

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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WEDNESDAY,
JULY 29, 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

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

2 8:00 a.m.

3 JUDGE GUTHRIDGE: The hearing will
4 come to order, please. Back on the record.

5 I note that counsel are present. Mr.
6 Quirós, Mr. Davis, are you ready to proceed?

7 MR. DAVIS: We are ready to proceed,
8 Your Honor.

9 JUDGE GUTHRIDGE: All right.

10 MR. QUIR S: Your Honor, we'd like to
11 call our first witness, Jeff Worn.

12 Whereupon,

13 JEFF WORN

14 having been first duly sworn, was called as a
15 witness herein and was examined and testified as
16 follows:

17 JUDGE GUTHRIDGE: Proceed.

18 MR. QUIR S: Thank you, Your Honor.
19 Just one moment, let me distribute copies.

20 DIRECT EXAMINATION

21 BY MR. QUIR S:

22 Q Jeff, tell us what you did to

1 yourself. We all want to know.

2 A I broke my leg in high school playing
3 football, that's about the extent of it.

4 Q Did you just get out of high school?

5 A No. This is the fifth surgery I've
6 had on my leg, the second one this year, and I
7 think this is the last one I'll have to have. I
8 had an ankle fusion in June. I get my cast off
9 this afternoon; you guys are lucky I'm here.

10 Q Well, Jeff, thank you for making the
11 effort. Didn't realize it was going to be such
12 an effort for you, but appreciate you coming out.

13 A No problem.

14 Q Jeff, before we start, have you had an
15 opportunity to receive what we've marked Exhibit
16 1 which is labeled Hearing Notice in this
17 proceeding, and it was from the USDA and in it
18 includes the proposed Federal Marketing Order for
19 pecans.

20 A I have.

21 Q And have you received what has been
22 marked Exhibit 23 in this hearing which is an

1 economic analysis of the implementation of a
2 Federal Marketing Order for pecans, the executive
3 summary prepared by Dr. Marco Palma and Dr.
4 Daniel Chavez?

5 A I have.

6 Q Thank you. I understand you have
7 testimony for us.

8 A Yes, sir.

9 Q Would you please read it into the
10 record?

11 A Sure. My name is Jeff Worn. I live
12 in Valdosta, Georgia. I'm an owner of South
13 Georgia Pecan Company.

14 JUDGE GUTHRIDGE: Did you spell your
15 name yet?

16 MR. QUIR S: Excuse me, Jeff. Do you
17 need to swear him in, Your Honor?

18 JUDGE GUTHRIDGE: I did that.

19 BY MR. QUIR S:

20 Q Could you spell your name?

21 A It's J-E-F-F is my first name, and my
22 last name is W-O-R-N.

1 Q Take your time, Mr. Worn.

2 A I'm an owner of South Georgia Pecan in
3 Valdosta, Georgia. Our business was started in
4 1913, and I grew up in the business. I was born
5 in 1985. My father actually bought the business
6 in 1983. I worked there through middle school
7 until the Labor Department got on my dad for
8 letting me work in the plant being that young,
9 and I went on through high school working at the
10 plant, buying pecans, doing whatever I could,
11 staying involved in the business. When I
12 graduated college in 2008, I became I guess what
13 you would call a full-time employee. A copy of
14 my resume has been given to counsel here.

15 Q And it's attached to this testimony.
16 Is that correct?

17 A Yes.

18 Q Thank you.

19 A And we're one of the largest suppliers
20 of pecan meats in the world, selling to chain
21 restaurants, confectionaries, ingredient users,
22 large retailers and a host of other customers.

1 We're a large sheller/handler under the Small
2 Business Administration definition, meaning
3 retail sales from shelling of over \$7 million.

4 The pecan industry is changing
5 rapidly. It is a challenging environment
6 characterized by fluctuating prices, fluctuating
7 supply and a lack of generic pecan promotion, in
8 my opinion. There is much we could do to improve
9 these conditions through the proposed Federal
10 Marketing Order for pecans. We currently
11 participate in the State of Georgia's one cent
12 checkoff program. We are glad to do so, and the
13 costs and indirect costs of record keeping,
14 remittance and audit are not a great burden to
15 us. The benefits of that program we are sure
16 will outweigh any costs to us.

17 We reviewed the assessments in the
18 proposed Federal Marketing Order the same way.
19 The anticipated benefits will outweigh the costs.
20 I discussed the proposed Federal Marketing Order
21 for pecans numerous times with Mike Adams and
22 Bruce Caris, both board members of the American

1 Pecan Board. I feel that the American Pecan
2 Board has kept me informed about the progress of
3 the proposed marketing order through their
4 website, calls and in-person meetings with
5 American Pecan Board members, and that I have had
6 an adequate opportunity to provide input into the
7 process. I have reviewed the proposed Federal
8 Marketing Order and fully support its adoption.

9 I've also reviewed the summary of
10 economic analysis proposed by Dr. Marco Palma. I
11 agree that handlers will economically benefit
12 from the proposed Federal Marketing Order for
13 pecans. I am aware that the proposed order may
14 impose some direct costs on my operation, such as
15 the 1 to 3 cent per pound assessment. I'm also
16 aware that there may be some indirect costs, such
17 as the obligation to keep records of the amount
18 of product we handle and the calculation and
19 remittance of assessments to the American Pecan
20 Council. I believe these costs are reasonable
21 and are not unduly burdensome.

22 Furthermore, I am aware of the

1 benefits that will flow from the increased
2 marketing and promotion efforts, improved
3 research and more accurate market data that will
4 result from the order and believe that these
5 benefits will great outweigh the costs to my
6 business. In the future the proposed handling
7 authorities for grade, sizes, quality, packaging,
8 transport, et cetera could be helpful for our
9 operation and the industry. Overall, the
10 benefits of the Federal Marketing Order outweigh
11 the costs.

12 I understand that only shellers that
13 handle more than one million pounds of inshell
14 pecans per year will be eligible to nominate and
15 to be elected to the sheller seats of the
16 Council. I believe this is a fair threshold.
17 First, I'm not aware of any sheller in my area
18 which handles less than one million inshell
19 pounds per year that is in the commercial
20 shelling business. Therefore, if there is such a
21 sheller, I do not believe it would be
22 commercially viable because such a small

1 operation could not invest in the required
2 equipment and turn a profit on such a small
3 production. I also agree that the handling of
4 12-1/2 million inshell pounds of pecans is
5 appropriate discretion between large shellers and
6 small or medium size shellers.

7 In conclusion, I strongly support the
8 proposed marketing order and encourage the
9 Secretary to adopt and implement it. I'll be
10 glad to answer any questions.

11 JUDGE GUTHRIDGE: Mr. Quirós.

12 MR. QUIR S: Yes.

13 BY MR. QUIR S:

14 Q Mr. Worn, are you a member of the
15 National Pecan Shellers Association?

16 A No, sir, I'm not.

17 Q So there may be shellers that are not
18 members of the National Pecan Shellers
19 Association that shell more than a million
20 pounds?

21 A Yes, sir.

22 MR. QUIR S: Okay. Thank you.

1 Your Honor, we have no further
2 questions and we tender this document as Exhibit
3 76 in these proceedings.

4 JUDGE GUTHRIDGE: Is there any
5 objection from USDA?

6 MS. CHILUKURI: No objection.

7 JUDGE GUTHRIDGE: Is there any
8 objection from anyone in the audience?

9 (No response.)

10 JUDGE GUTHRIDGE: Hearing no
11 objection, Exhibit 76 is admitted into the
12 record.

13 (The document referred to was marked
14 for identification as Exhibit 76 and
15 was received in evidence.)

