that's --

12 JUDGE GUTHRIDGE: Any more questions,  
13 Mr. Davis?

14 MR. DAVIS: No further questions.

15 JUDGE GUTHRIDGE: Any more questions,  
16 USDA?

17 (No response.)

18 JUDGE GUTHRIDGE: Does anyone in the  
19 audience have any questions for Dr. Hudson? I  
20 see a hand up.

21 Could you stand up to the microphone  
22 and identify yourself and your -- let me see,

1 what other -- I think I'm supposed to ask your  
2 occupation.

3 MR. COBB: Okay. My name's Bill Cobb,  
4 I'm a farmer.

5 MR. DAVIS: I'm sorry, Bill?

6 MR. COBB: Cobb, C-O-B-B.

7 MR. DAVIS: Thank you, Mr. Cobb.

8 MR. COBB: And I farm 300 acres of  
9 pecans up in Terrell County and Randolph County.

10 JUDGE GUTHRIDGE: And that's in  
11 Georgia?

12 MR. COBB: Yeah.

13 JUDGE GUTHRIDGE: What's the name of  
14 the farm?

15 MR. COBB: Bill Cobb Pecans.

16 JUDGE GUTHRIDGE: Okay.

17 MR. COBB: Okay. My question is there  
18 are a lot more growers than there are shellers,  
19 and you got to the point that, you know, growers  
20 are always trying to sell them and get as much as  
21 they can, and shellers always try to buy as low  
22 as they can, but both of them make money.

1           And, but you've got growers and  
2 shellers, and you may have a sheller that calls  
3 himself a grower, but he's still got the interest  
4 of a sheller in mind on that committee. And you  
5 could have, you know, three so-called growers and  
6 then you may have three shellers, you may have  
7 two people -- four people who call themselves  
8 shellers, but two people may call themselves a  
9 grower when they asked for maybe a sheller or two  
10 more shellers.

11           And the growers may be outnumbered by  
12 the shellers because somebody may call themselves  
13 a grower when they're sheller. You understand  
14 what I'm talking about?

15           JUDGE GUTHRIDGE: Mr. Cobb, do you  
16 have a question for Dr. Hudson?

17           MR. COBB: Yes. It seemed like to me,  
18 you know, a grower needs to be somebody that, you  
19 know, is a grower, and, you know, a sheller needs  
20 to be somebody that's a sheller. I know you have  
21 growers that are shellers. A lot of times grower  
22 and sheller has the interest of a sheller and

1 he's also got the interest of a grower.

2 But if he's a grower, a small grower  
3 but a large sheller, he can still go in as a  
4 grower. And, but he could have -- even though it  
5 costs -- he could have the interest of a sheller.

6 JUDGE GUTHRIDGE: Yeah, but this seems  
7 to be more like maybe some testimony that you  
8 would like to give rather than a question for Mr.  
9 Hudson. Is that -- that seems to be what you  
10 want to do is get some evidence in the record.

11 MR. COBB: I just want to make sure  
12 that you got a plan where the balance is going to  
13 represent growers.

14 JUDGE GUTHRIDGE: And I think that's  
15 more in terms of evidence that you would want to  
16 present it sounds like, than testimony of  
17 anything you're trying to get from Dr. Hudson in  
18 the form of a question. That's -- I'm thinking  
19 about the procedure that's --

20 MR. COBB: Yeah, you know, I'm just  
21 wondering how many pounds you've got to produce  
22 to be considered a grower versus -- I know a

1 sheller we're talking about you've got to shell  
2 over a million pounds a year I think. But I mean  
3 a sheller could have just a small amount of  
4 pecans and a lot of, you know, a lot of nuts he  
5 shells, and yet might want to call himself a  
6 grower.

7 JUDGE GUTHRIDGE: Okay. That's again  
8 sounding more like testimony. What I would like  
9 to do --

10 MR. DAVIS: We can help -- I think I  
11 can help. I can pose some questions --

12 JUDGE GUTHRIDGE: Right.

13 MR. DAVIS: -- I think would address  
14 his --

15 JUDGE GUTHRIDGE: Well --

16 THE WITNESS: And I would like to  
17 address his concern.

18 JUDGE GUTHRIDGE: Well, you detect a  
19 question.

20 MR. QUIR S: Your Honor --

21 THE WITNESS: Yeah, I heard a  
22 question.



1 MR. HILL: I think he did ask how many  
2 pounds --

3 JUDGE GUTHRIDGE: That's true.

4 JUDGE GUTHRIDGE: -- qualified you as  
5 a grower. And maybe this witness can answer  
6 that.

7 THE WITNESS: Mr. Cobb, I appreciate  
8 you being here to begin with. And if we hadn't  
9 talked, we should have. And if we haven't, I  
10 apologize. You're one of the few that I might  
11 have missed.

12 But I can promise you, as a pecan  
13 grower who by the way also owns a shelling  
14 company, and we shell for our gift pack business  
15 and that's the only reason we do it, is for our  
16 gift pack business. I understand your  
17 sentiments, and I can promise you that this Board  
18 did absolutely everything it possibly could to be  
19 able to bring forward a proposal that managed, or  
20 had your interest at heart.

21 Because quite honestly, the success of  
22 this program, and we've got five years to get it

1 right, is going to depend upon our ability to  
2 convince rank and file like yourself that this is  
3 something that's not just good for the big  
4 growers or the big shellers, but it's good for  
5 rank and file.

6 Because you guys are going to be the  
7 ones that vote it out, you know. If it's voted  
8 out in five years, it's going -- we're going to  
9 have to prove to you that it's been a benefit to  
10 you. So I can promise you your concerns were  
11 voiced, they were taken into consideration,  
12 because at one time I had 20 acres of pecans.  
13 That's all I had. And my daddy had 20 acres, my  
14 granddaddy had 15 acres, my great-granddaddy had  
15 five. And I'm not going to be a party to  
16 anything that doesn't take care of the base, take  
17 care of rank and file.

18 MR. COBB: And you testified, you  
19 know, getting in it, you know, making sure there  
20 is no bias in there when it gets over-staffed  
21 with sheller/growers and the growers just don't  
22 seem to have a representative in there.

1 THE WITNESS: No, sir, we're not going  
2 to allow that to happen.

3 MR. COBB: Okay.

4 BY MR. DAVIS:

5 Q I'll follow up with just a couple of  
6 questions. But to address first off Mr. Cobb's  
7 very basic question, in order to vote as a grower  
8 you have to certify that you have at least 30  
9 acres, or you have produced 50,000 pounds  
10 during -- on average during the previous four  
11 fiscal years. Is that correct?

12 A That is correct, yes.

13 Q And then also to give Mr. Cobb and  
14 other that may have this question some comfort,  
15 if a person has elected -- say it's this mixed  
16 grower/sheller, but elects to run as a grower, is  
17 it not true that the growers will be only growers  
18 will vote.

19 A Will be voting for, yeah. Right.

20 Q So if someone like Mr. Cobb were  
21 suspicious that somebody may really have more  
22 interest as a sheller than as a grower, he could

1 simply vote against them. Is that what he would  
2 do?

3 A He's not going to get elected.

4 Q Yeah. Okay.

5 MR. HILL: I just want to say thank  
6 you, Mr. Cobb, for your question, your  
7 participation.

8 MR. DAVIS: I think there was another  
9 question.

10 JUDGE GUTHRIDGE: Does the USDA have  
11 any follow-up questions of Dr. Hudson?

12 MS. SCHMAEDICK: No, my question was  
13 asked by counsel.

14 JUDGE GUTHRIDGE: Okay.

15 MR. DAVIS: There was one other --

16 JUDGE GUTHRIDGE: Was there another  
17 question -- yes, sir. Could you come up and  
18 identify yourself?

19 MR. FULLER: My name's Barry Fuller.

20 JUDGE GUTHRIDGE: I'm sorry, could you  
21 spell that, please?

22 MR. FULLER: F-U-L-L-E-R.

1 JUDGE GUTHRIDGE: What's your first  
2 name again? Spell that.

3 MR. FULLER: Barry, B-A-R-R-Y. I  
4 classify myself as a small grower in Cook County,  
5 Georgia. Now let me make sure that we're only  
6 interested in questions, we're not concerned  
7 about public comment here. Is that what you're  
8 trying to tell us?

9 JUDGE GUTHRIDGE: What I'm saying is  
10 that while Dr. Hudson is on the stand, then if  
11 you have a question for him, you should ask it  
12 now. But I've also -- as I also said earlier, if  
13 you would like to testify yourself under oath,  
14 you are free to do that. And we will make room  
15 for you. I'm not sure --

16 MR. DAVIS: We have time this  
17 afternoon.

18 JUDGE GUTHRIDGE: Could we do him  
19 before you -- both these gentlemen before your  
20 next witness?

21 MR. DAVIS: I believe we have time,  
22 Your Honor, this afternoon.

1 JUDGE GUTHRIDGE: All right. Any  
2 objection from USDA on that?

3 MR. HILL: No objections, Your Honor.

4 JUDGE GUTHRIDGE: So --

5 MR. FULLER: I'll try to work on a  
6 question as soon as I can.

7 JUDGE GUTHRIDGE: Well, no, what I'm  
8 saying is, as soon as Dr. Hudson gets off the  
9 stand, we could put both Mr. Cobb first, since he  
10 stood up first, and then you on the stand, put  
11 you under oath and you could testify right at  
12 this time. Is that what you would like to do?

13 MR. FULLER: Well, I'd like to ask a  
14 couple of questions --

15 JUDGE GUTHRIDGE: Okay. And if you  
16 have questions for Dr. Hudson, then go ahead and  
17 ask them.

18 MR. FULLER: All right. Doctor, who  
19 sent this out to us, this package?

20 JUDGE GUTHRIDGE: And what do you mean  
21 by this? Somebody who's reading this  
22 transcript --

1 MR. FULLER: It's from --

2 MR. DAVIS: It's Exhibit 1 I believe,  
3 it's the proposed --

4 MR. FULLER: -- the United States  
5 Department of Agriculture.

6 JUDGE GUTHRIDGE: Is it -- could you  
7 read the caption on the other document?

8 MR. FULLER: The other document is  
9 their -- it's Federal Register.

10 MR. HILL: Exhibit 1 he's talking  
11 about.

12 JUDGE GUTHRIDGE: So that -- we'll  
13 refer to that for the record as Exhibit 1. And  
14 the reason I need to do that is because if  
15 somebody is reading this, when you say, This  
16 document, they're not going to know what you  
17 mean. But now they know it's Exhibit 1, the  
18 proposal.

19 MR. FULLER: All right. So the  
20 question is, who sent this? Does anybody know?

21 THE WITNESS: Mr. Fuller, it's my  
22 understanding that that was sent out by USDA.

1 MR. FULLER: All right.

2 THE WITNESS: Apparently your probably  
3 on record as being a pecan producer I guess at  
4 FSA in Cook County?

5 MR. FULLER: Yeah.

6 THE WITNESS: I would suspect that  
7 that's probably how they got your mailing  
8 address.

9 MR. FULLER: Okay. And the only  
10 reason I'm asking, I guess justifying my  
11 question, is I'm really surprised something came  
12 from a federal agency. There's no cover sheet,  
13 no cover letter, explanation or anything. So I  
14 guarantee you most of the pecan growers in Cook  
15 County don't have master degrees or legal  
16 backgrounds, and it's -- I'm sure this is in  
17 their garbage can. Somewhere in the middle of  
18 this page on this exhibit that you're discussing  
19 here, it starts in the middle right down here.  
20 This over here has got something to do with  
21 something -- I don't know what it is.

22 THE WITNESS: Yes, sir. I got my copy



1 too and opened it, and --

2 MR. FULLER: When I saw that, I said,  
3 How unprofessional that is. So that's why I'm --  
4 I was concerned about Section 72 and  
5 notifications, because if that's --

6 THE WITNESS: Yes, sir.

7 MR. FULLER: -- their notification you  
8 were looking at -- let me see, how can I make  
9 this into a question -- assessments --

10 THE WITNESS: Yes, sir.

11 MR. FULLER: -- you were talking  
12 about. I'm not sure how you're going to do it.  
13 This is a dirty little secret about this  
14 industry, you know it. This is a cash industry,  
15 until it gets to the big guys. I know people who  
16 do 40,000-plus in nut sales each year and it's  
17 all paid out in \$100 bills whenever they go to  
18 the buyer. None of that. It's a little 1099,  
19 give it to them. This is a cash industry until  
20 you get to the big guys. So I don't know how  
21 this assessment thing will work out.

22 I know right now you're doing an

1 assessment there, if there's so many acres when  
2 you sale, now you get some type of assessment I  
3 think for the Georgia Farm kind of thing. So I  
4 don't know how you're going to do that in a cash  
5 industry.

6 THE WITNESS: Yes, sir.

7 MR. FULLER: That'll be interesting.

8 JUDGE GUTHRIDGE: Do you have a  
9 question for Dr. Hudson?

10 MR. FULLER: Yeah, how are you going  
11 to do it?

12 (General laughter.)

13 THE WITNESS: Well, okay, I'll -- you  
14 know, you're probably aware of our buying point  
15 in Irwin County, and we will still buy pecans  
16 like we've always bought pecans, and the grower  
17 doesn't pay the assessment anyway. It's the  
18 accumulators, handlers, shellers that will be  
19 paying the assessment.

20 And for our growers they'll be paid  
21 just like they've always been paid, and just for  
22 the record, and I don't mind you saying it

1 because we pretty well disclose everything we do,  
2 we will not -- we'll continue to pay in cash.

3 But we'll also pay the assessment.

4 MR. FULLER: Let's go now to  
5 standards, when you talk about the need for  
6 standards and such. I'm assuming in some cases  
7 it's going to bring about some of the  
8 transparency --

9 JUDGE GUTHRIDGE: For the record, let  
10 me -- what section is standards? Again, Mr.  
11 Fuller, when somebody's reading this, we want to  
12 make it as --

13 MR. FULLER: I understand.

14 JUDGE GUTHRIDGE: -- convenient for  
15 them as possible.

16 MS. SCHMAEDICK: It'd be 69.

17 MR. FULLER: Are we planning on coming  
18 up with --

19 JUDGE GUTHRIDGE: So it's .69?

20 MR. HILL: Yes, Your Honor.

21 MR. FULLER: Is the intent to come up  
22 with, in 69, a set of regulations that would --

1 that we could all live by? Because right now --

2 THE WITNESS: Mr. Fuller, you and I  
3 live about 30 miles apart, and my kids and myself  
4 and all my family are in the pecan business as a  
5 pecan grower. We're not going to do anything to  
6 hurt your ability to grow whatever you want to  
7 grow and sell it. The standards we're talking  
8 about will not affect your ability to pick your  
9 pecans, take them to a buying point and sell  
10 them.

11 MR. FULLER: All right. I'm hoping it  
12 would help because right now standards are a big  
13 mystery in this industry.

14 THE WITNESS: Absolutely.

15 MR. FULLER: And it goes to the fact  
16 that whenever they do something in secrecy, then  
17 they bring them back, for example, and you don't  
18 know what went on back there.

19 (General laughter.)

20 THE WITNESS: Yes, sir.

21 MR. FULLER: We need something there.

22 There's

1 this one time I --

2 THE WITNESS: Well, I tell you what,  
3 you come to our back room, we'll let you walk  
4 right on back there.

5 (General laughter.)

6 MR. FULLER: Mr. Ellis lets you do  
7 that up there. He --

8 THE WITNESS: Yes, sir, he's a good  
9 man.

10 MR. FULLER: I notice another  
11 question, but I don't know what section it would  
12 come under except maybe warehousing. But still  
13 when they're -- they're calling warehousing here  
14 deals with assessments. No mention of cold  
15 storage standards or how -- I didn't see anything  
16 in here relating to cold storage.

17 THE WITNESS: Yes, sir, it's in there.

18 MR. FULLER: Okay.

19 THE WITNESS: And it's handled in  
20 several different locations, but both for grower  
21 and handler storage. But as a grower, if you  
22 carry cold storage then there would be a period

1 of time when the inventory would be counted, but  
2 it would not be assessed, and that will be on  
3 August 31. But you would not pay the assessment  
4 as a grower until you move it to a handler.