16 JUDGE GUTHRIDGE: Mr. Quirós, no more
17 questions?

18 MR. QUIR S: No further questions.

19 JUDGE GUTHRIDGE: Does USDA have any
20 questions?

21 MS. SCHMAEDICK: Melissa Schmaedick,
22 USDA.

1 CROSS-EXAMINATION

2 BY MS. SCHMAEDICK:

3 Q Good morning, Mr. Worn.

4 A Good morning, Melissa.

5 Q I apologize. I think I've caught a
6 cold, so hopefully you'll be able to understand
7 me.8 So just to be clear, you're not a
9 grower in any way, you're just a sheller.10 A No, ma'am, not a grower right now,
11 just a sheller.12 Q Okay. Thank you. You mentioned that
13 you supply to restaurants, confectionaries and
14 ingredient users. Could you describe for us a
15 little bit that part of the industry? We've just
16 had very few witnesses who have given us
17 testimony about that specific part of the
18 industry.19 A So there's really two separate markets
20 within the meat market for larger shellers, and
21 one of those would be retail and one of those
22 would be more ingredient type users, and when you

1 go to like Walmart or whatever store, you've got
2 pies and I think I saw Turtles sitting right
3 there in front of you and those are my pecans in
4 those Turtles. You wouldn't have known those
5 came from me just eating that Turtle, so that's
6 what that business is. There's obviously retail,
7 like you see in CVS or Sam's Club or Costo or
8 wherever you go to shop, and then there's bulk as
9 well, and bulk would traditionally be shipped in
10 a 30-pound box on a dry semi truck van or either
11 a refrigerated semi truck van probably this time
12 of the year, and they go to processing facilities
13 that are further making something with the
14 product.

15 Q Thank you.

16 A Did that answer your question?

17 Q I think so, yes. So in your
18 experience working in this specific sector of the
19 market, has fluctuation of not only prices and
20 supply but quality issues, has that had an impact
21 on your business relations?

22 A Sure. So probably one of the biggest

1 challenges the shelling industry has faced over
2 the past three years has been the gap in halves
3 and pieces. When I've got over a dollar gap in
4 what I can sell halves for and what I can sell
5 pieces for, it makes it a struggle buying inshell
6 pecans. So say that the market on inshell pecans
7 today is \$5 per point, or \$4.80 -- don't quote me
8 on that, guys -- but just for round numbers say
9 \$5 a point, and say the halves market is \$6 per
10 pound and say that I've got a dollar overhead in
11 that. Okay? So when I buy inshell pecans, if
12 I've got six bucks in them, after I process them,
13 that's halves and pieces, I've got to take into
14 account that pieces are selling for 80 cents less
15 or a dollar less, I've got to take that into
16 account on what I can sell my halves for and make
17 a profit. So essentially -- this isn't the
18 market today, this is just for this example --
19 you would have to sell the halves for almost
20 seven bucks a pound for that to make sense.

21 So what it ends up doing, as I would
22 think everybody would agree, that if you go to

1 the store to buy kernel pecans to snack on,
2 you're going to buy halves, you're not going to
3 buy pieces to sit there and eat, and so it really
4 hurts consumption, I think, whenever we shoot our
5 halves price up there, and I don't believe it's a
6 true reflection of the market sometimes, I think
7 that it's something that could be helped and I
8 think that this program would help that effort.
9 I think that if we could close that gap with
10 further marketing of pecans and let people be
11 educated on the benefits of pecans and the sort
12 of thing you guys are talking about that it would
13 definitely help that and help the overall return,
14 not only to the grower but to the sheller as
15 well.

16 Q Thank you. So we've heard quite a bit
17 of testimony about misinformation on supply in
18 the market and how that impacts buying and
19 selling and pricing decisions, but I'm wondering
20 has that ever impacted your ability to either
21 retain a customer or secure a new customer, and
22 specifically, is the inconsistent supply or the

1 reliability in a stable price has that impacted
2 your ability to get new customers or retain
3 customers?

4 A I've got a very good example, and this
5 should be all in the forefront of our minds, but
6 you had a tri-state estimate of 260- or 270
7 million pounds, somewhere in there -- I think it
8 was 273- or 268-, something like that -- and the
9 next estimate that comes out is 320 million
10 pounds, that's 50 million pounds difference.

11 Where did that come from? And I think that if we
12 could have a non-objective point of view on what
13 our supply looks like coming into the year, when
14 I'm reporting to some of the biggest users of
15 pecans in the world, I'd have a little bit better
16 of a story going into it.

17 And that's just not the case with the
18 retailers. You know, you've got ingredient
19 users, you've got a walnut market today that's
20 below four bucks a pound and that's always been
21 traditionally our biggest competitor going into
22 R&D departments, and everybody from your bakeries

1 to the Turtles that are sitting in front of you,
2 if they're going to make X amount of Turtles. I
3 know this isn't the greatest name out in the
4 market today, but Blue Bell Ice Cream, if you
5 look at what Blue Bell Ice Cream was making for
6 butter pecan ice cream five years ago to what
7 they were making two years ago before their
8 incident, you'd see a dramatic decrease in what
9 they were making and it's to price fluctuation.

10 So it's not just a customer of mine,
11 it's an industry customer, and I think that that
12 price fluctuation is not just a buyer's way to
13 get a market down, it's truly something that they
14 have to plan for, and when you see pecans go from
15 \$6.50 to a pound down to \$4.75 a pound and now
16 back up to around six bucks a pound, it's hard to
17 plan for that. And I think that in a lot of
18 people's minds in this industry that a consistent
19 price that's good to the grower and good to the
20 sheller seems impossible, but I think that
21 something like this could help that.

22 Q Thank you. And are most of your

1 customers in the domestic market?

2 A They are, yes, ma'am.

3 Q Okay. Thank you. I've also taken a
4 moment to read your resume, and it states that
5 you have quite a bit of experience working with
6 organizations looking at accounting and financing
7 strategies, implementation of business functions
8 and management. So with that context in mind,
9 have you had a chance to read over the proposed
10 program in Exhibit 1?

11 A I have.

12 Q And there are elements that are
13 described in Exhibit 1, the proposal, that have
14 to do with things that would be required of the
15 program staff to conduct, and I just wanted to
16 get your overall impression on these elements,
17 and do they reflect, in your opinion, standard
18 yet necessary and effective business management
19 practices.

20 A Could you give me a little more
21 detail?

22 Q Sure, sure, absolutely. So if you

1 turn to Section 986.54, it's a section entitled
2 Duties.

3 A Yes, ma'am.

4 Q And I'll just read through some of the
5 highlights here so we have it on the record.

6 Under Duties it talks about keeping minutes,
7 books and records which clearly reflect all the
8 acts of the administrative council, transactions,
9 to furnish complete reports of all meetings, the
10 authority to appoint employees, determine
11 salaries, define duties. It speaks to auditing,
12 it speaks to the authority to investigate
13 shipping and marketing conditions and assemble
14 data. It also speaks to compliance, and then
15 bylaws and rules and regulations for
16 administering the program.

17 So given your extensive background in
18 working with businesses, specifically in the
19 context of change, what do you think of this list
20 of duties?

21 A I think it's good.

22 Q Are they, in your opinion, necessary?

1 A I do think they're necessary for sure.

2 Q Why are they necessary?

3 A Well, I think we have to hold
4 ourselves accountable and I think that having
5 this in the bylaws -- I guess this would be
6 considered the bylaws -- or in the Federal
7 Register, I think that it takes, for lack of a
8 better word, the guesswork out of it for people
9 in the future. If we're not the ones sitting
10 here making decisions 10 years from now, 15 years
11 from now, it was what was written and it's what
12 we want this Council to be held accountable to.

13 Q Thank you. And so sort of switching
14 back to your role as a sheller/handler in the
15 industry, knowing that these requirements are in
16 this program, does that give you some confidence
17 in terms of the legitimacy of the program and how
18 it will be run?