5 MR. FULLER: Okay. Turn then -- what  
6 section was that under, that was --

7 MALE VOICE: What page -- it's 61,  
8 61(I), it's the very last section.

9 JUDGE GUTHRIDGE: No, he's -- that's  
10 assessment.

11 MR. DAVIS: It says August 31.

12 MR. QUIR S: No, he's talking about --

13 THE WITNESS: No, it's term limits.  
14 Term limits.

15 JUDGE GUTHRIDGE: Term limits is --

16 THE WITNESS: Eight-year terms, two  
17 subsequent four-year terms.

18 MR. FULLER: Yeah, whatever section  
19 that is.

20 MR. QUIR S: That's 50.

21 JUDGE GUTHRIDGE: It's 50(b).

22 MR. FULLER: How did you come up with

1 eight years?

2 THE WITNESS: It was just a number  
3 that was used as a point of discussion. You  
4 know, that's a commitment and, you know, it would  
5 require that a person who is truly dedicated to  
6 the pecan industry willingness to participate.  
7 And so we felt like that an eight-year term would  
8 require a real commitment by someone who has an  
9 interest.

10 MR. FULLER: No more questions.

11 JUDGE GUTHRIDGE: It's actually a  
12 four-year term limited to --

13 THE WITNESS: To eight years.

14 JUDGE GUTHRIDGE: -- two terms, so  
15 eight years, is how that would -- but a term  
16 would be four years.

17 MR. FULLER: All right. Thank you.

18 JUDGE GUTHRIDGE: All right.

19 MR. HILL: Thank you, Mr. Fuller.

20 JUDGE GUTHRIDGE: So does anyone else  
21 have any more questions for Dr. Fuller -- I mean  
22 Dr. Hudson?

1 MR. DAVIS: I do, Your Honor. I was  
2 going to follow up perhaps on Mr. Fuller's  
3 question.

4 BY MR. DAVIS:

5 Q The eight-year, was there -- there was  
6 a concern that you would have experienced people,  
7 people that you didn't want to just limit it to  
8 four years, because then you'd have to have a new  
9 board, you know, constantly turned over. But at  
10 the same time you didn't want to have an  
11 entrenched board, somebody that would just get on  
12 there and never leave. Is that --

13 A That's absolutely correct.

14 Q And you thought this was a fair  
15 compromise?

16 A That seemed to be a very fair  
17 compromise.

18 Q Okay. Thank you.

19 JUDGE GUTHRIDGE: Any more questions,  
20 Mr. Davis?

21 MR. DAVIS: No further questions.

22 JUDGE GUTHRIDGE: Any more questions



1 from the USDA?

2 (No response.)

3 JUDGE GUTHRIDGE: Does anyone else in  
4 the audience have any more questions for Dr.  
5 Hudson?

6 (No response.)

7 JUDGE GUTHRIDGE: Hearing none, Dr.  
8 Hudson, you're excused.

9 THE WITNESS: Thank you, sir.

10 JUDGE GUTHRIDGE: If you would check  
11 again with --

12 THE WITNESS: Okay.

13 JUDGE GUTHRIDGE: -- Ms. Thompson.

14 (Whereupon, the witness was excused.)

15 JUDGE GUTHRIDGE: So why don't we call  
16 our two witnesses who have volunteered, who have  
17 showed up and would like to present some evidence  
18 right now. Starting with Mr. Cobb. Come up  
19 here, please.

20 MR. QUIR S: Okay. Mr. Cobb, would  
21 you like a glass of water?

22 MR. COBB: I'm fine. Thank you.

1 MR. QUIR S: Okay. Yes, sir.

2 JUDGE GUTHRIDGE: Would you please  
3 raise your right hand.

4 Whereupon,

5 BILL COBB

6 having been first duly sworn, was called as a  
7 witness herein and was examined and testified as  
8 follows:

9 JUDGE GUTHRIDGE: Okay. Could you  
10 please -- and I know you just did it, but do it  
11 again so it's in this part of the record -- state  
12 your name, your address and your occupation.

13 THE WITNESS: Okay. My name's Bill  
14 Cobb. I live at [REDACTED] in Dawson,  
15 Georgia, and I've been farming pecans full-time  
16 since 1975, part-time for about -- since I was 10  
17 years old until I --

18 JUDGE GUTHRIDGE: I'm sorry, you said  
19 15 acres?

20 THE WITNESS: No, I've got 300 acres.

21 JUDGE GUTHRIDGE: Oh, I thought you  
22 said 15 something. I'm sorry.

1 THE WITNESS: Okay. No, we've -- I  
2 farm approximately 300 acres. I do  
3 sharecropping, I've got some of my own, I've got  
4 some I rent, a combination of a little bit of  
5 everything.

6 JUDGE GUTHRIDGE: And just to show  
7 some of the terms I've learned in the last week,  
8 you have native trees mostly or --

9 THE WITNESS: Well, they're an  
10 improved variety of what we call native seedling.  
11 It's just a tree that died from a graph and comes  
12 up and if it's got a big enough nut, we -- yeah,  
13 you know, we keep it in the orchard. If it's  
14 real small, I usually cut them down.

15 JUDGE GUTHRIDGE: Okay. All right.  
16 Now I know you had from your questioning of Dr.  
17 Hudson, you have some evidence that you would  
18 like to present. Would you like to go ahead  
19 and --

20 THE WITNESS: Well --

21 JUDGE GUTHRIDGE: -- state that?

22 THE WITNESS: -- one thing over the

1 years I've run in, it's been -- I've got seven  
2 farmers that I'm representing that asked me to  
3 come over here today, and I talked with some on  
4 the phone, they had some questions they wanted me  
5 to ask, and, you know -- but over the period of  
6 years when you try to sell your pecans, and if  
7 you'll look in the Pecan South, you'll get --  
8 it'll be in a little page in the Alabama Pecan  
9 Growers, Louisiana Pecan Growers, and then you  
10 get to the National Pecan Shellers.

11           And National Pecan Shellers I  
12 guarantee has always got the highest estimate of  
13 crop. And what, you know, they're talking about,  
14 we need a good estimate, you know, so that  
15 everybody can determine what the crops size is.  
16 I know there's two years ago that I sort of had  
17 false information. I held on to my crop, and the  
18 crop was bigger. And if I had known what I knew,  
19 I would have sold it. But I lost money on it.

20           But you'll call -- a lot of times  
21 you'll call a sheller and, you know, you think  
22 you got this and they'll run the claims up 30,

1 40, 50 million more pounds, or they'll tell you  
2 about 100 million pounds produced out of Mexico,  
3 you know, that we don't really know about that  
4 may be coming across the border.

5 And one of my concerns is, how many  
6 pounds of US pecans go to Mexico to get shelled  
7 out and then they come back across the border,  
8 and then a sheller might claim, well, that's a  
9 Mexican pecan when it's actually being counted  
10 twice too.

11 So really understanding what the  
12 pecans in Mexico are, what's going down to  
13 Mexico, what may come back across the border as  
14 shelled pecans, and what's also produced in the  
15 United States. We need a good accurate figure to  
16 help us market our pecans, because I want to  
17 determine what my pecans are worth based on  
18 what's in cold storage, what's available and  
19 what's coming in out of Mexico. And if we don't  
20 have those figures, it's hard to market pecans.

21 And no -- you know, there's been years  
22 like in 2011 I think we got too much for them.

1 But I never had a sheller tell me he paid too  
2 little for them, I mean that he paid too much.  
3 He always says he paid too much. But we do need  
4 a fair market. But one thing, like Dr. Hudson  
5 was talking about, we need a good estimate, not  
6 where everybody's quoting different estimates of  
7 what the pecan crop is.

8 And, you know, and then another  
9 concern that some of the growers have asked me  
10 is, do we -- when pecans leave the United States  
11 and go to Mexico to get shelled out and then they  
12 come back, and they're showing all these pecans  
13 coming across the border from Mexico, are they  
14 counting those nuts twice so that they can  
15 inflate their figures to say there's more pecans  
16 than there actually is.

17 JUDGE GUTHRIDGE: All right. And you  
18 said you had a number of concerns, you had talked  
19 to seven farmers --

20 THE WITNESS: Well, I've --

21 JUDGE GUTHRIDGE: -- and do you have  
22 more concerns, or do they have more concerns?

1 THE WITNESS: Well, that one concern,  
2 one of the farmers asked me to ask you all,

3 JUDGE GUTHRIDGE: All right.

4 THE WITNESS: And I was talking to him  
5 during lunch and he was concerned about pecans  
6 that go across the border to Mexico to get  
7 shelled out, and then the shellers will say,  
8 Well, there's a 100 million pounds coming from  
9 Mexico.

10 But if we sent 60 million pounds down  
11 there to get shelled out, is that 60 million  
12 pounds being counted as American crop, and is  
13 that same 60 million pounds getting counted as  
14 Mexican crop that's coming back across the border  
15 as shelled pecans?

16 JUDGE GUTHRIDGE: Okay. Are there  
17 other concerns that you have?

18 THE WITNESS: That's the main concern.  
19 And one thing he, you know, he noted. I just got  
20 the notice, really hadn't had time, but the fact  
21 of, you know, we don't like it, we can vote it  
22 out in five years. Good news, you know.

1                   JUDGE GUTHRIDGE: Okay. All right.  
2                   Now I'd like you to answer any questions that the  
3                   Proponent Group and the USDA have, and maybe  
4                   anybody in the audience might have. And since  
5                   the Proponent Group, I think has the burden in  
6                   this procedure, I think they should go first.

7                   DIRECT EXAMINATION

8                   BY MR. DAVIS:

9                   Q           And I would just thank you, Mr. Cobb,  
10                  for coming forward and we hope we're going to  
11                  address those concerns for you.

12                  A           Okay.

13                  JUDGE GUTHRIDGE: Does the USDA have  
14                  any questions?

15                  MS. SCHMAEDICK: Melissa Schmaedick,  
16                  USDA.

17                  CROSS-EXAMINATION

18                  BY MS. SCHMAEDICK:

19                  Q           Thank you, Mr. Cobb, for your  
20                  testimony.

21                  A           All right.

22                  Q           Thank you for coming today. I'm just



1 wondering, have you been able to participate in  
2 any of the meetings that have been held over the  
3 last two years describing the process and --

4 A No. I really need to be out farming  
5 right now. I'm sort of like the rest of them; we  
6 don't have time to come up here. But I sort of  
7 got elected by some farmers to come over here.  
8 And neither -- most of your farmers, small  
9 farmers, we need to be out there spraying and  
10 doing our work, don't have time to do this. But  
11 I sort of got voted to come over here today. And  
12 so I haven't participated in anything else. This  
13 is my first time.

14 Q And so with 300 acres you consider  
15 yourself to be a small farmer?

16 A I consider myself probably a medium  
17 sized farmer.

18 Q Okay. Are you aware of the definition  
19 of grower in the proposed program?

20 A Uh-huh.

21 Q Okay. So just to recap briefly, it's  
22 minimum of 30 acres or 50,000 pounds. In your

1 opinion, if you were to describe a grower with 30  
2 acres or 50,000 pounds, in your opinion are they  
3 a small business, are they commercially viable,  
4 are they a hobby farmer, what's your opinion  
5 there?

6 A Most growers I know in that category  
7 are hobby farmers. And I represent some of  
8 those. Like I said, I've been in it for a long  
9 time, and a lot of people come to me asking me  
10 for advice about how to grow pecans, how to  
11 plant, what kind of varieties, and I scout pecans  
12 for people. And they all got jobs, that they do  
13 something else, and they fool with pecans on the  
14 weekend or, you know, or they have me try to  
15 advise them on it.

16 But most -- I don't know of anybody  
17 that's growing pecans full-time with just 30  
18 acres. It basically takes about 150 acres, you  
19 know, to support one man, you know, farming.  
20 And, but you -- to try to make a full-time  
21 living, you know -- if you've got the right  
22 varieties, you could do it, but for the old

1 varieties like Stuart and Schley and stuff, it  
2 takes about at least 150 acres for one man. But  
3 when you've got -- most of all your small growers  
4 are just doing it as a hobby farmer.

5 Q Thank you. And so in your opinion is  
6 this program designed to help farmers that are  
7 relying on their production as a livelihood?

8 A I think it's going to help all  
9 farmers, but a lot of them are concerned about,  
10 you know, how much money are they going to have  
11 to put out versus how much it's going to benefit  
12 them. And I think that's where the five-year  
13 period comes in, you know, when nobody's  
14 complained about China, you know, and it's been  
15 good for the pecan industry.

16 And if after five years we can see a  
17 benefit with this, I think it'll be voted in.  
18 But if a lot of farmers sit there and look at --  
19 they're putting out 18- to \$20,000 a year in  
20 assessment fees and don't feel like they're  
21 getting their money back, that's going to be a  
22 concern for a lot of farmers.

1           Q       Thank you. And in your opinion would  
2 generic promotion of pecans in the United States  
3 would -- do you think that would be beneficial,  
4 do you think that would help consumption and  
5 demand for pecans increase?

6           A       I hope it will. I mean if we're going  
7 to go put money in it, you know, it's all --  
8 farming's a gamble. This program is going to be  
9 a gamble, you know, and nothing is going to be  
10 guaranteed, but I have one farmer said he hopes  
11 it does like pistachio farmers and almond  
12 farmers.

13                       And if it works, you know, nobody's  
14 going to be complaining about it, you know. But  
15 if a lot of farmers see money going out without  
16 an increase in price, I think, you know, that  
17 there's going to be some voting out in five  
18 years. But that's what -- you know, the fact  
19 that we have a say so every five years will be  
20 good.

21           Q       Thank you. Do you have any other  
22 concerns that you would like USDA to be aware of?

1           A       Get some good accurate figures.

2                    (General laughter.)

3                    BY MS. SCHMAEDICK:

4           Q       Thank you. Thank you so much for your  
5 testimony.

6           A       All right.

7                    MS. SCHMAEDICK: I have no further  
8 questions.

9                    JUDGE GUTHRIDGE: Are there any more  
10 USDA questions?

11                    (No response.)

12                    JUDGE GUTHRIDGE: No? Does anyone in  
13 the audience have any questions for Mr. Cobb?

14                    (No response.)

15                    JUDGE GUTHRIDGE: Mr. Davis?

16                    MR. DAVIS: No further question, Your  
17 Honor. Thank you.

18                    JUDGE GUTHRIDGE: All right. Mr.  
19 Cobb, then you're excused. If you go over here  
20 and talk with Ms. Thompson and see if she needs  
21 anything clarified. And thank you for coming.

22                    (Whereupon, the witness was excused.)

1 JUDGE GUTHRIDGE: And, Mr. Fuller,  
2 would you like to come testify?

3 MR. QUIR S: Mr. Fuller, would you  
4 like a glass of water?

5 THE WITNESS: Yeah. Thank you.

6 MR. QUIR S: Yes, sir.

7 (Pause.)

8 JUDGE GUTHRIDGE: Could you raise your  
9 right hand, please?

10 Whereupon,

11 BARRY FULLER

12 having been first duly sworn, was called as a  
13 witness herein and was examined and testified as  
14 follows:

15 JUDGE GUTHRIDGE: All right. What  
16 would you like to tell us?

17 THE WITNESS: Well --

18 JUDGE GUTHRIDGE: -- starting with  
19 your -- and it's just to make sure it's on the  
20 record properly, if you'd spell your name and  
21 give your address and occupation again.

22 THE WITNESS: Again, Barry Fuller, F-

1 U-L-L-E-R. Address is [REDACTED] Hahira,  
2 Georgia. You're not from here, are you?

3 JUDGE GUTHRIDGE: I'm sure not.

4 THE WITNESS: H-A-H-I-R-A.

5 JUDGE GUTHRIDGE: If you're talking to  
6 me, no. Ms. Thompson may know.

7 MR. QUIR S: H-A-R-I --

8 THE WITNESS: H-A-H-I-R-A. Hahira,  
9 Georgia. And what was -- what else did you need?

10 JUDGE GUTHRIDGE: Your occupation.

11 THE WITNESS: I am recently retired,  
12 and I'm growing some nuts now.

13 JUDGE GUTHRIDGE: By nuts you mean  
14 pecans I take it.

15 THE WITNESS: Right.

16 JUDGE GUTHRIDGE: All right. Would  
17 you like to tell us about that operation and what  
18 your concerns are here?

19 THE WITNESS: Well, sure. According  
20 to the definition that you just pointed out,  
21 Madame, I think I've been disqualified because it  
22 says 30 acres or 50,000 pounds. Well, that kind

1 of knocks me out of the boat then. So -- and  
2 there are a lot of us who have less than 50  
3 acres, and according to this thing, we're going  
4 to be unheard now. We don't exist anymore.

5 JUDGE GUTHRIDGE: How many acres do  
6 you have?

7 THE WITNESS: Twenty.

8 JUDGE GUTHRIDGE: Twenty acres. And  
9 are they native, Improved or --

10 THE WITNESS: They cultivars.

11 JUDGE GUTHRIDGE: Okay. And what's  
12 your normal production approximately?

13 THE WITNESS: Well, you see I'm still  
14 on the -- I'm still -- I have -- half of my trees  
15 are just now starting to even produce, so -- and  
16 I'm still, in fact, planting trees. So I'm, you  
17 know -- I would say a good year for me right now  
18 would be about \$15,000, a good year.

19 JUDGE GUTHRIDGE: \$15,000 or pounds?

20 THE WITNESS: Dollars. So I mean I'm  
21 sure that makes me a hobby farmer or whatever.

22 JUDGE GUTHRIDGE: Well, the definition



1 talks about producing at least 50,000 pounds.

2 How many pounds would you -- approximately would  
3 you usually do?

4 THE WITNESS: If somebody could do the  
5 math. Right now you've been getting about  
6 2,000 -- \$2 a pound, so what's that, about  
7 seven -- yeah, 7500, thank you.

8 JUDGE GUTHRIDGE: About 7500 pounds?

9 THE WITNESS: Yeah.

10 JUDGE GUTHRIDGE: All right.

11 THE WITNESS: But that's going up each  
12 year, you know, as my production increases.

13 JUDGE GUTHRIDGE: Sure. And do you  
14 have a -- other than the fact that you would not  
15 be a voter, as I understand it, under this  
16 regulation, what is your -- do you have any other  
17 concerns about it, about the marketing order?

18 THE WITNESS: As I've gotten involved  
19 in this, and dealing with the local pecan  
20 community around there, it's a mysterious  
21 business, I'll tell you.

22 JUDGE GUTHRIDGE: Now are you talking

1 about now the pecan business itself or are you  
2 talking about this proposal for the Federal  
3 Marketing Order, or both?

4 THE WITNESS: Well, both, because I  
5 would say everybody that I know for the most part  
6 now is left out of this altogether.

7 JUDGE GUTHRIDGE: And by left out you  
8 mean they do not meet --

9 THE WITNESS: We do not meet --

10 JUDGE GUTHRIDGE: -- the definition --

11 THE WITNESS: -- qualifications here.

12 JUDGE GUTHRIDGE: -- of grower. Okay.

13 THE WITNESS: And so I don't know  
14 where that puts us now. That's my concern. We  
15 no longer exist once this happens in reality.

16 JUDGE GUTHRIDGE: That's your  
17 impression of what --

18 THE WITNESS: Right.

19 JUDGE GUTHRIDGE: -- what it is.

20 THE WITNESS: We can't vote, we just  
21 will be assessed or whatever. And I know how the  
22 way -- assessments, you know, one man's

1 assessment is another man's taxing. Either  
2 you're going to pay the assessment or it's going  
3 to get passed on down to you, one way or the  
4 other it's going to -- you know, the guy at the  
5 bottom is going to do it. Like I said, we're  
6 paying an assessment now to the Georgia Pecan  
7 Growers at a certain acreage. I think it's 50  
8 acres and on it, or something like that is the  
9 assessment.

10 JUDGE GUTHRIDGE: Okay. Do you have  
11 any other concerns that you would like to express  
12 at this time?

13 THE WITNESS: I just want to make sure  
14 that especially you guys understand the need  
15 for --

16 JUDGE GUTHRIDGE: By you guys are  
17 you --

18 THE WITNESS: USDA people.

19 JUDGE GUTHRIDGE: -- you're indicating  
20 USDA?

21 THE WITNESS: The needs in my opinion  
22 for standards on grading, you know, other --

1 almost all other agricultural crops have some  
2 pretty good standards, and that none exist,  
3 none -- we don't -- you know, you don't have  
4 Grade A, Grade B, you know, Grade A large, or,  
5 you know, like you grade beef.

6 None of that exists and I think it  
7 would really help if everybody had to go by the  
8 same rules on -- you know, the big guys, they  
9 have the luxury, they can sell directly to the  
10 end user, they can ship directly to China.

11 Everybody else has to go through the buyers out  
12 there. And you just get what they give you.

13 Period.

14 And, you know, you say, Well, you can  
15 shop around. What are you going to do, load  
16 everything back up and then drive 200 miles down  
17 the road and burn another tank of gas. Well,  
18 that was a waste of time. So if there's anything  
19 good that I see out of this, and there's probably  
20 a lot of it, is the possibility of  
21 standardization on the product coming about. We  
22 really need it.

1                   JUDGE GUTHRIDGE: Okay. All right.  
2 Let me start again with Mr. Davis or Mr. Quirós,  
3 do you have any questions?

4                   MR. DAVIS: I just happened to have  
5 the microphone, so I'll ask a couple of  
6 questions.

7                   DIRECT EXAMINATION

8                   BY MR. DAVIS:

9                   Q       I'm really just kind of curious. When  
10 did you first plant your trees, Mr. Fuller?

11                  A       I bought some trees 10 years ago that  
12 were already planted. Those are -- that's where  
13 I'm getting most of my production. Then I  
14 started planting about two years. So basically  
15 somewhere around eight years ago I started  
16 growing this thing. In my -- in Cook County  
17 there's a lot of that small type orchards around  
18 there.

19                             And it looked like a, you know,  
20 possible money making opportunity in retirement.  
21 But as I became more educated, now I have found  
22 out, you know, I need to shell out \$100,000 in

1 equipment now.

2 Q Okay. All right.

3 A You know, harvesting, sprayers and  
4 that kind of stuff. Well, at my age that's kind  
5 of -- that's not a wise decision. I'd never  
6 recover. So now I have to contract out most of  
7 the spraying. And if you're dealing with  
8 cultivars, you're going to spray --

9 Q Sure.

10 A -- and you're going to spend a lot of  
11 money on it.

12 Q I hear you. I hear you. And again,  
13 so if I understand you, do you have a total 20  
14 acres --

15 A Yes.

16 Q -- some of them are already mature  
17 trees, some of them are coming along. Is that  
18 right?

19 A Right. I've got about 200 and I think  
20 43 trees total.

21 Q And if I also -- and again, if I  
22 mischaracterize anything, I've got a feeling

1       you'll let me know, but if -- you're saying if  
2       the industry had improved standards, that would  
3       help you make more informed decisions on what's a  
4       fair price for your product. Is that right?

5             A       In my opinion, yes --

6             Q       Okay.

7             A       -- that would.

8             Q       And if you had better, more accurate  
9       information, I think you heard Mr. Cobb, we  
10      really need to know more information on the crop  
11      size, the real crop size. If that information  
12      were accurate and were publicized, that would  
13      help you make more informed decisions. Right?

14            A       I agree with everything he said.

15            Q       Okay. Good. And then again, if I'm  
16      understanding you, if you've only got 20 acres of  
17      pecans, it's really not worth your while to  
18      invest in the equipment and all the stuffs that's  
19      needed to keep a crop going. Is that right?

20            A       That is correct, unless, you know, and  
21      I buy more land and -- you know, if you're going  
22      to invest \$100,000 in equipment, you need 100

1 acres in pecan production in my opinion.

2 Q Okay. All right. Thank you.

3 MR. DAVIS: And we have no further  
4 questions.

5 JUDGE GUTHRIDGE: Does the USDA have  
6 any questions?

7 CROSS-EXAMINATION

8 BY MS. VARELA:

9 Q I just have a quick one for you. Jan  
10 Varela, USDA.

11 A Keep it simple.

12 Q I'm trying to. You mentioned that you  
13 hire people to do some of those jobs for you  
14 because you didn't want to invest in the  
15 equipment. We've heard some testimony earlier  
16 about custom harvesters and custom management.  
17 Would you describe your situation as falling into  
18 those definitions?

19 A Well, I think almost anything except  
20 sprayers is custom in this field. You take a  
21 harvester and I think the most least expensive  
22 Savage harvester out there is going to be \$25,000



1 on up, and I don't think the harvester can be  
2 used for anything other than pecans. Sprayers,  
3 yes, they can be used in different type products.  
4 And then you have the processers that you have to  
5 also -- which does -- you know, blows out the  
6 lightweights, and I saw the definition in there  
7 of that, and that's another 20,000 on up piece of  
8 equipment.

9 Q And that would be for cleaning?

10 A Right.

11 Q Okay. And you mentioned that there  
12 are a lot of small farms in your area. Cook  
13 County I believe is what you said?

14 A Right.

15 Q Would you say that your operation is  
16 kind of typical of what you see in your area?

17 A Yes.

18 Q Thank you. Those are all the  
19 questions I have for you.

20 JUDGE GUTHRIDGE: Are there any more  
21 USDA questions?

22 MR. HILL: Yes.

1 BY MR. HILL:

2 Q Mr. Fuller, how are you doing?

3 A I never knew I would be answering  
4 agriculture questions. Never in my life. My  
5 background's totally different.

6 Q There has been some testimony that you  
7 probably didn't hear --

8 JUDGE GUTHRIDGE: That's Mr. Hill  
9 asking questions.

10 MR. HILL: Oh, sorry, Brian Hill.

11 BY MR. HILL:

12 Q And that testimony basically said that  
13 there would be a projected average increase of  
14 6.3 cents per in-shell pound if this order went  
15 through. Now you've had some complaints I guess  
16 that you might not be -- you will not be a voter.

17 JUDGE GUTHRIDGE: And let me  
18 interject, Mr. Hill is returning I think both to  
19 Exhibits 19 and the executive summary of Exhibit  
20 19 that's in -- it's in Exhibit 23, and both  
21 those exhibits, as I understand it, can be found  
22 online at this point?

1 MR. HILL: Right. So --

2 JUDGE GUTHRIDGE: And if you could  
3 tell him where they can be found online.

4 MS. SHARROW: Michelle Sharrow, USDA.  
5 The exhibits are available on the Agricultural  
6 Marketing Service website. It's ams.usda.gov.

7 THE WITNESS: Okay.

8 MR. HILL: Okay.

9 JUDGE GUTHRIDGE: Sorry for the  
10 interruption, Mr. Hill.

11 MR. HILL: No problem.

12 BY MR. HILL:

13 Q There's a study by Dr. Marco Palma in  
14 which it said -- in which he stated that if this  
15 order went through, there'd be an increase of  
16 approximately 6.3 cents per in-shell pound.

17 A Increase in return, increase in  
18 cost --

19 Q In return.

20 A -- or increase in assessment or  
21 increase in --

22 Q No, no, no, no assessments. In the

1 price, in the price that a farmer could receive  
2 for his product.

3 A Increasing six cents?

4 Q 6.3 cents.

5 A That's nothing.

6 (General laughter.)

7 BY MR. HILL:

8 Q I will say, is that something that --  
9 is any increase something that a farmer would --  
10 in your position or any other position, with  
11 those that you know, smaller farmers, would it be  
12 appreciated, would a raise of any type be  
13 appreciated?

14 A That would be appreciated more in  
15 the -- with the big guys because the big guys  
16 now, like we have one in Lowndes County, I mean  
17 who use cold storage, one penny makes a  
18 difference on his sale date, on penny per pound  
19 will make a difference in his. But a small guy  
20 like me, yeah, I'd like to have six cents, but it  
21 really is not going to add up to much. I need a  
22 dollar.

1 (General laughter.)

2 BY MR. HILL:

3 Q We all believe the same thing. Thank  
4 you.

5 JUDGE GUTHRIDGE: To put Mr. Hill's  
6 question in context, it's in the context that the  
7 amount of money that was contributed by  
8 assessments --

9 THE WITNESS: Right.

10 JUDGE GUTHRIDGE: -- per pound would  
11 be exceeded considerably by the amount of  
12 expected return on that.

13 THE WITNESS: Yeah, and it's probably  
14 true. I'm really surprised that the big guys  
15 aren't here to address that. You would think  
16 that they would --

17 JUDGE GUTHRIDGE: Well, we've had  
18 hearings in Las Cruces, New Mexico and in Dallas,  
19 Texas where Dr. Campo -- Dr. Palma, who wrote the  
20 study, spent quite a bit of time online. I think  
21 that also can be -- is that online also, that  
22 testimony is online now?

1 MS. VARELA: Yes.

2 MS. SCHMAEDICK: Yes, all the exhibits  
3 are online now.

4 JUDGE GUTHRIDGE: The exhibits and the  
5 transcript?

6 MS. SCHMAEDICK: Not the transcript,  
7 just the exhibits.

8 JUDGE GUTHRIDGE: Okay.

9 MR. DAVIS: And, Your Honor, we could  
10 also point out there's going to be two days of  
11 testimony here, Mr. Fuller, where there are going  
12 to be some large growers testifying also.

13 THE WITNESS: Okay.

14 JUDGE GUTHRIDGE: So any more USDA  
15 questions?

16 MR. HILL: No, Your Honor.

17 JUDGE GUTHRIDGE: Mr. Davis?

18 REDIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q Other than you've just peaked our  
21 curiosity. What did you do before you retired  
22 and became a pecan farmer?

1           A       I moved heavy metal around at very  
2 high speeds.

3                   (General laughter.)

4           BY MR. DAVIS:

5           Q       You were a truck driver?

6           A       I was an airline pilot for United  
7 Airlines.

8           Q       Oh, an airline pilot. You did carry  
9 some heavy -- all right. Thank you.

10           JUDGE GUTHRIDGE: Does anyone in the  
11 audience have any questions for Mr. Fuller?

12                   (No response.)

13           JUDGE GUTHRIDGE: No? Okay. Mr.  
14 Fuller, you're excused. If you'd go over and  
15 check with Ms. Thompson, see if she has any  
16 spellings or anything that she needs clarifying.

17           THE WITNESS: Thank you kindly.

18           JUDGE GUTHRIDGE: Thank you.

19                   (Whereupon, the witness was excused.)

20           JUDGE GUTHRIDGE: Mr. Quirós?

21           MR. QUIR S: Yes, sir, could we have  
22 a five minute break and let us reorganize our

1 witnesses and prepare for the rest of the  
2 afternoon's testimony?

3 JUDGE GUTHRIDGE: That's fine. Five  
4 minutes.

5 MR. QUIR S: Thank you.

6 JUDGE GUTHRIDGE: All right. It's  
7 2:57, let's make it 3:05.

8 MR. QUIR S: Thank you, Your Honor.

9 MR. DAVIS: Thank you.

10 (Whereupon, a short recess was taken.)

11 JUDGE GUTHRIDGE: All right. Before  
12 you call your next witness, I have a request from  
13 Nick, the sound man, that when we're talking, get  
14 about four inches from the microphone and it's  
15 most effective for the court reporter and for the  
16 audience. So if we could all bear that in mind.

17 And if we don't do it, you let me  
18 know, including me. Okay.

19 All right. Call your next witness.

20 MR. QUIR S: Your Honor, we call  
21 Hilton Segler.

22 JUDGE GUTHRIDGE: Okay. Mr. Segler,



1 please raise your right hand.

2 Whereupon,

3 HILTON SEGLER

4 having been first duly sworn, was called as a  
5 witness herein and was examined and testified as  
6 follows:

7 JUDGE GUTHRIDGE: All right. Mr.  
8 Quirós.

9 DIRECT EXAMINATION

10 BY MR. QUIR S:

11 Q Yes. What is your name?

12 A The first name is Hilton, H-I-L-T-O-N,  
13 the last name is Segler, S-E-G-L-E-R.

14 Q And where do you live, Mr. Segler?

15 A I live in Albany, Georgia.

16 Q And tell us how you learned the farm  
17 trade and the pecan business.

18 A Kind of the hard way basically. I've  
19 always been, as an adult, working in the  
20 fertilizer and chemical business. And I happened  
21 to have a job in 1961 with a company by the name  
22 of Thompson Hayward Chemical Company with their

1 headquarters in Kansas City, Kansas. The parent  
2 company was Philips' Lamp, and goes back to the  
3 Philips over in Holland.