19 A Yes, ma'am.

20 MS. SCHMAEDICK: Thank you. I have no
21 further questions.

22 MS. VARELA: Jen Varela, USDA.

1 BY MS. VARELA:

2 Q Thanks so much for being with us this
3 morning, Mr. Worn. I want to go back to a
4 statement you made earlier about some of those
5 ingredient markets, and you mentioned that they
6 look at other nuts like walnuts. And we've heard
7 quite a bit of testimony about how pecans need to
8 catch up and get in the game with other tree
9 nuts, and something I think we haven't talked
10 about yet is when you're dealing with an
11 ingredient buyer, do you feel that there is
12 definitely more available information for other
13 tree nuts right now in terms of pricing or
14 production? Are they gathering data more
15 efficiently than this industry is right now?

16 A One hundred percent.

17 JUDGE GUTHRIDGE: This industry
18 meaning?

19 BY MS. VARELA:

20 Q The pecan industry.

21 A One hundred percent. Would you like
22 me to give examples?

1 Q Absolutely. Tell me all you know
2 about it.

3 A Okay. So do you know anything about
4 the almond projections and how that affects the
5 market and the shipping reports?

6 Q Right. We've heard some testimony to
7 that, but I'm interested to know how much of that
8 is even filtering to you as somebody who's not
9 even in almonds.

10 A Well, actually, I am in almonds, I
11 handle over 2 million pounds a year. That's been
12 one of the things that I guess has really not
13 been a burden but it's one of those things when
14 I'm trying to report back to some of the largest
15 retailers in the world and I'm doing reports on
16 almonds, walnuts and pecans, I've got all this
17 information on almonds to basically firm up a
18 report on the market, and then I get to pecans
19 and we have a 50 million pound difference in what
20 our reporting was from a crop standpoint. So
21 you've got shipping reports through the year on
22 almonds and you've got things in place on almonds

1 and walnuts, for that matter, that really hold
2 true to the market through the year.

3 You know, there might be subtle
4 corrections, and granted, when you're dealing
5 with a 1.8 billion pound crop and you're dealing
6 with a 300 million pound crop, you could have a
7 bigger difference and it wouldn't look as big on
8 1.8 billion as it would on 300 million, but at
9 the same time, the adjustments they make really
10 impact the market.

11 I was in meetings yesterday with some
12 really, really large retailers, on Tuesday night
13 and yesterday all day, and one of the things that
14 we were having a discussion about was this year's
15 planning and that sort of thing. And it just
16 makes it difficult when I don't necessarily
17 believe the numbers that have gotten reported
18 sometimes. And it's just not with that, it's
19 with cold storage as well. Our market should be
20 a reflection of what the true inventory numbers
21 are, and when you have the double dip that's
22 happened for so long, coming in from Mexico,

1 what's counted, what goes back to Mexico, is that
2 the real number. A lot of that is something that
3 all of us have questions with in our mind, and
4 I'm not just speaking for me, I'm speaking for
5 other shellers and growers as well.

6 Does that answer your question?

7 Q Yes. That's been very helpful. Thank
8 you.

9 A Yes, ma'am.

10 MS. VARELA: I have no further
11 questions.

12 JUDGE GUTHRIDGE: Are there any more
13 USDA questions?

14 MS. CHILUKURI: No, Your Honor.

15 JUDGE GUTHRIDGE: Mr. Quirós?

16 MR. QUIR S: No further questions of
17 this witness at this time.

18 JUDGE GUTHRIDGE: Does anyone in the
19 audience have any questions?

20 (No response.)

21 JUDGE GUTHRIDGE: No questions for
22 you, so you're excused.

1 (Whereupon, the witness was excused.)

2 MR. DAVIS: Your Honor, the Proponent
3 Group offers as its next witness Mr. Thomas
4 Stevenson.

5 Whereupon,

6 THOMAS STEVENSON

7 having been first duly sworn, was called as a
8 witness herein and was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. DAVIS:

12 Q Good morning, Mr. Stevenson. First,
13 thank you for coming in this morning. We
14 appreciate you taking time out of your busy
15 schedule to come in and testify.

16 I think you'll see to your left a copy
17 of Exhibit 23 and Exhibit 1 to these proceedings,
18 Exhibit 1 being the proposed Federal Marketing
19 Order and notice thereof, and then Exhibit 23
20 being the executive summary of the economic
21 analysis of Dr. Marco Palma. Have you received
22 those documents before?

1 A Yes.

2 Q And have you reviewed them?

3 A Yes.

4 Q Thank you. It's my understanding that
5 you have some prepared testimony that you'd like
6 to give.

7 A Yes.

8 Q Please proceed.

9 A My name is Thomas Stevenson, spelled
10 T-H-O-M-A-S, S-T-E-V-E-N-S-O-N. I live in
11 Albany, Georgia. I've been in the pecan business
12 in a variety of capacities for 45 years,
13 including farm owner, farm management and mail
14 order business. I am currently an investor, an
15 officer and the director of farm operations of a
16 new business venture named National Pecan Company
17 which has currently 4,000 acres of producing
18 trees and intentions to expand to around 20,000
19 acres in the next two to three years. We have
20 acquired also a shelling business which we will
21 begin to operate Monday morning.
22 My resume is attached. We would be classified as

1 a large pecan grower under the Small Business
2 Administration definition, with more than
3 \$750,000 in gross revenues from pecans.

4 I have reviewed the proposed federal
5 marketing order for pecans, as published in the
6 Federal Register. I think it is very well done
7 and really have no large concerns about it. I
8 think the American Pecan Board showed a lot of
9 foresight not to propose supply restrictions or
10 crop reserves in the proposed order. There is
11 much to like about the proposed Federal Marketing
12 Order for pecans but I think 986.65, Marketing
13 Policy is especially important.

14 The pecan industry, as we have heard,
15 desperately needs credible information to operate
16 its business, whether it's cold storage and
17 carrying inventory or crop estimates, we have
18 operated without reliable market information for
19 too long. We need to make marketing and business
20 decisions with a greater degree of confidence in
21 the industry's data. The 986.65 marketing policy
22 states that: By the end of each fiscal year the

1 Council shall make a report and a recommendation
2 to the Secretary on the Council's proposed
3 marketing policy for the next fiscal year. Each
4 year such a report and recommendation shall be
5 adopted by the affirmative vote of at least two-
6 thirds of the members of the Council and shall
7 include the following, and where applicable, on
8 an inshell basis:

9 Number one, estimate of the grower
10 clean production and handler clean production in
11 the area of production for the fiscal year;
12 estimate of disappearance, estimate of improved
13 native and substandard pecans, estimate of the
14 handler inventory as of August 31 of inshell and
15 shelled pecans; estimates of unassessed
16 inventory; estimate of the trade supply taking
17 into consideration trade inventory, imports and
18 other factors; preferable handler inventory of
19 inshell and shelled pecans on August 31 of the
20 following year; projected prices in the new
21 fiscal year; competing nut supplies; and lastly,
22 any other relevant factors.

1 The ability to bring together the
2 entire industry across 15 states for product
3 marketing, research, future handling regulations
4 and future food safety responses will be
5 important to every stakeholder in the future.
6 For growers and handlers, we can help the
7 industry to develop best food safety practices in
8 order to build consumer confidence in the U.S.
9 domestic market. All of this is available to us
10 if we're able to move forward as an industry
11 through the proposed Federal Marketing Order for
12 pecans.