4 In 1964 through their research program  
5 they came out with the first fungicide that was  
6 used on controlling scab on pecans with an EPA  
7 label. It was Triphenyltin hydroxide, don't ask  
8 me how to spell it. I let you do that. They  
9 used the brand name Duter, D-U-T-E-R. The  
10 product is still available today sold under the  
11 brand name Super 10.

12 So this was labeled in 1964, so I had  
13 a chance to observe the product during its  
14 initiation into the marketplace. But being  
15 regional manager of Thompson-Hayward with my  
16 territory covering South Carolina, Georgia,  
17 Florida and Alabama, the very heart of the pecan  
18 industry, the company expected this to be a real  
19 factor and to move a lot of product to the pecan  
20 industry.

21 Up until that time, if land had pecans  
22 growing on them, it was considered a disadvantage

1 because grass wouldn't grow under it to feed the  
2 cows. So we didn't have anything to spray with  
3 to control disease. So it really brought the  
4 industry up-to-date in 1964.

5 We didn't have a pecan team, we did  
6 not have, as we have today, entomologists and  
7 pathologists, agronomists. I work with the  
8 department heads at the University of Georgia and  
9 the department heads over at Auburn to learn  
10 about pecans. And I pretty well found out that  
11 within our own company we didn't know a whole lot  
12 about growing pecans or controlling insects or  
13 disease.

14 With that in mind, I said the best way  
15 for me to do a job is to get into the pecan  
16 business. So I rented me 25 acres of pecans.  
17 And so everything that I've learned about pecans  
18 I've done it trial and error and working with  
19 these department heads over the years.

20 Later on, about 20 years ago, I bought  
21 a 500-acre farm, pecan farm, in Crisp County,  
22 Georgia, known as Gumcreek Farms on Highway 280

1 up close to Lake Blackshear. During that same  
2 time I rented a lot of acres in a couple of other  
3 counties, and for a period of about seven, eight,  
4 ten years I farmed 1900 acres of pecans and run  
5 900 head of momma cows.

6 So over a long period of time I've  
7 gathered a lot of knowledge pertaining to growing  
8 and marketing pecans. In 2007 was the last year  
9 that I gathered a crop and sold out. At that  
10 time I had downsized my farms and I only had 350  
11 acres. And believe me, sometimes always bigger  
12 is not always better. So over a 40-year span  
13 I've had an opportunity to learn the market.

14 I've sat under a pecan tree many times  
15 during the course of those 40 years with 3- or  
16 400,000 pounds of pecans and couldn't even get a  
17 price on them, or if you sold them. You  
18 definitely had to carry the deed to your farm,  
19 prices were so low. I made myself a promise at  
20 that time that if I ever had an opportunity to  
21 improve our industry, I would do everything that  
22 I could to do it.

1           During that 40 odd years from '64 to  
2 the present time, I've served on the Board of  
3 Directors for the Georgia Pecan Growers  
4 Association several times. It's a two-year term.  
5 In 2003 I was elected to the Board for a two-year  
6 term. I served that term and was elected vice  
7 president of the Georgia Pecan Growers  
8 Association, and that's a two-year term.

9           And then later after that was elected  
10 president, and they rewarded me after two years  
11 and elected me president for another two years.  
12 So I spent four years as president of the Georgia  
13 Pecan Growers Association.

14           With the number of acres of pecans in  
15 our state, it is of vital interest that this  
16 industry not only is recognized by the USDA and  
17 our Congressional leadership in Washington, but  
18 we do everything that we can to revive the  
19 industry. Our industry was dying when I became  
20 president of the organization. We were not  
21 recognized even as a farm by the USDA, compared  
22 to other crops such as peanuts or cotton or corn

1 and soy beans, et cetera. We had no price  
2 support, we had no crop insurance, it was just  
3 what everybody would pay you when it became due.

4 Over a 20-year period with the first  
5 meeting at one of my farms, we had a meeting with  
6 the RMA representatives and members of this  
7 industry.

8 Q What does RMA stand for, Mr. Segler?

9 A Risk Management Agency, it's the  
10 federal crop insurance under the USDA. About  
11 acquiring crop insurance for our industry. In  
12 2003 we finally was granted crop insurance in  
13 Georgia, after a six-year pilot program in three  
14 counties.

15 I was attending the Alabama Pecan  
16 Growers Association meeting and was leaving when,  
17 at that time Congressman Sanford Bishop, who we  
18 had worked with so diligently in acquiring the  
19 insurance, that the Board had finally approved it  
20 for Georgia. This changed our industry, or  
21 started us on the change of our industry  
22 nationwide basically. Because -- excuse me.

1           Q       Mr. Segler, how did that change the  
2 industry, how did crop insurance change the  
3 industry for pecans?

4           A       Pecan growers, regardless of where  
5 they were located, was considered a bad credit  
6 risk because you had no insurance or anything  
7 else. Now if you had plenty of assets and plenty  
8 of money in the bank, didn't need the bank to  
9 operate, they might loan you money. Up until  
10 then you couldn't get it. When we became  
11 eligible for federal crop insurance, the banking  
12 industry took an entirely different view of it,  
13 because we were being insured based on a history  
14 of dollars earned for the past 10 years of  
15 production, so they had something to go on.

16                   That would have pretty well stopped at  
17 that point, but I have -- I don't use the words  
18 that my good friend, Dr. Randy Hudson, used with  
19 the education that he's got, but I have a lot of  
20 passion for our industry. I would not accept the  
21 fact that in 2004 that we would not expand our  
22 insurance.

1                   And so I was able to get crop  
2 insurance in Mobile and Bowen County, Alabama in  
3 2004. That was the only two counties that was  
4 added nationwide. 2005 it became a nationwide  
5 program in all 15 commercial producing states  
6 that pecan growers can get insurance. If you  
7 remember, during the 2004-2005 hurricanes, that  
8 saved a lot of farmers. But it took 20 years,  
9 people, to get that.

10                   Some of the other things that has  
11 happened, I think I was very instrumental in  
12 getting NRCS to recognize the pecan grower. For  
13 a long time grow crop people could participate in  
14 some of their programs, but pecan growers could  
15 not. They have a --

16                   JUDGE GUTHRIDGE: Did you say NRCS?

17                   THE WITNESS: NRCS, yes, sir.

18                   JUDGE GUTHRIDGE: Has that been  
19 defined?

20                   BY MR. QUIR S:

21                   Q       Yes, do you want to define that for  
22 us?



1           A        It's the -- gone.

2                    MALE VOICE:  Natural Resources  
3   Conservation Service.

4                    THE WITNESS:  Conservation Service.  
5   I'm sorry, yeah.

6                    JUDGE GUTHRIDGE:  In case that didn't  
7   make it to the record -- to the microphone --

8                    THE WITNESS:  National Resource  
9   Conservation Service.

10                   JUDGE GUTHRIDGE:  Thank you.

11                   THE WITNESS:  Under the USDA.  One of  
12   the programs that they have is called the CEP  
13   program, it's the Conservation Stewardship  
14   Program.  It was established I think back in  
15   probably 1978, I'm not sure on that date, but it  
16   was established a number of years ago for  
17   growers, that it would award them for using  
18   conservation practices on their farms.

19                    Later they made some changes in the  
20   program and it not only awarded the farmers for  
21   using conservation programs, but it enticed them  
22   to add additional programs.  And there's probably

1 100 different programs that could be used. It's  
2 a five-year program. A grower, per entity, can  
3 draw \$40,000 a year, up to a maximum of \$200,000.

4 There are things like the Clover  
5 Program, planting a legume crop in there.  
6 They've got another program called the EQIP  
7 Program, that's the Environmental Quality  
8 Incentive Program. That's a program that  
9 covers -- it's a two-year program, it covers many  
10 things. For example, if a grower was irrigating  
11 his pecans and using a diesel engine, they would  
12 help subsidize the cost of electricity there to  
13 save energy.

14 Up until maybe four years ago we  
15 didn't qualify for any of these programs. Today  
16 we do. Many of our growers in the state of  
17 Georgia are taking advantage of both of those  
18 programs, which has been very beneficial.

19 BY MR. QUIR S:

20 Q Mr. Segler, for the benefit of the  
21 audience, would you explain why the clover and  
22 legumes program is important to pecan growers?

1           A       Well, it covers a lot of things, but  
2       the significant deal is that when you plant a  
3       legume, and in particular clover out there,  
4       you're generating a source of beneficial insects  
5       to help you control the insects in your trees.

6                    You also have a biomass that  
7       disintegrates, goes back into the soil and  
8       generates anywhere from 100 to 150 pounds of  
9       actual nitrogen per acre, saving that grower  
10      something of about like a 100- to \$150 an acre  
11      for the cost of nitrogen, so you're improving  
12      that. And also a good food source for beneficial  
13      insects.

14                   So that program has been widely used  
15      here in the southeast, a lot more so than the  
16      west. But it's cleared nationwide, so it's a  
17      tremendous program.

18           Q       Mr. Segler --

19           A       Yes, sir.

20           Q       -- can I move you on your -- some of  
21      the highlights of your industry service include  
22      the -- achieving the federal crop insurance and

1 getting these conservation programs. Take us  
2 into the MAP program into the US Pecan Council.  
3 Would you explain your background in that and  
4 your current title.

5 JUDGE GUTHRIDGE: Could you refresh my  
6 recollection on the MAP program?

7 MR. QUIR S: Yes. In fact, I'll ask  
8 Mr. Segler to.

9 THE WITNESS: The MAP program is  
10 under --

11 JUDGE GUTHRIDGE: What does the --  
12 what does MAP stand for?

13 THE WITNESS: Market Access Program.  
14 It's under the Federal Agricultural Services of  
15 the USDA. It's a way that funds that are  
16 available, matching funds that are available to  
17 agricultural industries to help balance the trade  
18 and export. It's not a freebie, you have to  
19 match the funding both with cash and in kind to  
20 the point of 100 to 125 percent of the amount of  
21 funds that you get.

22 We were able successfully to acquire

1 the first funds that came to Georgia in 2010, at  
2 a point in time I lived in Washington, just  
3 about, trying to get these programs available.

4 BY MR. QUIR S:

5 Q Mr. Segler, when you say we do you  
6 mean the US Pecan Growers Council?

7 A I'm talking about the US Pecan Growers  
8 Council.

9 Q Thank you.

10 A And --

11 Q I hate to interrupt you again, but can  
12 you tell me what your position is with that group  
13 and then give us some of that history?

14 A After my term was up as president of  
15 the Georgia Pecan Growers Association, the US  
16 Pecan Council asked me if I would take over  
17 the -- as Executive Director in charge of all the  
18 international marketing of pecans. And that's my  
19 present position to date.

20 Q What's the goal of the US Pecan  
21 Council -- Pecan Growers Council, Mr. Segler?

22 A Simply to increase the sale of pecans

1 overseas. We're the marketing arm of our  
2 industry in promoting pecans.

3 Q And what are the objectives of the  
4 proposed -- well, let me back up. Have you had a  
5 chance to review Exhibit 1, which is the notice  
6 that was sent out from the USDA that contains the  
7 proposed Federal Marketing Order for pecans?

8 A I not only had notice of it, I read it  
9 word-for-word.

10 Q That's terrific. And from your  
11 understanding of Exhibit 1 what are the  
12 objectives of the proposed Federal Marketing  
13 Order for pecans as you understand them?

14 A To unify our industry across this  
15 country in 15 commercial states, which I  
16 represent. But to increase the sale domestically  
17 of US pecans generically. When you move out of  
18 the 15 commercial states from North Carolina,  
19 around the Gulf Coast, as far north as Oklahoma,  
20 Missouri, Kansas, and Arizona and California and  
21 New Mexico, et cetera, Texas, when you move out  
22 of that area, and that's not where the population

1 is in this country, people -- there's no market.  
2 They don't know where to buy them.

3 I hate to say this, Judge, but you  
4 live in Virginia, I just asked you, I bet you  
5 couldn't even pecans there, could you?

6 JUDGE GUTHRIDGE: I live in a pecan  
7 deprived area of the country.

8 (General laughter.)

9 THE WITNESS: Right. The --

10 MR. QUIR S: We're going to fix that,  
11 Your Honor.

12 THE WITNESS: But the population is in  
13 New York, is in Washington, Philly, it's in  
14 Chicago, that's where the population of this  
15 country -- and that's where people don't know  
16 anything about the most healthiest nut and the  
17 most nutritious nut period. I see you shaking  
18 your head too. So, but the objective is to  
19 increase -- that's our biggest customer. The  
20 biggest customer is the United States.

21 BY MR. QUIR S:

22 Q From what you -- then you know of the

1 US Pecan Growers Council and its objectives and  
2 what the proposed Federal Marketing Order for  
3 pecans, its objectives are for the American Pecan  
4 Council, in your opinion is there any conflict  
5 between the goals of the US Pecan Growers Council  
6 and the proposed American Pecan Council?

7 A Absolutely not. There's no conflict  
8 at all. The fact is, we complement each other.  
9 The job of the US Pecan Growers Council, which  
10 I'm the Executive Director that handles  
11 international, I'm looking forward to this  
12 passing so that we can have some funds next year,  
13 not 20 years from now. We should have done this  
14 20 years ago. It's one of the greatest pieces of  
15 legislation that we've ever had.

16 And there's no way that you're going  
17 to ask enough questions, or answer everything  
18 that's going to come up in a complicated industry  
19 in 15 states. I'm continuously talking to all  
20 the state presidents and growers around. To fit  
21 a market as diversified as ours it's going to  
22 take a smart group of these 17 Board members to



1 work out the details, and they're not going to do  
2 it overnight.

3 Some of it would have to probably --  
4 this is a good piece of work that was published  
5 in the Federal Register. Some of the details  
6 might have to be worked out by the Board  
7 themselves. But Mike and his Board, they've done  
8 a tireless, thankless job, and they've done  
9 something that I've been extremely interested in  
10 for the past 10 years.

11 Q Mr. Segler, before we leave this, what  
12 is your opinion of the proposed Federal Marketing  
13 Order for pecans that you've read?

14 A As I've stated before, I think it's  
15 the greatest thing that we've ever done. I'll  
16 tell you this, that over the last number of --  
17 well, over the past year anyway, I've wrote over  
18 600 emails out to growers. When the -- it was  
19 published in the Federal Register, I'll attached  
20 that and send it out to growers.

21 And I'm heavily involved in not only  
22 the United States but -- generically, but Georgia

1       itself. Last year when Georgia wanted to  
2       increase their assessment from a half cent to a  
3       cent, I personally talked to 900 growers myself  
4       pertaining to the need for this.

5               So this is good not only for the small  
6       hobby type growers, ones that are just retired.  
7       Remember six -- five or six years ago the average  
8       price for the big Improved variety of pecans was  
9       the gift pack trade early, prior to the holidays.  
10      A Desirable, which was the premium nut, you were  
11      lucky to get a dollar and a quarter to maybe a  
12      \$1.35 a pound. Okay. Once that season was over,  
13      that price would probably drop down to somewhere  
14      between 80 cents to a dollar.

15             Now that same pecan today is anywhere  
16      from 2.75 to three-and-a-quarter. That same  
17      pecan today. One of the reasons that this has  
18      come about domestically, and we're looking at it  
19      so hard and it's needed so hard, is that our  
20      people in this country, they need to eat more  
21      nuts and in particular pecans. It is the most  
22      nutritious, healthiest nut on the market.

1 Period. No question.

2 We just need the operating funds to do  
3 it, and it doesn't matter if a grower has got one  
4 tree and he sells a nut off of that tree, and  
5 this other grower's got a million trees, he's  
6 getting advantage of the price increase from the  
7 sale of those nuts.

8 Q Mr. Segler.

9 MR. QUIR S: I think that's a good  
10 place for the Proponent Group to end its  
11 questioning, Your Honor.

12 JUDGE GUTHRIDGE: Does the USDA have  
13 any questions?

14 MS. SCHMAEDICK: Melissa Schmaedick,  
15 USDA.

16 CROSS-EXAMINATION

17 BY MS. SCHMAEDICK:

18 Q Good afternoon, Mr. Segler.

19 A Good afternoon, Melissa.

20 Q Thank you for your testimony, and it's  
21 nice to see you again. So based on your  
22 testimony, you have a number of years being

1 involved with organizations, pecan industry  
2 related organizations. So a couple of my  
3 questions are going to be asking you about your  
4 opinion based on your experience.