13 In recent years I've seen wide
14 variations in prices we have received for our
15 pecan crop. Such wide variation in pricing makes
16 it extremely difficult to plan for the future
17 operation of our business. While prices for
18 pecans go up and down dramatically from year to
19 year, our costs of production have steadily
20 increased. I think our farms and the industry in
21 general would also benefit in the future from
22 grade, size, quality, packaging, shipping

1 protocols and other handling requirements as we
2 compete with other tree nuts for shelf space and
3 consumer attention.

4 I also understand that under the
5 proposed order only growers with more than 30
6 acres of pecans or 50,000 pounds of average
7 production per year over the last four years will
8 be allowed to vote on the proposed order. In my
9 opinion, this threshold is reasonable because a
10 grower that does not meet this threshold is not a
11 commercial grower. Any grower that is smaller
12 than the proposed threshold could not justify the
13 costs inherent with such a small acreage.

14 However, if the marketing order is successful, as
15 I feel it will be, these small growers will reap
16 the same market benefits as the larger growers.

17 I am not aware of a single farmer in my area who
18 has a commercial farm that is smaller than 30
19 acres or produces less than 50,000 average pounds
20 per year.

21 I have also reviewed the economic
22 analysis summary prepared by Dr. Marco Palma,

1 specifically the projected average price increase
2 from promotion of 6.3 cents per inshell pound for
3 improved varieties versus the average 2-1/2 cent
4 per pound inshell cost. I think promotion works
5 for agricultural commodities and I agree that we
6 are likely to get increased stability and prices
7 through generic pecan promotion.

8 Overall, I'm aware of the costs that
9 a Federal Marketing Order may impose on our farms
10 and other businesses and I do not believe these
11 costs are unduly burdensome. Further, I believe
12 that a Federal Marketing Order for pecans will
13 produce a net positive cost benefit situation
14 for our businesses.

15 The American Pecan Board has kept our
16 organization informed about its efforts to
17 propose a Federal Marketing Order.

18 Representatives of the American Pecan Board have
19 attended a number of grower meetings that I have
20 also attended. I also know many of the board
21 members of the American Pecan Board.

22 In conclusion, I fully support the

1 proposed marketing order for pecans and encourage
2 the Secretary to implement the order as proposed
3 by the American Pecan Board. I will be happy to
4 answer any questions.

5 MR. QUIR S: Thank you very much, Mr.
6 Stevenson.

7 I guess first let me get on here that
8 we tender Exhibit 77, and would note that we did
9 catch the personal information on there and that
10 I made a pen correction to that. We're blanking
11 out birth dates and things like that. So I
12 tender that exhibit as annotated.

13 JUDGE GUTHRIDGE: Is there any
14 objection from USDA?

15 MS. CHILUKURI: No objection, Your
16 Honor.

17 JUDGE GUTHRIDGE: Any objection from
18 the audience?

19 (No response.)

20 JUDGE GUTHRIDGE: With no objection,
21 Exhibit 77 is admitted into the record.

22 (The document referred to was marked

1 for identification as Exhibit 77 and
2 was received in evidence.)

3 BY MR. QUIR S:

4 Q Mr. Stevenson, just off of your
5 prepared testimony, we heard yesterday about a
6 researcher with the last name Stevenson that is
7 doing a research project on scab. Would you
8 happen to have any familial involvement with that
9 project?

10 A I'm not directly involved, but that's
11 my wife. My wife is a plant pathologist with the
12 University of Georgia and a professor there
13 almost 20 years.

14 Q And she's working on a scab research
15 project?

16 A She works a lot with scabs, she works
17 a lot with other crops besides pecans, and I
18 believe this is a project that's been funded by
19 the Georgia Commodity Commission.

20 Q That's what we heard, yes. Thank you.
21 Where will your sheller be located,
22 the one that goes into operation on Monday?

1 A Sylvester, Georgia.

2 Q And for the benefit of the record,
3 that's in southwestern Georgia?

4 A Yes. It's about two-thirds of the way
5 from here to Albany.

6 MR. QUIR S: Thank you. No further
7 questions at ths time, Your Honor.

8 JUDGE GUTHRIDGE: Does USDA have any
9 questions?

10 MS. SCHMAEDICK: Melissa Schmaedick,
11 USDA.

12 CROSS-EXAMINATION

13 BY MS. SCHMAEDICK:

14 Q Good morning, Mr. Stevenson.

15 A Good morning.

16 Q Thank you for your testimony. In
17 your discussion of the marketing policy section
18 of the proposed order, you used a term
19 "disappearance" and we've received testimony on
20 disappearance in the past but I'm wondering if
21 you could give us your interpretation of what
22 disappearance means.

1 A Disappearance to me would be sales
2 into the marketplace. There's always a little
3 loss in the processing and handling of pecans
4 which reduces the number, typically about 3
5 percent, in a shelling plant maybe 4. But
6 disappearance to me is how much is sold or
7 otherwise removed from the supply chain and
8 available to the end user or customer, so that if
9 we start out the marketing year with 300 million
10 pounds and there are sales and other uses and you
11 get to the end of the marketing year and you've
12 got 150 million pounds in inventory across the
13 United States, the difference is what I call the
14 disappearance.

15 MS. SCHMAEDICK: Okay. No further
16 questions. Thank you.

17 JUDGE GUTHRIDGE: Are there any more
18 questions from USDA?

19 MS. VARELA: Yes. Jen Varela, USDA.

20 BY MS. VARELA:

21 Q Thanks so much for giving us your time
22 this morning, Mr. Stevenson. I'm interested in

1 some of your testimony here where you talked
2 about wanting to vertically integrate to include
3 a shelling operation. Can you give us a little
4 bit of background of some of the factors that
5 went into that decision?

6 A The decision was made to be able to
7 control the process from production to the
8 supermarket shelf from a quality control
9 standpoint, and we believe there is a little
10 profit margin at each of those steps to be
11 acquired, the farming level, the processing and
12 sales level, be it into retail or be it into
13 ingredient users, and at the final marketing
14 level also.

15 Q Thank you. And just to go a little
16 further into that, we've heard a lot of testimony
17 about production that's expected to come online
18 in the next few years of increased planting.
19 When you're looking ten years forward in the
20 pecan industry, what do you see happening, what
21 are your expectations, and how did that play into
22 some of that decision-making?

1 A Well, with no formal census of
2 plantings or disappearance, parking lots and
3 what-have-you of old orchards in the United
4 States, there's a little bit of guesstimate in
5 this, but I'm pretty confident that Georgia
6 itself has planted 6- or 7,000 acres in the last
7 five years that will begin to come into
8 production over the next five years. And there's
9 more being planted in other places. South Africa
10 has increased their plantings quite a bit which
11 becomes a part of a worldwide product. I've been
12 involved in Argentina for several years. While
13 it's not nearly as far along as South Africa, it
14 is trying to expand its production down there.

15 So domestically and internationally
16 we're faced with increased supply over the next
17 five to ten years, and I really believe we need
18 the funds from this program to help us create
19 more market and open more market, be it domestic
20 or wherever. There's still a large domestic
21 market that's untapped. If you get north of the
22 Mason-Dixon line there's not too many people know

1 what a good pecan is.

2 So I think that, combined with our
3 other responsibilities in food safety and things
4 along that line that the funds generated by this
5 will help us tackle all those issues.

6 Q Thank you. And you just mentioned
7 that you were involved with business in
8 Argentina. Is that a direct export or is not in
9 pecans?

10 A No. That was really a personal thing.
11 I have some friends down there that are trying to
12 grow some pecans, and I went down there on an
13 individual basis and worked with them for several
14 years.

15 Q Interesting. Let me try to get back
16 to something. You piqued my interest but I'm
17 going to have to ask you a different question
18 later. Looking back at this section here that
19 you referred to with marketing policy -- and we
20 thank you for taking such a good look at it and
21 reading it specifically, earlier on we've had
22 some testimony on different pieces of it -- but I

1 wanted to draw your attention to two parts there.
2 First, in paragraph (a) there's an estimate of
3 production for the fiscal year, and then a little
4 further down in (h) there, there's projected
5 prices for the new fiscal year, and I just want
6 to make sure I have a clear understanding of
7 whether those are the same fiscal year or if in
8 your understanding of reading this if we're
9 looking at two different pieces of that market
10 puzzle.

11 A I think that the way I read it, it's
12 the same fiscal year.

13 Q Okay. All right. Thank you very much
14 for that. I also wanted to know if you could
15 give me a little more detail about how you think
16 the proposed order could help the industry in
17 terms of food safety. That's an issue that's
18 very important in your industry, I'm sure, as
19 well as in our department. What are some of the
20 tools that you see in this proposed order that
21 could help you in the future in dealing with food
22 safety?

1 A Well, food safety -- and as we all
2 know, the FDA is coming out with some final rules
3 here in the next few weeks, hopefully -- tree
4 nuts have been classified along with produce in
5 terms of food safety which is the highest
6 priority food safety category in the whole FDA
7 thing. Some might disagree with tree nuts being
8 with fresh produce but that's the way it's
9 written right now.

10 I was born in California, I know what
11 California agriculture is, and there's an old
12 saying in farming: So goes California, there
13 goes the rest of the country eventually. They're
14 much stronger in their state rules and
15 regulations versus sanitation, field sanitation,
16 handling, et cetera, et cetera. The tree nut
17 industry, outside of pecans, is basically
18 concentrated in one valley in California. You
19 have a like culture, like-minded people and a
20 very small geographic area, so what one does
21 there tends to get done everywhere across those
22 industries.

1 We're spread across 15 states with
2 very large and sophisticated growers and other
3 growers that it was good enough for my grandpappy
4 and that's the way I'm going to do it.

5 Education, we need to be very strong in going to
6 the growers and helping the processors with
7 research, with trying to get people to sign on to
8 GAP qualifications and educate them in food
9 safety that's required and help them to attain
10 the proper level of food safety.

11 Q So is it fair to say that you see a
12 big part of that role as educational?

13 A I think so, yes. Educational, mock
14 inspections, classes, and I think a portion of
15 those funds that are collected need to go in that
16 area. I don't know exactly how much but some of
17 it has to be earmarked for that, in my opinion.

18 Q That's a very interesting and helpful
19 perspective. I think those are all the questions
20 for USDA. Thank you.

21 MS. SCHMAEDICK: Excuse me. Just for
22 the record, this is Melissa Schmaedick, USDA.

1 BY MS. SCHMAEDICK:

2 Q You used a term "GAP." Could you
3 define that for the record, please?

4 A GAP, depending on who you talk to, but
5 it basically is good agricultural processes, and
6 it is a program, the State of Georgia has one, in
7 which you do certain things to become GAP
8 certified which means you have proper field
9 sanitation, your product is handled cleanly and
10 safely and shipped, and et cetera. The Georgia
11 Department of Agriculture, in combination with
12 the Georgia Fresh Fruit and Vegetable
13 Association, have a program. There's also a
14 global GAP which gives you global GAP
15 certification if you're exporting into Europe or
16 some of the other countries that require it, and
17 it's basically a set of guidelines to use on the
18 farm or in the cleaning plant or even in a
19 shelling plant. It's similar to a HACCP plan in
20 a shelling plant, so not quite as detailed but
21 that's basically what it is.

22 Q So for clarification on the record,

1 GAP is capital G, capital A, capital P.

2 A Yes.

3 Q And then you just used another term.

4 I'm sorry but we have to have a clear record.

5 HACCP.

6 A I'm not sure I remember exactly all
7 the words. Hazard Analysis Critical Control
8 Program.

9 Q Okay. Thank you. No further
10 questions.

11 A I know what the acronym means, I
12 couldn't remember.

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

15 MS. CHILUKURI: No, Your Honor.

16 JUDGE GUTHRIDGE: Mr. Davis?

17 MR. DAVIS: Yes, Your Honor, just
18 briefly.

19 REDIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q Mr. Stevenson, let me put up on the
22 overhead, and I believe you have it in front of

1 you, from Exhibit 1, Section 986.12,
2 Disappearance, and this is the definition of
3 disappearance, and if you would take a second to
4 refresh your memory with this.

5 A Well, I think I may not have said it
6 exactly that way, but that's basically the way in
7 interpret it.

8 Q The definition in this proposed
9 marketing order is consistent with your
10 understanding of that term. Is that correct?

11 A Yes.

12 Q And is it consistent with the way that
13 that term would generally be understood and used
14 in the pecan industry?

15 A Yes.

16 Q Well, then as a slight followup, if we
17 go back to Section 986.65, and we noted under
18 subparagraph (b) that the Council will do a
19 report to the Secretary on the estimate of
20 disappearance. Why in particular do you think
21 they singled that out as a report that would have
22 to be given?

1 A Well, because we, to effectively
2 market, make plans for a new crop year, need to
3 know how much is left over from the old crop
4 year, and if it's a large supply, then that's
5 going to burden the pricing capability of the
6 industry. If it's a small supply, that increases
7 the ability to perhaps see the prices raise some.
8 That's the primary reason: to basically know
9 what you've got in this hand left from last year
10 and what you think you're going to have in your
11 hand from the new year.

12 Q And both for the perspective of a
13 grower and soon to be sheller, would such
14 information be valuable to the businesses in
15 making their future business decisions and
16 pricing decisions?

17 A Yes.

18 MR. DAVIS: We have nothing further,
19 Your Honor.

20 JUDGE GUTHRIDGE: Does USDA have any
21 more questions?

22 MS. CHILUKURI: No, Your Honor.

1 JUDGE GUTHRIDGE: I have one question.
2 Mr. Stevenson, were you always particularly
3 delighted to get the C-ration box with the pecan
4 roll in it?

5 THE WITNESS: I don't remember pecan
6 rolls. I remember being delighted to get toilet
7 paper and cigarettes.

8 (General laughter.)

9 JUDGE GUTHRIDGE: Does anyone in the
10 audience have any questions for Mr. Stevenson?
11 No? No more questions. You're excused.

12 (Whereupon, the witness was excused.)

13 MR. DAVIS: Your Honor, I don't
14 believe we've had to ask for this indulgence in
15 any of these proceedings, but we do have a slight
16 logistical issue with a witness and the
17 testimony, and so it is a bit earlier but could
18 we take our morning break? I think we'll be
19 ready to go in about ten minutes.

20 JUDGE GUTHRIDGE: Is there any
21 objection? We seem to be racing through things
22 today. Is everybody in a hurry?

1 MR. QUIR S: Your Honor, in this part
2 of the world we say the horse can see the barn.

3 (General laughter.)

4 JUDGE GUTHRIDGE: So 9:01?

5 MR. DAVIS: That would be great, Your
6 Honor. Thank you.

7 JUDGE GUTHRIDGE: We'll recess until
8 9:01.

9 (Whereupon, a brief recess was taken.)

10 JUDGE GUTHRIDGE: We'll come to order,
11 please. Back on the record.

12 Whereupon,

13 JACLYN DIXON FORD

14 having been first duly sworn, was called as a
15 witness herein and was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. QUIR S:

19 Q Thank you, Ms. Ford. Before we get
20 into your testimony I want to ask you a few
21 questions. Have you had an opportunity to
22 receive and review what has been marked Exhibit 1

1 in these hearings which was the notice from the
2 USDA that included the proposed Federal Marketing
3 Order for pecans?

4 A I have.

5 Q And have you received and had a chance
6 to review what's been marked in these hearings
7 Exhibit 23 which is an executive summary of the
8 economic analysis of the implementation of a
9 Federal Marketing Order for pecans, prepared by
10 Dr. Marco Palma?