5 So you also mentioned that you've read  
6 the notice, which has the proposed program.

7 Correct?

8 JUDGE GUTHRIDGE: Exhibit 1 you mean?

9 MS. SCHMAEDICK: Exhibit 1. Thank  
10 you.

11 BY MS. SCHMAEDICK:

12 Q So in your opinion, when you read  
13 through that, did the proposal describe the  
14 framework for an organization that seemed  
15 reasonably well organized, solid, it had the  
16 components that are necessary for a program to  
17 function efficiently?

18 A When the American Pecan Board first  
19 started, and I was privileged to a lot of  
20 information other growers wasn't in the position  
21 I was in. There was a lot of work that had to be  
22 done. People in North Carolina think different

1 than people in Alabama. People in Oklahoma think  
2 differently than folks in Texas, and so forth.

3 To bring all of these ideas together  
4 was a monumental job. To describe our industry  
5 in as much detail as they have done, to have as  
6 many meetings across this country and many of  
7 them you've been involved in, has just been  
8 phenomenal.

9 I've raised a lot of questions, as you  
10 well know, pertaining to this Exhibit 1. A lot  
11 of people thought for a while that I was totally  
12 against it. I wasn't against it, I just wanted  
13 it right. And it's a good piece of work and  
14 these guys deserve a tremendous hand for bringing  
15 it together. They've spent time in Washington,  
16 but the undue hours that they have spent trying  
17 to get the USDA, as well as our growers and our  
18 handlers and our shellers to embrace and  
19 understand that we're one industry and we must  
20 work together is just outstanding. So I don't  
21 think you could make a single word of improvement  
22 to it.

1           Q       Thank you. I was very curious to hear  
2 your description of the federal crop insurance,  
3 and I believe you stated that federal crop  
4 insurance is available now in 15 states. Is that  
5 correct?

6           A       All commercial across the nation, yes.

7           Q       So then in your opinion is the  
8 proposed production area also in sync with the  
9 federal crop insurance definition of where  
10 commercial pecans are being grown? Are the  
11 two -- is the 15 states in the federal crop  
12 insurance, are they the same states that are  
13 being -- that would be covered in this program?

14          A       Yes.

15          Q       Thank you. And given your work with  
16 the National Pecan Growers Association, which is  
17 now the US --

18          A       Yes.

19          Q       -- Pecan Growers Council, what is  
20 your opinion of the broad based understanding of  
21 this proposal? I know you've said there's been a  
22 lot of outreach done and a lot of listening, but

1 does that opinion also include sort of an  
2 assessment of the understanding of the program,  
3 how it will impact people, and are those impacts  
4 generally accepted?

5 A I know of really no growers that  
6 really are against the program. I think that all  
7 growers, big or small, recognizes the fact that  
8 with the economy being as it is today, each  
9 industry is pretty well going to have to look  
10 after themselves, and anything that we can do to  
11 improve our cost of production or our market  
12 potential and movement of the crop we produce is  
13 going to make them money, and that's a very small  
14 amount in order to do it.

15 Q Thank you. I believe you also  
16 mentioned that you have some experience with the  
17 Georgia Pecan Growers Association, as well as the  
18 Georgia Pecan Commission?

19 A Commodity Commission.

20 Q Commodity Commission. Can you tell  
21 me -- so under the Georgia Commodity Commission,  
22 it's my understanding that there's an assessment

1 rate that is -- an assessment that is collected.  
2 So is there a definition under that program of  
3 sort of the minimum size of a farm that is  
4 captured in that assessment?

5 A Yes, ma'am.

6 Q Could you tell us what that is?

7 A A grower that has 30 acres or more is  
8 assessed at the first handler one cent a pound.

9 Q Thank you.

10 A Regardless of variety.

11 Q So that 30 acres is similar to the 30  
12 acres that is found in this proposal, is it not?

13 A Yes, ma'am.

14 Q So in your opinion is that a good  
15 benchmark, has it worked well for Georgia?

16 A I think it's probably the best  
17 benchmark you could have.

18 Q Thank you. My last question for you,  
19 and you actually just brought it up for me, you  
20 said 30 acres regardless of whether it's Improved  
21 or native. So in Georgia is there a different  
22 way to identify native pecan acres?



1           A       We basically do not have any native or  
2 seedling varieties in the state. Now do we have  
3 some seedling? Sure we do. They're grown in  
4 people's yards or along the fence row. But to  
5 name -- we probably don't have but one or two  
6 growers that's 15 or 20 acres of nothing but  
7 seedlings in our whole state. They're all  
8 Improved varieties.

9           Q       Okay. Thank you. So in other words,  
10 in previous testimony we've heard the term pecan  
11 acre as defined by the FSA, Farm Service Agency,  
12 but that's applicable to the state of Georgia in  
13 our opinion.

14          A       Pardon me now? Oh, the --

15          Q       Sure. The term pecan acre is not  
16 applicable to Georgia because you don't really  
17 have native production.

18          A       Well, it's also reported that way, but  
19 more than -- in my opinion, when someone comes in  
20 with a grocery sack or a bag of pecans, they just  
21 dump them out there and they call them seedlings,  
22 and they may be Stuarts or something else. But

1 to have a -- a native grows in the Mississippi  
2 area where -- the Mississippi delta area where  
3 the trees were originally started at the  
4 beginning of time I guess.

5 The seedling over here is where we  
6 planted an Improved variety and maybe a freeze  
7 come or it broke off and it come up below the  
8 bud. Whatever nut you plant, when that nut  
9 breaks dormancy and comes up is a seedling,  
10 regardless of what variety. It has to be grafted  
11 or budded. Most of Georgia's are Improved  
12 varieties.

13 Q Okay. Thank you. That is it for my  
14 questions. Thank you for your testimony. Very  
15 helpful.

16 MS. VARELA: Jan Varela, USDA.

17 BY MS. VARELA:

18 Q Mr. Segler, I just wanted to follow up  
19 on part of your testimony where you were  
20 discussing some of the Risk Management crop  
21 insurance program. And are you comfortable  
22 answering a few more questions about that? I

1       figured you'd know --

2           A       Fire away.

3           Q       -- as much about it as anybody else.

4           A       Fire away.

5           Q       When that program was being developed  
6       was there a process for determining who qualified  
7       in terms of size, whether it was just the initial  
8       Georgia program, or when you expanded it? Are  
9       there any restrictions on who can apply for that  
10      insurance, or is it done on a case-by-case basis?

11          A       If you've got one tree you can apply.

12          Q       Okay. I was curious.

13          A       You can apply.

14          Q       Thank you so much. That was my only  
15      question for you.

16          A       Okay.

17                   BY MR. HILL:

18          Q       Mr. Segler.

19          A       Yes, sir.

20          Q       Brian Hill. Do you sell any of your  
21      crop outside of the state of Georgia?

22          A       The last crop that I sold was in 2007.

1 Q Okay.

2 A Okay. So I don't grow pecans anymore.

3 Q Okay. So how much of your crop at  
4 that time do you think you were selling outside  
5 of the state of Georgia? Percentage-wise, just a  
6 rough estimate.

7 A Probably the majority of it.

8 Q So can you tell me what states a lot  
9 of your crops were going to?

10 A Most of it probably went in  
11 international trade.

12 Q But did some of that crop go  
13 presumably into other states in this country?

14 A I'm sure it did because all the pecans  
15 basically that's produced is -- ends up through  
16 shellers that's going to shell the nuts. Our  
17 market here in the United States is not in  
18 shelled pecans.

19 Q Right.

20 A They end up in the hands of shellers.  
21 Now they may go through several hands before they  
22 get there, but somebody's going to shell them.

1 Q Right.

2 A And they're going to sell them. I  
3 will tell you this, that in -- nationwide where  
4 we exported very little five or six years ago,  
5 we're now exporting probably 30 to 35 percent of  
6 our total market. Five or six years ago Georgia  
7 was exporting probably less than 2 percent and  
8 we're probably exporting close to 70 percent of  
9 our production now.

10 Q So would you say that much of the  
11 crops all across the country, all across this  
12 proposed production area, is it moving outside of  
13 the states that it's produced in?

14 A No, only probably about 35 percent.  
15 So on an average it's moving internationally at  
16 this point in time. Our biggest customer is  
17 domestic. And of course there's a lot of imports  
18 of pecans that come into this market. We've got  
19 to place this important crop that we produce,  
20 this healthy crop that we produce, we've got to  
21 place where the population is in the United  
22 States, and it's not in the south where it's

1 grown. We don't have to be -- we don't even have  
2 to teach people how to pronounce it. It's pecan,  
3 isn't it?

4 (General laughter.)

5 THE WITNESS: I mean we know what they  
6 are. We've got to find folks that don't.

7 BY MR. HILL:

8 Q And that's what I'm focused on.  
9 Forgetting the exports, within the United States  
10 is there movement in between the various states,  
11 pecan movement you know, from Georgia to Ohio  
12 or --

13 A A lot of the shellers have -- we've  
14 got three or four shellers here in Georgia,  
15 there's a lot more in Texas than there are here.  
16 Some of their offices is up north and they don't  
17 even have a shelling plant up there. So I don't  
18 really know how to answer that really.

19 Q So there has been a lot of testimony  
20 about breaking into other markets, mostly in the  
21 northeast and the north in general. And I just  
22 want to -- that part of the market, is that

1 something that you agree with?

2 A Oh, absolutely.

3 Q All right. And how is that important  
4 to this market -- to this industry?

5 A In the last five years Georgia has  
6 planted over 25,000 brand new acres of pecans.  
7 And we're still planting them as we speak each  
8 year. Five years ago we had about 12 nurseries  
9 here in the state that was growing pecans in  
10 Improved varieties. This past year we had over  
11 50.

12 In the next 10 years the southeast in  
13 particular, we're blessed with adequate water  
14 aquifers, more so than the west. In the next  
15 decade we're probably going to produce here in  
16 this state probably 200 to 250 million pounds of  
17 pecans. People, we've got to find somebody to  
18 eat them. It's just that simple.

19 Q Thank you.

20 MS. SCHMAEDICK: Melissa Schmaedick,  
21 USDA.

22 BY MS. SCHMAEDICK:

1           Q       First of all, Mr. Segler, is it -- I  
2           want to make sure we're getting the spelling of  
3           your name correctly, as well as the  
4           pronunciation. Is the spelling S-E-G-L-E-R?

5           A       Right.

6           Q       Okay. So it's not S-E-I?

7           A       No I.

8                    JUDGE GUTHRIDGE: The witness  
9           indicates yes.

10                   MS. SCHMAEDICK: Okay.

11                   THE WITNESS: When my family moved  
12           over here from Germany some of them spelled it  
13           this way, some dropped the I.

14                   MS. SCHMAEDICK: Okay.

15                   THE WITNESS: I was with the poor  
16           group, we dropped it.

17                   (General laughter.)

18                   BY MS. SCHMAEDICK:

19           Q       All right. I just want to make sure  
20           that we have that correct for the record, and  
21           that we pronounce your name correctly. So, Mr.  
22           Segler, I want to kind of follow up on what I



1 think Mr. Hill was trying to ask.

2 So right now I'm going to give you an  
3 example. I live in Utah, and if I go to the  
4 grocery store, I can find pecans on my shelf. I  
5 don't -- before I started working with this  
6 industry, I would not buy those pecans because  
7 the experience I had wasn't that great. But  
8 there are pecans from the south that are making  
9 it to the states across the country at this point  
10 in time. Is that correct?

11 A Probably in some sections, but --

12 Q Okay.

13 A -- not widely used.

14 Q But through this marketing order and  
15 through the promotion activities that it would  
16 authorize, the intent is to push more pecans that  
17 hopefully are packaged and displayed properly and  
18 of a good quality that then develops a consumer  
19 base out in all of those other states where  
20 pecans don't grow. Is that correct?

21 A I would -- yes.

22 Q Okay. And as a result of that

1 increased movement in pecans in the market, and  
2 increased consumer demand, the hope and the  
3 expectation is that consumers will be happy,  
4 demand will increase and prices will increase.

5 Is that correct?

6 A Prices should increase, consumers  
7 should be educated and knowing what he's doing,  
8 the dealer or wholesaler's going to be making a  
9 profit, the shellers are going to be making a  
10 profit and the growers are going to be making a  
11 profit.

12 Q So in sum we can say that the  
13 activities of this proposed program will have an  
14 impact on the commerce occurring in the domestic  
15 market as well as the commerce that's occurring  
16 in the international market. And I know maybe  
17 that sounds --

18 A Well --

19 Q -- does that sound like a strange  
20 question?

21 A Well, it sounded more like a statement  
22 than a question. But they will complement each

1 other. The things that through research programs  
2 that are conducted and utilized by this program  
3 certainly would be available to us, and we can  
4 use it internationally as well, which I think is  
5 very important.

6 We have found that -- I've worked in  
7 this business a long time. To reach this point  
8 in our history of uniting our industry that was  
9 so far apart working for each other, truly some  
10 growers and some of the shellers had to die  
11 before we could get together. But I ain't too  
12 sure a few more don't need to.

13 (General laughter.)

14 THE WITNESS: But we -- Mike and his  
15 group has done the impossible. They have just  
16 created an element there that you're going to see  
17 the same percentage occur in pecans over the next  
18 decade or two that's occurred with pistachios and  
19 almonds and things like that. We just need the  
20 funds in order to do it.

21 MS. SCHMAEDICK: Okay. Thank you.

22 No further questions.

1 JUDGE GUTHRIDGE: Are there any more  
2 USDA questions?

3 (No response.)

4 JUDGE GUTHRIDGE: Mr. Quirós?

5 MR. DAVIS: No further questions from  
6 the Proponent Group, but we do want to publicly  
7 thank you for your testimony and for all of your  
8 service to the industry, Mr. Segler.

9 THE WITNESS: Thank you.

10 JUDGE GUTHRIDGE: Are there any --

11 THE WITNESS: Oh, excuse me.

12 JUDGE GUTHRIDGE: Are there any  
13 questions from the audience?

14 (No response.)

15 JUDGE GUTHRIDGE: No questions from  
16 the audience. Before you go though, when I sent  
17 my daughter my itinerary, she sent back an  
18 email -- and saying exactly what the hearing was  
19 about -- she sent me an email that said, You know  
20 you're going to have to make and stick to a  
21 decision for how to pronounce P-E-C-A-N. I've  
22 been saying pecan this whole time and now you're

1 telling me I'm wrong I think.

2 (General laughter.)

3 MR. DAVIS: Pecan is right, Your  
4 Honor, I just --

5 (General laughter.)

6 THE WITNESS: If you're growing them,  
7 it's a pecan.

8 (General laughter.)

9 JUDGE GUTHRIDGE: If you'd check with  
10 Ms. Thompson over here about whether she has any  
11 pronunciations.

12 (Whereupon, the witness was excused.)

13 MR. DAVIS: Your Honor, the Proponent  
14 Group calls as its next witness Mr. Tom Harmon.

15 (Pause.)

16 JUDGE GUTHRIDGE: Why don't you have  
17 a seat. And while they're handling that  
18 paperwork, if you would raise your right hand.

19 THE WITNESS: Okay.

20 JUDGE GUTHRIDGE: Wait a minute. Wait  
21 a minute. Let me wait for the court reporter.  
22 Let me wait for the court reporter. I'm going to

1 wait for the court reporting to get --

2 THE WITNESS: I'm sorry.

3 (Pause.)

4 JUDGE GUTHRIDGE: Okay. Now if you'd  
5 please raise your right hand?

6 Whereupon,

7 TOM HARMON

8 having been first duly sworn, was called as a  
9 witness herein and was examined and testified as  
10 follows:

11 JUDGE GUTHRIDGE: All right. Mr.  
12 Davis.

13 MR. DAVIS: Thank you so much.

14 DIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q And you have some water, Mr. Harmon?

17 A Yes. Thank you.

18 Q Thank you so much for being here  
19 today. In fact, for the record where do you  
20 live, Mr. Harmon?

21 A I live at [REDACTED] Gilbert,  
22 South Carolina.

1 Q And again for the benefit of everybody  
2 in the audience, how far did you have to travel  
3 to be here today for today's hearing?