11 A I have.

12 Q Thank you. A couple of preliminary
13 questions. Do you live in Barrien County?

14 A I do.

15 Q And is Nashville the county seat of
16 Barrien County?

17 A It is.

18 Q And is Barrien County the home of
19 Harvey's Grocery Store and Hogzilla?

20 A It is.

21 Q Thank you. Would it surprise you to
22 know that once 33 years ago a young lawyer

1 arrived in court in Nashville and identified
2 Alapaha as Ala-paha?

3 A Doesn't surprise me. Do you know what
4 it means?

5 Q Tell me.

6 A It means Laughing Waters, an Indian
7 name.

8 Q Would it surprise you that everyone in
9 that court laughed and mocked that young lawyer?

10 A No.

11 Q Would it undermine your confidence in
12 your counsel to know that that young lawyer was
13 me?

14 A No.

15 Q Well, I was helped out in that
16 situation and I wanted to make sure and help you
17 out as well, so if you would, please read the
18 testimony that you've prepared for us.

19 A I hope you won't mind if I say pea-can
20 instead of pecan.

21 Q We've had controversy on that issue.

22 A Okay. That's how I grew up saying it.

1 Q Hilton Segler reminded us that people
2 that say pea-can are the ones that grow them.

3 A That's right.

4 Q Thank you.

5 A My name is Jaclyn Dixon Ford. It is
6 spelled

7 J-A-C-L-Y-N, D-I-X-O-N, F-O-R-D. I live in
8 Alapaha, Georgia. I'm co-owner of Dixon Farms,
9 LLC, Dixon Gin Company, Dixon Farm Supply, JCQ
10 Farms and Jake Ford Farms. We are a diversified
11 family farming operation consisting of corn,
12 cotton, pecans and peanuts. One of the primary
13 sources of our income is a pecan farm in Alapaha.
14 We have over 200 acres of irrigated pecans
15 currently in production. Last year we produced
16 over 224,000 pounds of pecans, over the last ten
17 years we have interplanted, and are currently in
18 the process of planting and irrigating over 50
19 acres of new pecan trees that will not be in
20 production for seven years. On our farm we grow
21 primarily Stewarts and Desirable pecans but are
22 diversifying with newer varieties in the new

1 plantings. Attached is my resume.

2 Our farm has less than \$750,000 in
3 annual gross revenue from pecans, and therefore,
4 under the Small Business Administration
5 guidelines we are classified as a small business.

6 I've also reviewed the economic
7 analysis summary prepared by Dr. Marco Palma,
8 specifically the projected average price increase
9 from promotion of 6.3 cents per inshell pound
10 versus the average 2-1/2 per inshell pound cost.
11 Overall, I'm aware of the costs that the proposed
12 Federal Marketing Order may impose on my farm and
13 I do not believe those costs are unduly
14 burdensome. Further, I believe that the benefits
15 of the Federal Marketing Order to my farm will
16 greatly outweigh any costs associated with it.

17 Through managing our cotton gin, I've
18 been very involved in the checkoff program for
19 cotton over the past 15 years and have certainly
20 witnessed the success in that program. We hope
21 the proposed Federal Marketing Order for pecans
22 will be as successful.

1 In recent years I've seen wide
2 variation in the prices I've received for my
3 pecan crop. WE have sold Desirable pecans of the
4 same quality for under \$1.60 per pound and over
5 \$3 in the last five years. Such wide variation
6 in pricing makes it extremely difficult to plan
7 for the future operation of my farm. While
8 prices for pecans go up and down dramatically
9 from year to year, my costs of production have
10 steadily increased. Cost of fertilizer,
11 pesticides, irrigation and equipment have all
12 increased in recent years regardless of the price
13 I receive for my crop.

14 The lack of accurate market
15 information on the anticipated size of the pecan
16 crop in any given year also makes it difficult
17 for me to negotiate a fair price for my crop and
18 to make reasonable business decisions about
19 investments in my farm. Increased price
20 stability and more accurate market information
21 would greatly benefit my small family farm. I
22 think my farm and the industry would also benefit

1 in the future from grade, size, quality, packing,
2 shipping protocols and other handling
3 requirements as we compete with other tree nuts
4 for shelf space and consumer attention.

5 I also understand that under the
6 proposed order only growers with more than 30
7 acres of pecans or more than 50,000 pounds of
8 average production per year over the last four
9 years will be allowed to vote on the proposed
10 order. In my opinion, this threshold is
11 reasonable because a grower that does not meet
12 this threshold is not a commercial grower. Any
13 grower that is smaller than the proposed
14 threshold could not justify the costs inherent in
15 such a small production.

16 I'm testifying in my individual
17 capacity in support of the Federal Marketing
18 Order for pecans. My husband and I are actively
19 involved in both the Georgia Pecan Growers
20 Association, as well as the Southeastern Pecan
21 Growers Association. The American Pecan Board
22 has kept our organization informed about its

1 efforts to propose a Federal Marketing Order.
2 Representatives of the American Pecan Board
3 attended a meeting of Georgia pecan growers in
4 March and provided us with information and
5 solicited our input.

6 In conclusion, I fully support the
7 proposed Federal Marketing Order for pecans and
8 encourage the Secretary to implement the order as
9 proposed by the American Pecan Board. I would be
10 glad to answer any questions anyone may have at
11 this time.

12 MR. QUIR S: Your Honor, we tender
13 this as Exhibit 78 at this time.

14 JUDGE GUTHRIDGE: Is there any
15 objection from USDA?

16 MS. CHILUKURI: No objection.

17 JUDGE GUTHRIDGE: Any objection from
18 the audience?

19 (No response.)

20 JUDGE GUTHRIDGE: Hearing no
21 objection, Exhibit 78 is admitted into the
22 record.

1 (The document referred to was marked
2 for identification as Exhibit 78 and
3 was received in evidence.)

4 JUDGE GUTHRIDGE: Mr. Quirós?

5 MR. QUIR S: Yes.

6 BY MR. QUIR S:

7 Q Ms. Ford, tell us about other crops
8 that are grown on your farm.

9 A We grow peanuts, corn and cotton.

10 Q And are any of those subject to a
11 checkoff program or Federal Marketing Order?

12 A Yes. All of them are.

13 Q And those are checkoff programs for
14 peanuts, corn and cotton?

15 A Uh-huh.

16 Q And are those checkoff programs for
17 promotion?

18 A Yes.

19 Q And how does that work?

20 A I mean, it works very well. I work in
21 cotton specifically and we're competing with
22 other synthetic fibers all the time for market

1 share, just like pecans are with other nut trees
2 and nut crops.

3 Q So you've seen promotion work with
4 regard to agricultural products on your farm?

5 A Yes.

6 Q And you think that will work for
7 pecans as well?

8 A Yes.

9 MR. QUIR S: Thank you. No further
10 questions at this time, Your Honor.

11 JUDGE GUTHRIDGE: Are there any
12 questions from USDA?

13 MS. VARELA: Jen Varela, USDA.

14 CROSS-EXAMINATION

15 BY MS. VARELA:

16 Q Thank you for being with us this
17 morning, Ms. Ford.

18 I want to go back to a portion of your
19 testimony where you kind of generously let us
20 know what some of your actual price were, and I
21 know a lot of people don't like to give that
22 particular information, but this is helpful to me

1 because I'm looking at this swing you describe
2 when you say you sold pecans of the same quality
3 for under \$1.60 per pound and over \$3 in the last
4 five years. Can you talk about, first of all, do
5 you anticipate that that type of swing is going
6 to continue in the future if there are no changes
7 in the industry? Actually, just answer that
8 first.

9 A Well, from what I understand, the
10 reason our prices have increased so much has been
11 the Chinese coming into our market, and I know
12 that -- my husband and I were talking -- 95
13 percent of what we sell which is a larger fuller
14 nut because it's mostly irrigated, does go to the
15 Chinese market, so if the Chinese were to
16 withdraw from our market and decide to be
17 uninvolved, it would really hurt us, and there's
18 no way of us knowing what, I guess, acreage and
19 stuff that we have overall as far as what our
20 market should be in this country.

21 And another thing is that because
22 we're so reliant on the Chinese markets that it's

1 made other buyers of nuts in this country,
2 they've gone to other tree nuts and have kind of
3 left the pecan market because the prices were so
4 high.

5 Q Okay. And just kind of as a point of
6 clarification for me, is your farm selling
7 directly into China or are you selling to
8 someone?

9 A We sell to shellers.

10 Q Okay. Just wanted to clarify that.
11 And if you did see that prices were still
12 fluctuating this much, how difficult does that
13 make your future planning decisions? You said
14 that you're expanding, you've planted some more
15 trees. Can you keep making decisions like that?
16 If you're not sure if the price is going to be
17 one thing or half of that, how does that impact
18 your deciding whether to stay in the industry or
19 whether to expand your farm?

20 A Yes, it makes it very difficult just
21 knowing how much input cost you can spend, how
22 many times can you spray, can you afford to put

1 irrigation on new trees, can you afford to put in
2 new trees when the price is varying that much.

3 Q So in your opinion in looking at this
4 proposal overall, does the structure of this
5 proposed program make you confident that there
6 will be more stability there that will help you
7 have better information to make your decisions.
8 Is that what you're basing your support on?

9 A Yes, definitely.

10 Q And kind of a side question since we
11 talked about some of the other crops that you
12 grow and some of the other programs that impact
13 them, my office actually oversees some peanut
14 standards and those have remained unchanged for a
15 little while, but given that you're also
16 functioning in that industry, do you see that
17 having some of those minimums there is also
18 helpful in terms of building consumer confidence
19 in peanuts as something that's consumed in the
20 country? Do you think that's important?

21 A Yes.

22 JUDGE GUTHRIDGE: By minimums, do you

1 mean minimum standards?

2 BY MS. VARELA:

3 Q Minimum standards.

4 A I definitely do, especially when
5 you're dealing with something that people are
6 eating, they want to know that there are
7 guidelines there to maintain quality and safety.

8 Q And so you think that pecan standards,
9 if put in place, would have a similar effect?

10 A Yes.

11 MS. VARELA: Thank you very much for
12 your testimony. I have no further questions.

13 JUDGE GUTHRIDGE: Are there any more
14 questions from USDA?

15 MR. HILL: No, Your Honor.

16 JUDGE GUTHRIDGE: Mr. Quirós?

17 MR. QUIR S: No further questions,
18 Your Honor.

19 JUDGE GUTHRIDGE: Are there any
20 questions from the audience?

21 (No response.)

22 JUDGE GUTHRIDGE: No more questions.

1 You're excused.

2 (Whereupon, the witness was excused.)

3 MR. DAVIS: Your Honor, the Proponent
4 Group calls as its next witness Mr. Fred
5 Beshears.

6 Whereupon,

7 FRED H. BESHEARS

8 having been first duly sworn, was called as a
9 witness herein and was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q Good morning, Mr. Beshears. Would you
14 state your name and spell it for the record,
15 please?

16 A My name is Fred Beshears, F-R-E-D,
17 B-E-S-H-E-A-R-S.

18 Q And do you have before you Exhibit 1
19 and Exhibit 23 in these proceedings?

20 A Yes, sir.

21 Q And have you had an opportunity to
22 review those exhibits?

1 A Yes, I have.

2 Q Okay. Thank you. It's my
3 understanding you have some prepared testimony
4 you'd like to give.

5 A Yes, sir.

6 Q Would you please do that?

7 A My name is Fred Beshears from
8 Monticello, Florida, and I'm president and owner
9 of Simpson Nurseries, LAA, which was founded in
10 1902, and I've been there since 1970. Today I
11 have 20 acres of pecan nut production and 100
12 acres of pecan nursery production, plus 800 acres
13 of other tree production. Last year we produced
14 approximately 10,000 pounds and on our farm we
15 grow mostly old varieties. And at one time I had
16 over 300 acres of producing orchard and over 300
17 acres of young groves. Simpson Nurseries has
18 over \$750,000 in annual gross revenue from pecans
19 and pecan tree sales, therefore, under the Small
20 Business Administration guidelines we are
21 classified as a large business.

22 Q Can I make this notation on the

1 record? Did you make a pen-and-ink correction to
2 the statement that you have before you and
3 changing small to large?

4 A Yes, I did.

5 Q And are those your initials next to
6 that change?

7 A Yes, they are.

8 Q Okay. Thank you.

9 A I feel like I've been informed about
10 the process of securing a Federal Marketing Order
11 and I've been given an opportunity to participate
12 in this process. Thus, I am very familiar with
13 this process and the purpose and the program as I
14 led the Pecan Promotion Act of 1990 when I was
15 president of the Federated Pecan Growers of the
16 United States, which is today called the U.S.
17 Pecan Growers Council, and the current president
18 is here today, Randy Hudson.

19 I've also reviewed the economic
20 analysis prepared by Dr. Marco Palma,
21 specifically, the projected average price
22 increase from promotion from 6.3 cents per

1 inshell pound versus an average of 2.5 cents
2 costs. Overall, I'm aware of these costs that
3 the proposed Federal Marketing Order may impose
4 on my farm and the industry and I do not believe
5 these costs are overly burdensome. Further, I
6 believe that the benefits of the Federal
7 Marketing Order to my farm will greatly outweigh
8 any costs associated with it.

9 In recent years I've seen wide
10 variation in the prices of pecan nuts, as we also
11 have a small gift pack nut business. Such wide
12 variation in pricing makes it extremely difficult
13 for us to plan for future operations in our
14 industry. While prices go up and down
15 dramatically from year to year, cost of
16 production has steadily increased. Cost of
17 fertilizer, insecticides, equipment, et cetera in
18 recent years have really gone up.

19 Further, the lack of accurate market
20 information on anticipated size of the pecan crop
21 in any given year makes it difficult for me to
22 anticipate prices of the coming crop which

1 interferes with our market planning of tree
2 production and gift sales, while at the same the
3 lack of price stability affects the entire
4 industry for all sizes of growers. I think my
5 farm and the industry would benefit in the future
6 market promotion of grade, size, quality,
7 packing, shipping protocols and other handling
8 requirements as we compete with other tree nuts
9 for shelf space and the consumer's attention.

10 I also understand that the proposed
11 order only growers of more than 30 acres of
12 pecans or more than 50,000 pounds of average
13 production per year over the last four years
14 should be allowed to vote on the proposed order
15 which is a much better system than was in the
16 1990 pecan promotion plan. In my opinion, this
17 threshold is reasonable because a grower who does
18 not meet this threshold is not a commercial
19 grower, and I can make a very strong case that 30
20 acres is too low. Any grower that is smaller
21 than the proposed threshold could not justify the
22 cost inherent in such a small production is most

1 probably a seller of pecans for older trees that
2 happened beyond his or her property, a hobby
3 farmer or someone that does have a plan for all
4 commercial necessary inputs. The American Pecan
5 Board has kept our industry informed about these
6 efforts and the proposed marketing order.

7 In conclusion, I fully support the
8 proposed Federal Marketing Order for pecans and
9 encourage the Secretary to implement the order as
10 proposed by the American Pecan Board. I'd be
11 glad to answer any questions.