4 A About 300 miles.

5 Q Well, we really appreciate you driving  
6 down. We hope we'll get you on the road home.

7 A I appreciate the opportunity to be  
8 here.

9 Q Thank you, sir. Just in case a  
10 question comes up on this, let me hand you  
11 Exhibit 23 and Exhibit 1.

12 A Okay. I've got them.

13 Q Have you had an opportunity to review  
14 those two documents?

15 A Yes, I have.

16 Q It's my understanding you have a  
17 prepared statement you'd like to give, Mr.  
18 Harmon?

19 A I do.

20 Q Could you please begin?

21 A Okay. Again, thank you for the  
22 opportunity for being here, for the opportunity

1 to appear. My name is Tom Harmon. It is spelled  
2 T-O-M H-A-R-M-O-N. I live in Gilbert, South  
3 Carolina. I have been in the pecan industry for  
4 over 50 years beginning in 1964, when I became  
5 manager of Nilo Plantation in Albany.

6 JUDGE GUTHRIDGE: That's Albany,  
7 Georgia?

8 THE WITNESS: Yes, sir. I'm sorry.  
9 That's Albany, Georgia. I have attached my  
10 resume. My wife Nancy and I own and operate  
11 Harmony Hills Farm in Lexington County, South  
12 Carolina. We have over 35 acres of pecans  
13 currently in production. A few years ago we  
14 planted 50 acres of new pecan trees that will not  
15 be in commercial production for another four to  
16 seven years. On our farm we grow Improved  
17 variety pecans.

18 Under the Small Business  
19 Administration we would be considered a small  
20 business, less than fifty-seven hundred and fifty  
21 thousand dollars a year -- that's less than  
22 750,000 a year. I have reviewed the economic



1 analysis summary prepared by Dr. Marco Palma,  
2 specifically the projected price increase from  
3 promotion of 6.3 cents per in-shell pound versus  
4 the 2.56 per pound in-shell cost, that is for  
5 \$2.56 we invest, we get back \$6.36.

6 Overall I am aware of the cost that a  
7 Federal Marketing Order may impose on my farm,  
8 and I do not believe those costs are unduly  
9 burdensome. And I like to think of it as an  
10 investment. But I believe that the benefits --  
11 it went out of order -- the benefits of the  
12 Federal Marketing Order to our farm will greatly  
13 outweigh any cost associated with it.

14 In recent years we have seen wide  
15 variation in the prices we have received from our  
16 pecan crop. Such wide variation in pricing makes  
17 it extremely difficult to plan for the future  
18 operation of our farm. Our prices for pecans go  
19 up and down dramatically from year-to-year. Our  
20 cost of production has steadily increased. Cost  
21 to fertilize, insecticides and equipment have all  
22 increased in recent years regardless of the price

1 we received for the crop.

2 Or the lack of accurate market  
3 information on the anticipated size of the pecan  
4 crop in any given year also makes it difficult  
5 for us to negotiate a fair price for our crop and  
6 to make reasonable business decisions about  
7 investments in our farm. Increased price  
8 stability and more accurate market information  
9 would greatly benefit our farm.

10 I think our farming industry would  
11 also benefit in the future from grade, size,  
12 quality packing, shipping protocols and other  
13 handling requirements as we compete with other  
14 tree nuts for shelf space and consumer attention.

15 I also understand that the proposed  
16 order only growers with more than 30 acres of  
17 pecans or more than 50,000 pounds of average  
18 production per year over the last four years will  
19 be allowed to vote on the proposed order. In my  
20 opinion, this threshold is reasonable because if  
21 a grower does not meet this threshold, he's  
22 probably not a commercial grower.

1           Any grower that is smaller than the  
2 proposed threshold will find it difficult to  
3 justify the cost inherent in a small production  
4 operation, and is maybe merely a seller a pecans  
5 from older trees that happened to be on his or  
6 her property, a hobby farmer, or one that does  
7 not plan to put all commercial inputs, i.e.  
8 fertilizer, water, insecticides on his farm.

9           I am currently coordinator of the  
10 South Carolina Pecan Growers and Director of the  
11 Southeast Pecan Growers Association. The  
12 American Pecan Board has kept us informed about  
13 its efforts to propose the Federal Marketing  
14 Order.

15           I have attended several meetings where  
16 the Federal Marketing Order was being discussed.  
17 In the spring Mike Adams came to the annual  
18 meeting of the Southeastern Pecan Growers  
19 Association to discuss the Federal Marketing  
20 Order. I feel like I have been informed about  
21 the process and have been given ample opportunity  
22 to persist -- given ample opportunity to

1 participate.

2 In conclusion, I fully support the  
3 proposed Federal Marketing Order for pecans and  
4 encourage the Secretary to implement the order as  
5 proposed by the American Pecan Board. I will be  
6 glad to answer any questions anyone may have.

7 BY MR. DAVIS:

8 Q Thank you, Mr. Harmon. If I could  
9 just ask quickly, when you said that you had  
10 reviewed the economic analysis summary, is that  
11 Exhibit 23 that you have before you here?

12 A Yes. Yes, it is.

13 Q All right.

14 MR. DAVIS: Your Honor, with that  
15 clarification, I tender Exhibit 63.

16 JUDGE GUTHRIDGE: Any objection from  
17 the USDA?

18 MR. HILL: No, Your Honor.

19 JUDGE GUTHRIDGE: Any objection from  
20 the audience?

21 (No response.)

22 JUDGE GUTHRIDGE: I would point out

1 that his statement added something to the exhibit  
2 that we already have on page 3. And also there's  
3 some PII for USDA in the resume. With no  
4 objection, Exhibit 63 is admitted.

5 (The document referred to was marked  
6 for identification as Exhibit 63 and  
7 received into evidence.)

8 MR. DAVIS: Yes, and we'll work out  
9 with the USDA to remove your birth date from  
10 the -- just so that's not published.

11 THE WITNESS: All right.

12 JUDGE GUTHRIDGE: Mr. Davis?

13 MR. DAVIS: No further questions, Your  
14 Honor.

15 JUDGE GUTHRIDGE: Does the USDA have  
16 any questions?

17 MS. SCHMAEDICK: Melissa Schmaedick,  
18 USDA.

19 CROSS-EXAMINATION

20 BY MS. SCHMAEDICK:

21 Q Good afternoon, Mr. Harmon.

22 A Good afternoon. Nice to see you

1 again.

2 Q Thank you for joining us --

3 A Yes, ma'am.

4 Q -- all the way from South Carolina.

5 So you mentioned that you're involved with two  
6 different organizations, the South Carolina Pecan  
7 Growers and the Southeastern Pecan Association.

8 A That's correct.

9 Q So I want to ask you about the South  
10 Carolina Pecan Growers. Can you tell me how  
11 large is your organization, how many members do  
12 you have roughly?

13 A Well, we have a fairly informal  
14 organization because we don't have a lot of  
15 commercial producers in the state of South  
16 Carolina. Most of our industry is based on kind  
17 of acreages less than 30 acres. So we have a  
18 meeting in the spring, which is a classroom type  
19 meeting, and then we have a meeting in the fall  
20 where we visit an orchard. And we usually have  
21 from around 30 or 35 attendees at each one of  
22 those meetings.

1           Q       And so I believe you just said that  
2 most of your farmers have less than 30 acres. Is  
3 that correct?

4           A       That's correct.

5           Q       Okay. So out of those 35, again, just  
6 to clarify, most of those 35 have less than 30  
7 acres?

8           A       Probably less than 35, probably six or  
9 eight have --

10          Q       Okay.

11          A       -- less than 30 acres.

12          Q       Okay. And based on your statement it  
13 seems like most of what you do is maybe sort of  
14 an educational type of -- it is an educational  
15 organization?

16          A       That's correct.

17          Q       So you don't do any promotion or  
18 anything like that?

19          A       We are affiliating ourselves with the  
20 South Carolina Specialty Crops Association, and  
21 one reason for that is they have the  
22 administrative abilities, they also can help us

1 with some of our bookkeeping, and they also have  
2 the ability to apply for specialty crops grants  
3 through the South Carolina Department of  
4 Agriculture. So actually we're in the process of  
5 being organized as the Pecan Committee of the  
6 South Carolina Specialty Crops Association which  
7 is under the auspices of the South Carolina  
8 Department of Agriculture.

9 Q Wow. Interesting. Thank you. That's  
10 helpful information. So given that -- it looks  
11 like based on your testimony the majority of  
12 pecan producers in South Carolina are very, very  
13 small. You said below that 30-acre threshold.

14 Even though they may not be able to  
15 participate as a voter in the program, is there  
16 any sense of whether or not your group would  
17 benefit from this program? I know you mentioned  
18 that in your statement, but, you know, have you  
19 had discussions with your members and is this  
20 something that you're all looking forward to?

21 A Yes, in the spring when we had our  
22 classroom setting type meeting, Mike Adams with



1 the American Pecan Board came out and talked with  
2 our group and asked for questions. And we have a  
3 couple of growers in the area that are less than  
4 30 acres, but they do some direct marketing, and  
5 they had some questions of Mike, and we  
6 appreciate Mike coming. And the general  
7 consensus at that meeting was that they were in  
8 favor of it because we feel like that a rising  
9 tide floats all boats.

10 Q Thank you for that statement. That's  
11 the second time I've heard that in this hearing  
12 procedure, so I think it's perhaps a fitting  
13 description of the anticipated program and its  
14 benefits.

15 A Yes, ma'am.

16 Q So thank you very much.

17 MS. SCHMAEDICK: No further questions.

18 THE WITNESS: Thank you.

19 JUDGE GUTHRIDGE: Are there any more  
20 USDA questions?

21 MS. VARELA: Jan Varela, USDA.

22 BY MS. VARELA:

1           Q       Mr. Harmon, I just have one question  
2       for you. I won't keep you too much longer. Are  
3       there any particular challenges to growing pecans  
4       in South Carolina that we might not have heard of  
5       yet? We've heard a lot about scab in the east.  
6       Do you face some of those same challenges where  
7       you are, or is the growing region just a little  
8       different since you're further north?

9           A       Basically our challenges are about the  
10      same as Georgia. In fact, I'm also a member of  
11      the Georgia Pecan Growers Association, and I try  
12      to attend their meetings, and I have quite a few  
13      friends in Georgia, and of course as I said in my  
14      testimony, I worked in Albany back years ago.  
15      And so our challenges are pretty much the same.

16                   I think probably we have challenges  
17      similar to central Georgia because we are almost  
18      due east of Atlanta. Our farm is actually 60  
19      miles -- 60, 65 miles east of Augusta, Georgia  
20      on -- just north of Interstate 20. So, and I  
21      guess we probably have more animal predation,  
22      squirrels and crows -- well, squirrels aren't

1 animals but -- I mean squirrels are animals,  
2 crows aren't. I'll get it right.

3 (General laughter.)

4 THE WITNESS: But we probably have  
5 more predation because of the smaller orchards  
6 and they're scattered and everything. But our  
7 challenges are quite similar.

8 I think one of the challenges we've  
9 had, we've done some direct marketing, we had a  
10 produce operation some years ago, and we grew  
11 sweet corn and blueberries and peaches and those  
12 things and sold them direct to the consumer.

13 And even in a market where the  
14 consumers are willing to pay a good market price  
15 for those commodities, it was a tough sell with  
16 pecans to get what they were worth because they  
17 were used to buying pecans from the backyard  
18 trees. And so I guess that may be one of the  
19 bigger challenges we have is actually getting  
20 market price from a direct marketing set up in  
21 South Carolina.

22 BY MS. VARELA:

1 Q Thank you very much.

2 A Thank you.

3 MS. VARELA: No further questions from  
4 me.

5 JUDGE GUTHRIDGE: Are there any more  
6 USDA questions? Mr. Hinman.

7 BY MR. HINMAN:

8 Q Okay. Good afternoon. Don Hinman,  
9 USDA.

10 A Yes, sir.

11 Q I did notice on your resume that you  
12 actually have a 20-year period in which you were  
13 very involved in pecans in your operation group.  
14 And you started out as a farm manager, and then  
15 you added 250 acres, which grew to 600 acres,  
16 from the '60s to the '80s.

17 Could you tell us a bit more about  
18 your -- what conditions were like then and what  
19 your reasons were for getting out of pecans in  
20 the '80s.

21 A Well, I got caught in the farm crunch  
22 of the 1980s and -- because of some of my

1 decisions. And also I was into row crops. And  
2 like I say, I got caught in the farm crunch of  
3 the '80s and I could no longer -- I was heavily  
4 leveraged, and I could no longer get the funds  
5 that I needed from Farm Credit to service my  
6 obligations.

7 So I sold the farm and taught school  
8 for 10 years, which was -- I've been very  
9 fortunate in life. I've had quite a few  
10 experiences, and growing pecans is probably one  
11 of the most challenging.

12 Q Thank you.

13 MR. HINMAN: No further questions.

14 THE WITNESS: Yes, sir.

15 JUDGE GUTHRIDGE: Are there any more  
16 USDA questions?

17 (No response.)

18 JUDGE GUTHRIDGE: Mr. Davis?

19 MR. DAVIS: Your Honor, just one thing  
20 for clarification.

21 REDIRECT EXAMINATION

22 BY MR. DAVIS:

1           Q       Although I understood your testimony  
2       that you think on just kind of a head count basis  
3       in South Carolina there may be a lot of farmers  
4       that are less than 30 acres, but when you say --  
5       when people attend the meetings, if I understood  
6       you correctly, you say you'd have about 35 people  
7       attend the meetings, and only six or eight of  
8       those would be less than 30 acres. Was that  
9       right?

10           A       No, sir. Only six or eight of those  
11       would be more than 30 acres.

12           Q       All right. Okay. I didn't --

13           A       The majority -- quite a few of them  
14       have interest in the business, some of them are  
15       thinking about planting some trees, but most of  
16       them have less than 30 acres.

17           Q       We've had testimony like -- in this  
18       regard in the other regions, but so I'll ask in  
19       South Carolina, but if a farmer has less than 30  
20       acres, that farmer must have some other form of  
21       income or something, he's not a commercial pecan  
22       farmer. Is that correct?

1           A       Lately with the export market and  
2 everything, we've been able to pretty well  
3 suffice with the 30 acres as the principal source  
4 of income. However, prior to that time we did  
5 direct marketing and we did some commercial --  
6 well, we produced commercial vegetables and corn  
7 and fruits and sold them direct. But I think to  
8 just have pecans as an income, I think at less  
9 than 30 acres it won't justify it because of  
10 equipment cost and those kind of things.

11           Q       Okay. Thank you.

12                   MR. DAVIS: Those are all my  
13 questions, Your Honor.

14                   JUDGE GUTHRIDGE: Any more questions  
15 from the USDA?

16                           (No response.)

17                   JUDGE GUTHRIDGE: Are there any  
18 questions from the audience for Mr. Harmon?

19                           (No response.)

20                   JUDGE GUTHRIDGE: No? So, Mr. Harmon,  
21 you're excused.

22                   THE WITNESS: Thank you.

1 JUDGE GUTHRIDGE: Go speak with Ms.  
2 Thompson here.

3 (Whereupon, the witness was excused.)

4 (Pause.)

5 MR. QUIR S: Your Honor, we call Jeb  
6 Barrow.

7 JUDGE GUTHRIDGE: All right.

8 (Pause.)

9 JUDGE GUTHRIDGE: Mr. Barrow, while  
10 they're taking care of that, let me swear you in,  
11 if I could.

12 Whereupon,

13 JEB BARROW

14 having been first duly sworn, was called as a  
15 witness herein and was examined and testified as  
16 follows:

17 (Pause.)

18 DIRECT EXAMINATION

19 BY MR. QUIR S:

20 Q Jeb, thank you for coming here today.  
21 Before we start let me ask you a couple of  
22 questions. Did you receive a copy of what's been



1 marked Exhibit 1 in these hearings, which is a  
2 notice which -- from the USDA which was published  
3 in the Federal Register, which included the  
4 proposed Federal Marketing Order for pecans?

5 A I did.

6 Q Thank you. And did you also receive  
7 what's been marked Exhibit 23, which was an  
8 executive summary of the economic analysis that  
9 was prepared by Dr. Marco Palma?

10 A I did.

11 Q Thank you. I understand that you have  
12 testimony you'd like to give in this matter  
13 today. If you would like to begin that  
14 testimony, that --

15 A Sure.

16 Q -- will be fine.

17 A My name is Jeb Barrow. That's spelled  
18 J-E-B B-A-R-R-O-W, or Barrow as in wheelbarrow.  
19 And in -- I guess in the interest of complete  
20 accuracy and since I am under oath, I'll add that  
21 Jeb is not actually my given name, but rather is  
22 an acronym, it's my initials, the J-E-B.

1           I live on my farm near Matthews,  
2 Georgia, which is the east central part of the  
3 state, not far from Augusta, and I'm sure you  
4 golfers there will know Augusta. And I farm 1000  
5 acres of Improved variety pecans in Jefferson and  
6 Burke Counties, and those are both Georgia  
7 counties, something over half of which are now  
8 producing. A copy of resume, meager though it  
9 may be, is attached.

10           Under the Small Business  
11 Administration definition, my farm is  
12 characterized a large grower, meaning in excess  
13 of \$750,000 in gross revenue from pecans. I've  
14 been in this business since 1974, 41 years. It  
15 seems kind of amazing actually. For much of that  
16 time the industry has been moribund.

17           Production has been static, or by some  
18 measures, declining. Prices are varied from  
19 season-to-season, sometimes profitable, sometimes  
20 not. Budgeting, financial planning have just  
21 been exercises in guesswork. And of course,  
22 while prices for pecans have gone up and down

1 from year-to-year, cost of production has done  
2 nothing but increase. And with the cost of  
3 fertilizers, insecticides, fuel, labor, equipment  
4 they've all risen over the years regardless of  
5 the price I receive for my crop.

6 But -- and that's the plight of all  
7 farmers. But perhaps most concerning, many of  
8 our young people have not seen this industry as a  
9 viable option and have been going elsewhere and  
10 they've been absolutely right to do so. There  
11 has been progress in some areas, most notably  
12 things related to growing techniques, varieties,  
13 pest control, equipment, things of that nature.

14 But marketing, no. Marketing methods  
15 and scope have remained more or less unchanged  
16 for 50 years. Aggressive marketing in this  
17 industry is placing a sign on the side of a  
18 highway. Consequently, until the advent of the  
19 China trade, demand had not grown for 50 years.  
20 International marketing, generic or otherwise,  
21 well, that's just -- that's a novel concept never  
22 tried with pecans.

1           But things are changing and there is  
2 new optimism. It started relatively recently  
3 with the eligibility of pecans for the USDA's  
4 Market Access Program, funds, as I'm sure most of  
5 you in this room know, that are used to promote  
6 international, but not domestic sales. Support  
7 from MAP funds, combined with more aggressive  
8 industry leadership, and the pioneering export  
9 efforts of some individual handlers has led to  
10 the China trade that we have today.

11           The effect has been startling, at  
12 least for growers of the large nuts favored by  
13 the Chinese. Orchards are being planted,  
14 equipment's being purchased, people are being  
15 hired and trained, and this is in an industry  
16 that's been stagnant since the 1960s, if not  
17 before. In some cases our sons and daughters  
18 returning to the family business.

19           What we need to do now is figure out  
20 some way to keep it going. But there are  
21 problems and there are challenges. For one,  
22 we've gotten ourselves into a position where we

1 are very vulnerable to any interruption in the  
2 China market. And as we all know, that could  
3 happen at any time for any of a number of  
4 reasons, political, bureaucratic or financial,  
5 the rising dollar, or this crack down on  
6 terrorists that they have going over in China as  
7 we speak.

8 The way to mitigate the China risk --  
9 the way to mitigate the China risk is by growing  
10 domestic demand. Exactly what we expect this  
11 proposed marketing order to do.

12 A second challenge, the pecan market  
13 is bifurcated. There is strong demand with good  
14 prices for large, high quality nuts, the nuts  
15 favored by gift packers and Chinese customers.  
16 But there's weaker demand with lower prices for  
17 smaller nuts, especially natives.

18 It is true that there has always been  
19 bifurcation in the pecan industry with gift pack  
20 quality nuts bringing more than commercial nuts.  
21 But the additional demand for large nuts from  
22 China has exacerbated the differential. It is

1 argued correctly that any nut sold offshore will  
2 reduce the supply of nuts available for domestic  
3 use and thereby support domestic prices. But  
4 even so, this price bifurcation has become  
5 accentuated to a degree that it is divisive for  
6 the industry.

7 I recently attended the Texas Pecan  
8 Growers Association annual conference, and the  
9 price bifurcation issue was the subject of more  
10 than one let's say vigorous discussion. This is  
11 an issue that can be successfully addressed by  
12 the proposed marketing order.

13 Perhaps a little out in left field,  
14 but -- let me start that over. Perhaps a little  
15 out in left field, but recently in conversation  
16 with another grower, and I'm not going to call  
17 that growers name, but his initials are Mike  
18 Adams.

19 (General laughter.)

20 THE WITNESS: He speculated about  
21 promoting natives as essentially a separate  
22 commodity. Can you imagine a promotional

1 campaign where native pecans are described as  
2 what they are, wild pecans growing naturally in  
3 the river bottoms of the American heartland,  
4 prized by American Indians for thousands of  
5 years, naturally nutritious and packed with  
6 antioxidants. Can you imagine what a good  
7 marketer could do with that?

8 Now I can't sell anything. I couldn't  
9 sell \$20 bills for \$10. But I think I could sell  
10 that story. Who knows, maybe with the right  
11 promotion native pecans could someday bring more  
12 than Improved nuts. Now this is just one idea,  
13 and maybe a cockeyed one at that, but pecan price  
14 bifurcation, it is a concern, and it's certainly  
15 something that could be reduced in a number of  
16 ways with appropriate marketing.

17 Third, we're challenged by the lack of  
18 industry-wide grading and packaging standards.  
19 Our product varies so much from variety-to-  
20 variety, from grower-to-grower, from one area of  
21 the country to another, that uniform standards  
22 are a must to ever gain consumer confidence.

1 Everyone knows and trusts beef grades. The top  
2 grade prime will be the best and it'll cost the  
3 most. Lesser grades will not be quite as good,  
4 but they'll cost less.

5 Pecans have to be the same way. But  
6 that's far from the situation we have today.  
7 We've all seen pecans in grocery stores labeled  
8 Select or Fancy or USDA 1. They were anything  
9 but. A marketing order will resolve that.

10 There's a fourth challenged. There's  
11 now a lack of reliable information. Mr. Cobb  
12 made this point better than I can. The crop size  
13 estimate is not much more than a guess and  
14 there's widespread distrust of the inventory  
15 reports.

16 This is information I and other  
17 growers and handlers need to make rational  
18 pricing and investment decisions, and now it just  
19 simply does not exist. As things now stand, the  
20 insiders in the industry, and by insider I mean  
21 the larger growers, the larger accumulators and  
22 the shellers tend to have much better information



1 than the smaller growers, thereby disadvantaging  
2 small growers. Reliable information will level  
3 the field. Again, this will be addressed by the  
4 marketing order.

5 These challenges that I've described,  
6 all four of them, are well known, have been  
7 discussed here all day. And they're inter-  
8 related. And together they engender what I see  
9 as the fundamental problem facing the industry.

10 I was formerly in the manufacturing  
11 business, and from that background know that a  
12 manufacturer, a processor, a user of any raw  
13 material needs that raw material to have two  
14 economic characteristics, one, there needs to be  
15 reliable supply, and two, the price needs to be  
16 predictable.

17 It does not matter whether the raw  
18 material is pecans or steel, if you cannot get it  
19 when you need it, or if the price is so  
20 unpredictable that you cannot budget or price  
21 your product, then that's a problem. Pecans meet  
22 neither of these criteria.

1           Every grower knows how threatening it  
2 is when pecan prices crater. But a few years ago  
3 I saw through the eyes of one of my customers  
4 just how existentially disruptive it can be when  
5 prices spike, something growers generally view as  
6 a good thing. This customer was in the gift pack  
7 business. His products had been priced,  
8 catalogues mailed, orders taken, then the price  
9 of his principal raw material, pecans, increased  
10 by half and more.

11           He had to go back to his customers,  
12 re-price all of his products, and as you might  
13 imagine, this was not popular with his customers.  
14 He lost some, he irritated all of them I'm sure.  
15 That kind of situation destroys demand and is not  
16 good for anyone, grower or handler.

17           The proposed marketing order does not  
18 address this problem of unpredictable supply and  
19 price directly as it expressly prohibits any form  
20 of volume regulation. But the marketing order  
21 will result in better information on the  
22 anticipated size of the pecan crop and will grow

1 domestic demand.

2 I believe those things, better  
3 information and growing demand, coupled with  
4 increasing supplies from new plantings already in  
5 the ground will lead to improved balance between  
6 supply and demand, and that will result in  
7 significant price stabilization beneficial to  
8 both grower and handler.

9 On another subject, one that's been  
10 discussed several times, namely who is defined a  
11 grower, under the proposed order only growers  
12 with more than 30 acres of pecans or more than  
13 50,000 pounds average production per year over  
14 the last four years will be allowed to vote on  
15 the proposed order.

16 And the purpose of that is to  
17 distinguish between commercial growers and  
18 others. The problem is how to define a  
19 commercial grower. I tried to Google commercial  
20 grower, I thought you could Google anything, or  
21 commercial farmer, and found no consensus as to  
22 what the terms mean. So any line drawn can and

1 likely will be criticized as arbitrary.

2           What I'm going to do is give it my own  
3 definition. I'm going to define a commercial  
4 grower as someone who derives all or most of his  
5 livelihood from growing pecans. By that  
6 definition I saw this threshold is entirely  
7 reasonable.

8           Any grower smaller than the proposed  
9 threshold cannot justify the cost inherent in  
10 such a small operation, and is most probably  
11 merely a seller of pecans, likely from older  
12 trees that happened to be on his or her property.  
13 Or the hobby farmer that's been mentioned  
14 earlier, or just simply a farmer that is not  
15 going to put all of the inputs required,  
16 fertilizer, irrigation, et cetera into his  
17 orchards. I'm not aware of a commercial pecan  
18 grower in my area by my definition, mind you,  
19 that's smaller than 30 acres or produces less  
20 than 50,000 pounds per year.

21           I have reviewed the economic analysis  
22 summary prepared by Dr. Marco Palma, specifically

1 the projected 6.3 cents average price increase  
2 for promotion versus the average 2-1/2 cent per  
3 in-shell assessment cost. Now I have no idea  
4 whether his analysis will prove right or wrong,  
5 and meaning no disrespect to Dr. Palma, it is  
6 said that God made economist so weathermen would  
7 look good.

8 (General laughter.)

9 THE WITNESS: If anything, I suspect  
10 his analysis understates the potential. After  
11 all, the incremental increase in demand from  
12 China resulted in increased prices well beyond  
13 what the Palma analysis would suggest. I  
14 strongly believe that promotion is near certain  
15 to stabilize and/or increase pecan prices.

16 Advertising works in every other  
17 industry, it will work here as well. I'm fully  
18 aware of the cost that the Federal Marketing  
19 Order will impose on my farm, and I do not  
20 believe those cost unnecessarily burdensome.  
21 Further, I believe the benefits of the Federal  
22 Marketing Order to my farm, and the industry as a

1 whole, will greatly outweigh any cost associated  
2 with it.

3 The American Pecan Board had done an  
4 excellent job keeping me informed about its  
5 efforts to develop the proposed Federal Marketing  
6 Order. Their website, articles in Pecan South,  
7 in The Georgia Pecan Grower, and visits from  
8 representatives of the American Pecan Board to  
9 our growers meetings have helped.

10 In addition, they've conducted  
11 numerous meetings with small groups of growers  
12 and handlers, they've been available for one-on-  
13 one conversation, they've solicited input from  
14 everyone. Anyone who's wanted to have a say in  
15 this has had ample opportunity. Not only that,  
16 but a member of our grower organization is also a  
17 member of the American Pecan Board.

18 As a Board member of the Georgia Pecan  
19 Growers, I talk with a number of growers in  
20 Georgia and elsewhere. Most support the  
21 marketing order effort. A few have reservations,  
22 mostly concerning inviting the federal government

1 into the pecan industry. Now I imagine that most  
2 of us in this room can sympathize with that.

3 But my answer, what I tell them is  
4 that I see the proposed Federal Marketing Order  
5 as an exercise in self-government. The pecan  
6 industry is undertaking to govern itself under  
7 the umbrella of the Agricultural Marketing  
8 Agreement Act of 1937. It will be a very limited  
9 government with specific authorities defined by  
10 the marketing order.

11 As with all efforts to self-govern, it  
12 will involve giving up some measure of individual  
13 sovereignty in exchange for what we trust will be  
14 a greater good. I think it's a good trade. But  
15 maybe the best thing about this particular  
16 government is that every five years you get the  
17 opportunity to vote it out. Not just vote out  
18 the bums running it and replacing them with  
19 different bums, but do away with it altogether.  
20 Sudden death accountability. And I find that  
21 really reassuring.

22 In conclusion, I support the proposed

1 Federal Marketing Order for pecans. The pecan  
2 industry has historically been characterized by  
3 adversarial relationships between the various  
4 factions, the western growers in competition with  
5 the east, all the growers versus the shellers.  
6 And for sure in any one year the pecan business  
7 tends to be a zero sum gain where what I've  
8 gained in price, my customer loses in cost.

9 That's not going to change whether we  
10 have a marketing order or not. But viewed from a  
11 big picture, macro perspective we are all,  
12 growers and handlers, in the same boat, and if  
13 that boat is taking on water, we all risk  
14 drowning. The American Pecan Board has managed,  
15 maybe miraculously, to get all the stakeholders  
16 in the industry to see the industry from that big  
17 picture, all in the same boat perspective.

18 The bickering of the past has been put  
19 aside and the industry is now united, with  
20 growers, processors in support of this marketing  
21 order. I encourage the Secretary to implement  
22 the order as proposed by the American Pecan



1 Board. Thank you. I appreciate your time. Any  
2 questions?

3 MR. QUIR S: Your Honor, we have no  
4 questions at this time, but we would like to  
5 tender this as Exhibit 64.

6 JUDGE GUTHRIDGE: Does the USDA have  
7 any objection?

8 MS. SCHMAEDICK: No objection, Your  
9 Honor.

10 JUDGE GUTHRIDGE: Does anyone in the  
11 audience have an objection?

12 (No response.)

13 JUDGE GUTHRIDGE: Hearing no  
14 objection, Exhibit 64 is admitted into the  
15 record.

16 (The document referred to was marked  
17 for identification as Exhibit 64, and  
18 received in evidence.)

19 JUDGE GUTHRIDGE: Mr. Quirós?

20 MR. QUIR S: No questions at this  
21 time.

22 JUDGE GUTHRIDGE: Does the USDA have

1 any questions?

2 MS. SCHMAEDICK: Yes, Your Honor.

3 Melissa Schmaedick, USDA.

4 CROSS-EXAMINATION

5 BY MS. SCHMAEDICK:

6 Q Thank you, Mr. Barrow, for your  
7 testimony. It was really a very delightful and  
8 interesting statement. Thank you.

9 A Thank you.

10 Q And you brought up two -- sort of two  
11 themes that I'd like to maybe expand on a little  
12 bit. You mentioned this idea of price  
13 bifurcation, which I understand to be sort of two  
14 price tiers, one for native and one for Improved.  
15 Is that what you were saying?

16 A Well, that's the extreme ends of it.  
17 I mean the Improved nuts that go in the gift pack  
18 trade or the China market on one end of the scale  
19 and the natives on the other end of the scale.  
20 But there are nuts in between that don't go all  
21 the way to the extremes. But, yes, that's the  
22 most extreme example of it right there.

1           Q       So based on your experience is there  
2 any price bifurcation between prices in the  
3 international market versus prices in the  
4 domestic market?

5           A       No, because -- not currently. I mean  
6 from my view as a grower, the Chinese have pretty  
7 much set what the price is. What they come in  
8 and offer in August or whenever the gift pack  
9 does. Now bear in mind I sell all -- everything  
10 I produce is something that would go China or go  
11 to a gift packer.

12                   And when the Chinese -- when the price  
13 kind of gets determined in the China market,  
14 which is usually very early in the season,  
15 usually in August, then the gift packers have  
16 pretty much got the mass of that. So I don't  
17 think there's any bifurcation there, if that's  
18 where your question's going.

19           Q       So would it be more accurate to say  
20 that there's actually a correlation, so if --

21           A       Yes.

22           Q       -- China prices are higher, that's

1 going to lead to higher prices in the domestic  
2 market.

3 A It's the incremental demand that  
4 drives prices, as in all commodities.

5 Q Okay. Thank you. Towards the end of  
6 your testimony you made some comments about what  
7 I would look at as maybe compliance, having -- I  
8 think you stated the US government looking into  
9 your business. Do you remember those -- that  
10 part of your testimony?

11 A Oh, I remember it well. It's one of  
12 my concerns as well.

13 Q Okay. So I listened to that statement  
14 and then I looked at your resume and I see that  
15 you have some pretty impressive experience here  
16 as the Director and Treasurer of Alliance  
17 Petroleum --

18 A That's correct.

19 Q -- Corporation, as well as the  
20 majority owner and the Chief Operating Officer of  
21 Jebco, which I believe you told us was a  
22 manufacturing company.

1           A       That's correct.

2           Q       Right. So in answer to my next  
3 questions, if you could for just a moment take  
4 off your pecan grower hat and put your Director  
5 hat on or you CEO -- or your COO hat on. Can you  
6 tell me how important is it to have an internal  
7 compliance plan, how important is it to make sure  
8 that you're able to check your records and make  
9 sure that everything is in check?

10          A       Extremely.

11          Q       So would you say that having a  
12 compliance component --

13          A       Define a little bit what you mean by  
14 compliance plan. I'm not really sure I'm with  
15 you on this one.

16          Q       Oh, my apologies. That's a term that  
17 we use in USDA for --

18          A       To comply with what?

19          Q       -- for existing marketing orders.  
20 Most often there are committees or boards that  
21 are required to have a compliance plan that  
22 basically causes sort of an internal auditing

1 system, and then also that coordinates that  
2 information check with reports that are coming in  
3 from the handlers in the industry so that there  
4 is sort of a continuous accurate accounting of  
5 assessments and production and then the internal  
6 business operations of the committee, or in this  
7 case it would be the council.

8 A I would say it is absolutely critical.

9 Q Okay. So thank you for -- my next  
10 question is do you think it's important and, in  
11 fact, would you consider it perhaps to be an  
12 essential component of running a good business?

13 A Yes.

14 Q Thank you.

15 A Without compliance, I mean  
16 demonstrated compliance, you just lose  
17 credibility.

18 Q Thank you.

19 MS. SCHMAEDICK: I have no further  
20 questions.

21 JUDGE GUTHRIDGE: Are there any more  
22 USDA questions?

1 (No response.)

2 JUDGE GUTHRIDGE: No?

3 MR. QUIR S: No further questions,

4 Your Honor.

5 JUDGE GUTHRIDGE: Does anyone in the  
6 audience have a question for Mr. Barrow?

7 (No response.)

8 JUDGE GUTHRIDGE: None? Okay. Mr.  
9 Barrow, you're excused.

10 THE WITNESS: All right.

11 JUDGE GUTHRIDGE: If you would check  
12 over here with Ms. Thompson to see --

13 THE WITNESS: Sure.

14 JUDGE GUTHRIDGE: -- if she has any  
15 spellings or anything that she needs help with.

16 THE WITNESS: Okay.

17 (Whereupon, the witness was excused.)

18 MR. DAVIS: Your Honor, the Proponent  
19 Group calls as its next witness Mr. R.G. Lamar.  
20 I believe Mr. Lamar's here.

21 (Pause.)

22 JUDGE GUTHRIDGE: While they're

1 handling that, could you please raise your right  
2 hand?

3 Whereupon,

4 R.G. LAMAR

5 having been first duly sworn, was called as a  
6 witness herein and was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q Good afternoon, Mr. Lamar.

11 A Good afternoon.

12 Q Do you have -- well, first, in case I  
13 missed in the shuffle here, have you stated your  
14 full name for the record?

15 A I have not.

16 Q Could you spell that -- state your  
17 full name and spell it for us, please.

18 A My name's R.G. Lamar, first name is  
19 spelled R-G, last name is spelled L-A-M-A-R.

20 Q And do you have in front of you  
21 Exhibit 1 to these proceedings, and also Exhibit  
22 23 I believe --



1           A       I do.

2           Q       -- the economic analysis thing. And  
3 have you had an opportunity to review those in  
4 preparation for your testimony today?

5           A       I have.

6           Q       Okay. I understand you've prepared a  
7 statement you'd like to deliver?

8           A       That's right.

9           Q       Could you do that for us?

10          A       My name is R.G. Lamar, it is spelled  
11 R-G L-A-M-A-R. I live in Hawkinsville, Georgia.  
12 My father, brother and I farm 2,300 acres of  
13 Improved pecans in six counties in the middle of  
14 Georgia. A copy of my resume is attached.

15          Q       I have to interrupt you here just for  
16 a second. And I'll say we've been amazed at  
17 the -- some of the witnesses that we've had and  
18 their experiences and their life experiences.  
19 But I do believe you're first witness who has had  
20 experience with the United States State  
21 Department, as I look on your resume. There has  
22 to be a story there, so why don't you tell us,

1 what got you into that work and exactly what you  
2 did.

3 A Sure. Yeah, shortly after I graduated  
4 from college I went to Washington to work as an  
5 advisor for the Assistant Secretary of the Bureau  
6 of International Narcotics and Law Enforcement  
7 Affairs, the State Department. The Bureau has  
8 programs in about 140 countries that administer  
9 programs dealing with narcotics and law  
10 enforcement.

11 I spent most of my time focusing on  
12 programs that train police in Afghanistan, and  
13 also trying to encourage Afghan farmers to grow  
14 illicit crops.

15 Q As part of that did you actually  
16 travel to Afghanistan and meet with --

17 A I did, I went to Afghanistan three  
18 times. I had a chance to go to 23 countries  
19 during the time I was there. Of course, NATO was  
20 involved in security in Afghanistan, so we  
21 coordinated a lot of our programs there with all  
22 the countries in NATO.

1           Q       Okay. Terrific. Thank you. Thank  
2 you for your service.

3           A       You're welcome. The Small Business  
4 Administration classifies our business as a large  
5 pecan growers since we have more than \$750,000 in  
6 gross pecan revenues each year.

7                   In recent years I have seen wide  
8 variation in t he prices buyers pay for our pecan  
9 crop. Such wide variation in pricing makes it  
10 extremely difficult to plan for the future  
11 operations of our farms. While prices for pecans  
12 go up and down dramatically from year-to-year,  
13 our cost of production has steadily increased.

14                   Cost of fertilizer, pesticides and  
15 equipment have all increased in recent years  
16 regardless of the prices we receive for our crop.  
17 Increased price stability would help our farm  
18 earn profits each year and put an end to the  
19 complex planning that erratic income requires.

20                   Further crop -- current crop estimates  
21 are often inaccurate and we have little reliable  
22 information about consumption. Without an

1 accurate market picture it's difficult for me to  
2 formulate a marketing strategy or to make  
3 reasonable business decisions about investments  
4 on our farm. More accurate market information  
5 would be a great help to strategic decision  
6 making.

7 I think our farm and the industry  
8 would also benefit in the future from grade,  
9 size, quality, packaging, shipping protocols and  
10 other handling requirements as we compete with  
11 other tree nuts for consumer attention.

12 I also understand that under the  
13 proposed order only growers with more than 30  
14 acres of pecans or more than 50,000 pounds of  
15 average production per year over the last four  
16 years will be allowed to vote on the proposed  
17 order. In my opinion, this threshold is  
18 reasonable because a grower that does not meet  
19 this threshold is not a commercial grower.

20 Any grower that is smaller than the  
21 proposed threshold could not justify the cost  
22 inherent in such a small production. I'm not

1 aware of a single pecan farmer in my area who has  
2 a commercial farm that is smaller than 30 acres  
3 or produces less than 50,000 average pounds per  
4 year.

5 I've reviewed the economic analysis  
6 summary prepared by Dr. Marco Palma, specifically  
7 the projected average price increase from  
8 promotion of 6.3 cents per in-shell pound versus  
9 the average 2.5 cents per in-shell cost. I agree  
10 that promotion will increase prices. I'm aware  
11 of the cost the Federal Marketing Order may  
12 impose on my farm. I do not believe those costs  
13 are unduly burdensome. Rather, the benefits of  
14 the Federal Marketing Order to my farm will  
15 greatly outweigh its cost.

16 I'm on the Board of Directors of the  
17 Georgia Pecan Growers Association. In this  
18 capacity I speak with a number of growers from  
19 all regions of the state, and I have not heard  
20 one grower oppose the proposed marketing order.  
21 Instead there seems to be a consensus that we  
22 could all benefit from the authorities in the

1 proposed Federal Marketing Order for research,  
2 promotion, future handling regulations and  
3 information we could gain from the proposed  
4 marketing policy, data gathering.

5 The American Pecan Board has kept our  
6 organization informed about its efforts to  
7 propose the Federal Marketing Order.

8 Representatives of the American Pecan Board  
9 regularly attend our growers meetings to listen  
10 to us and to answer our questions. I also know  
11 personally several members of the Board of the  
12 American Pecan Board.

13 In conclusion, I fully support the  
14 proposed Federal Marketing Order for pecans and  
15 encourage the Secretary to implement the order as  
16 proposed by the American Pecan Board. I would be  
17 glad to answer any questions anyone may have.

18 MR. DAVIS: Your Honor, the Proponents  
19 tender Exhibit 65 to these proceedings.

20 JUDGE GUTHRIDGE: Any objection from  
21 the USDA?

22 MS. SCHMAEDICK: No objection.

1 JUDGE GUTHRIDGE: Any objection from  
2 the audience?

3 (No response.)

4 JUDGE GUTHRIDGE: Hearing no  
5 objection, Exhibit 65 is aerated into the record.

6 (The document referred to was marked  
7 for identification as Exhibit 65, and  
8 received in  
9 evidence.)

10 JUDGE GUTHRIDGE: Mr. Davis?

11 MR. DAVIS: We have no questions at  
12 this time, Your Honor.

13 JUDGE GUTHRIDGE: Does the USDA have  
14 any questions?

15 MS. VARELA: Yes. Thank you.

16 CROSS-EXAMINATION

17 BY MS. VARELA:

18 Q Good morning -- or good afternoon now,  
19 Mr. Lamar. I known you've been with us for a  
20 little while today, so --

21 A Good afternoon.

22 Q -- given that you've been here to

1 hear some of the earlier testimony, I wanted to  
2 ask you a few questions about some of the things  
3 that you read in Exhibit 1, and I've heard some  
4 testimony on.

5 First I'm going to look at Section  
6 986.65, marketing policy. And you mentioned that  
7 some of this information could be important to  
8 the industry. Can you just give that list of  
9 estimates and data a look over and maybe just  
10 give us a couple of examples of how some of these  
11 pieces of information would help your business on  
12 a day-to-day level.

13 A Yeah. We -- I mentioned in my  
14 testimony that strategic planning is difficult  
15 right now. Part of that is not having accurate  
16 information about the size of the crop from the  
17 previous year that's left in stocks, also not  
18 having a very accurate crop estimate for the  
19 coming year.

20 So it's difficult to make informed  
21 predictions of what the market situation might be  
22 for the coming year, which means what our



1 revenues are going to be for our farm, for our  
2 business. If we had these estimates that are in  
3 the order, we could do a lot better job of  
4 predicting what our revenues are going to be I  
5 believe.

6 Q And in your opinion is it helpful not  
7 just to have the overall picture, but maybe  
8 something broken down, like you see paragraph (c)  
9 there, breaking down into the different  
10 categories, the Improved, native and substandard  
11 pecans. Is that level of detail also important  
12 to the industry?

13 A It could be important. It's not as  
14 important in my opinion as the whole picture.

15 Q Thank you very much. After that I  
16 would like to move down just a little bit here to  
17 some of the authorities regulating handling.  
18 That's Section 986.69.

19 A Okay.

20 Q And in your experience what does the  
21 industry have to gain by having the ability to  
22 set some of these standards? I'm looking at

1 paragraph (a)(3) here where there's a wide range  
2 of options, fixing the size, capacity, weight,  
3 dimensions, the pack. I think you mentioned that  
4 you do some exporting?

5 A We do, yeah.

6 Q How beneficial would those types of  
7 authorities be to the industry overall in setting  
8 some standards?

9 A Yeah, so you specifically mentioned  
10 (a)(3) there. One risk we have in exporting is  
11 spoilage of the product on the way. Everything  
12 we -- well, not -- we ship to South America and  
13 China. In both cases spoilage is the main risk  
14 in my opinion, more so than default or any other  
15 problems. Standardized packaging that works  
16 would minimize the risk of spoilage. It would  
17 also put everyone on an equal playing field as  
18 far as the cost of that aspect of sales.

19 Outside of that particular section, I  
20 believe -- and (a)(2) mentions requires for  
21 minimum tolerances for particular grade, size or  
22 qualities. It's already been mentioned today

1 that the current USDA standards that we have are  
2 inadequate. A US Number 1 pecan could be a  
3 really good pecan, or it could be just an average  
4 pecan. We don't know a lot when say that.

5 So I think having standards about  
6 grades could help us market pecans, in a way that  
7 almonds and pistachios have done really well I  
8 think, where the consumer can expect a product  
9 that's a certain quality.

10 And as far as the packaging goes along  
11 the marketing lines, I think someone mentioned  
12 earlier as well we really do have a problem in  
13 the industry with pecan kernels that are  
14 available in the grocery store, sometimes you can  
15 get good quality pecans, oftentimes they're  
16 rancid. And it's been mentioned already today,  
17 but a consumer who buys a rancid bag of pecan  
18 kernels is not likely to go back.

19 Melissa, you mentioned in Utah you've  
20 had pecans and had a bad experience, and I'm sure  
21 its for that reason.

22 But the biggest problem that's causing

1 that problem is packaging. Oftentimes there's no  
2 nitrogen flushing in the packing, or it's with  
3 packing materials that allow a lot of oxygen to  
4 pass through the material and a lot of light.  
5 There are ways, as an industry, I believe we  
6 could really improve the standard of all the  
7 products that we're offering the consumer that  
8 would be a great help to us.

9 Q Okay. And right just then you brought  
10 up something that we haven't heard a lot of year  
11 in terms of advances in different types of  
12 packaging. Is that type of research something  
13 that you think the order as proposed might look  
14 into, that would make that available to grower  
15 and --

16 A I'm sure there are advances we could  
17 make in that area through research that would be  
18 funded by the order. But frankly I've talked to  
19 some experts at the University of Georgia about  
20 this and most of the research has been done.  
21 It's not that we don't know how to package pecans  
22 in a way that preserves them well, it's just that

1 we're not doing it.

2 Q Thank you. That's very helpful.

3 A Yeah.

4 MS. VARELA: No other questions from  
5 me. No further question from the USDA.

6 JUDGE GUTHRIDGE: No further questions  
7 from the USDA? I was waiting for somebody to  
8 speak up.

9 (General laughter.)

10 MR. DAVIS: We have no further  
11 questions, Your Honor. Thank you.

12 JUDGE GUTHRIDGE: Does anyone in the  
13 audience have a question?

14 (No response.)

15 JUDGE GUTHRIDGE: No? Mr. Lamar,  
16 you're excused. If you'd check over here with  
17 Ms. Thompson.

18 (Whereupon, the witness was excused.)

19 MR. DAVIS: Your Honor, I believe that  
20 that is the Proponent's last witness for the day.

21 JUDGE GUTHRIDGE: Ms. Wray, have we --

22 MS. WRAY: No.

1 JUDGE GUTHRIDGE: -- had anyone sign  
2 up?

3 MS. WRAY: No --

4 JUDGE GUTHRIDGE: How disappointing.

5 (General laughter.)

6 MR. DAVIS: It's five o'clock.

7 MR. QUIR S: A lot of people quit work  
8 at five o'clock, Your Honor.

9 MR. DAVIS: Shall we reconvene?

10 JUDGE GUTHRIDGE: I think then in that  
11 case -- USDA, do you have anything else today?  
12 No?

13 MR. HILL: No, Your Honor.

14 JUDGE GUTHRIDGE: Well, we'll recess  
15 till eight o'clock tomorrow morning then.

16 MR. DAVIS: Thank you, Your Honor.

17 (Whereupon, at 4:52 p.m., the was  
18 recessed, to resume at 8:00 a.m., Tuesday, July  
19 28, 2015.)  
20  
21  
22

## A

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Before: USDA

Date: 07-27-2015

Place: Tifton, Georgia

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Court Reporter

**NEAL R. GROSS**

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