12 And I'd like to digress just for one
13 second. I'm fully aware of the work the American
14 Pecan Council has done because, as I said, I've
15 been down that road in 1990. There were three of
16 us primarily when we started in 1987 and we got
17 it done in 1992. They've gotten it done in two
18 years, and it's a very good program, and as one
19 of the previous witnesses said about 15 states,
20 it's a tremendously hard process to educate
21 people in 15 states, as I'm sure you've heard in
22 different testimony, different people's needs and

1 wants.

2 And like I said, 30 acres, I think, is
3 basically too small and that was our downfall the
4 last time and the growers voted it out because at
5 that time it was one tree, if you had one tree
6 you could vote, which was a poor system, in my
7 opinion. And again, I really commend the board
8 for doing this and I know how hard it is and
9 they've volunteered a lot of time and lot of
10 personal effort. A lot of personal funds have
11 been spent on this effort and it's something our
12 industry can really enjoy and benefit from and I
13 really feel it's necessary.

14 MR. DAVIS: Thank you so much, Mr
15 Beshears.

16 Your Honor, the Proponent Group
17 tenders Exhibit 79.

18 JUDGE GUTHRIDGE: Is there any
19 objection from USDA?

20 MS. CHILUKURI: No objection.

21 JUDGE GUTHRIDGE: Is there any
22 objection from the audience?

1 (No response.)

2 JUDGE GUTHRIDGE: No objection.

3 Exhibit 79 is admitted into the record.

4 (The document referred to was marked
5 for identification as Exhibit 79 and
6 was received in evidence.)

7 BY MR. DAVIS:

8 Q Let me ask just a couple of questions,
9 if I may, Your Honor.

10 First, in your written statement and
11 your testimony here you said that currently you
12 grow mostly old varieties. I don't think anybody
13 has used that term yet. Why don't you tell the
14 tribunal here what you mean by old varieties?

15 A As anything in agriculture and
16 anything in the world today, technology and
17 genetics have gotten better, cars have gotten
18 faster and pecans have gotten faster producing.
19 We grow old varieties that have been around for
20 50-60-70 years. It's an old orchard and we don't
21 take very good care of it and run cows under it
22 mostly. But anyway, we have Moneymakers, Moores,

1 and we have some Elliotts. Moneymakers and
2 Elliotts were really a mainstay of the industry
3 for many years, but today I'm in the nursery
4 business, as I said, we haven't grown a
5 Moneymaker in 30 years. They're just not as
6 productive as the new varieties. You're talking
7 about a thousand pounds per acre where today we
8 can get 2,000 pounds per acre with better
9 genetics.

10 Q Thank you. Let's talk a little bit
11 more about the earlier effort to get a proposed
12 Federal Marketing Order. You were directly
13 involved in that process. Is that correct?

14 A I was the president. Yes.

15 Q And ultimately a marketing order was
16 proposed but it was not accepted by the growers.
17 Is that correct?

18 A We didn't have a marketing order, we
19 had a marketing promotion plan. It's a big
20 difference there, as I found out. And we got it
21 passed through the Congress, I testified in a
22 similar hearing before the U.S. Senate and the

1 U.S. House and it was actually passed through the
2 Senate, public law number so-and-so, 96 to one,
3 in the House we got 420 votes and one no. So
4 what our plan was it ran for two years or three
5 years, I think, 2-1/2 years, and then the growers
6 got to vote, and back then we had one tree, one
7 grower, one vote, and my personal opinion is I
8 think there was some fraud in the votes and there
9 were a lot of people against the program -- I
10 won't get into it but reporting was an issue. It
11 wasn't that our plan didn't work, it was very
12 successful, and I think it was the genesis of
13 what we're doing today, and we were big on
14 exports and trying to find new markets. The
15 previous person testified about China. We
16 started the Chinese program, the European program
17 in 1992 and '93, and the director of the thing
18 was actually from the USDA, Joanne Smith, she was
19 undersecretary of Agriculture, and she led the
20 effort.

21 Anyway, since there was a lot of
22 votes, some one county in Georgia over here and

1 two or three counties in Alabama and a couple of
2 places in Texas, and they put out misinformation,
3 half truths, and so nobody argued about the
4 effects of the plan but they didn't like the
5 reporting requirement. That was our undoing.
6 Yes, it was narrowly voted out. But I'm happy to
7 say that the Georgia Commission soon thereafter
8 started their own plan and the Texas group came
9 on with another plan. So nobody argued about the
10 effects of it but it was just how we managed the
11 collection of the funds.

12 Q Thank you. That's very helpful.
13 There's been some allusions to it but would this
14 be a fair summary to say there was perhaps a
15 similar plan but it was not identical in that it
16 did not follow -- it was not done under the 1937
17 Price Stabilization Act?

18 A No, it was not. And I do not remember
19 the reason why we didn't do that, but we were
20 advised not to do that, and we came with a
21 marketing promotion plan.

22 Q All right. Let's focus for a second

1 again to get us in the moment here. You
2 currently have only 20 acres of pecans in
3 production. Is that correct?

4 A That's correct.

5 Q But if I understood your testimony,
6 you still understand that this proposed marketing
7 orders says as a threshold in order to be able to
8 vote as a grower you have to have 30 acres, and
9 you think that that's a fair and reasonable
10 level. Is that correct?

11 A Actually, I think, yes, it is, it's
12 fair and reasonable. As I said earlier, though,
13 I don't know that you can make it on 30 acres.
14 You might can afford it but you don't have enough
15 acres to spread your overhead out, but 30 is
16 certainly better than one tree, one vote.

17 Q So I was going to ask you believe
18 that, one, a threshold is needed.

19 A Absolutely.

20 Q And that's in part because of your
21 experience in the 1990s with that other program.

22 A Yes.

1 Q And then second, you would agree with
2 some other witnesses that have testified here
3 that if you have less than 30 acres you certainly
4 are not really a true commercial grower, you're
5 not making your living off of pecan.

6 A There's no way. You're what I call a
7 hobby farmer. And the reason I'm doing my 20
8 acres is because I love the pecan industry. I've
9 been here since 1970, I've been very involved and
10 not been that involved in the last few years. My
11 wife was executive director of the Southeastern
12 Pecan Growers Association for many years, and so
13 I love the pecan industry and I'm a hobby farmer.
14 I lose money on my 10 acres, 20 acres. At one
15 time, though, I did have several hundred acres of
16 old orchard and 300-some acres of new orchard,
17 but I traded that in another deal so I don't have
18 that anymore.

19 MR. DAVIS: We have no further
20 questions at this time, Your Honor.

21 JUDGE GUTHRIDGE: Does USDA have any
22 questions?

1 MS. SCHMAEDICK: Melissa Schmaedick,
2 USDA.

3 CROSS-EXAMINATION

4 BY MS. SCHMAEDICK:

5 Q Good morning, Mr. Beshears. Thank you
6 for your testimony and thank you for providing us
7 with some of that history about the previous
8 attempt at establishing a program.

9 The first thing I want to do is maybe
10 clear up some information here on the record. So
11 in your statement you indicate that you are a
12 large business as defined under the Small
13 Business Administration guidelines, but typically
14 when we are discussing with witnesses, we try to
15 classify them as a grower or as a non-grower
16 business, and in doing that we separate out the
17 revenue from those different business operations.
18 So if you were to separate your nursery from your
19 pecan growing operations and look at yourself
20 strictly as a pecan grower, would you say that
21 you still classify as a large business?

22 A My pecan nut production does not

1 exceed \$750,000.

2 Q Okay. So then for the purpose of your
3 representing yourself as a grower, you would be a
4 small grower.

5 A Yes, ma'am.

6 Q But in terms of your nursery business,
7 you're a large business, according to the SBA
8 definitions?

9 A My counsel and I discussed that, and
10 so yes.

11 Q Okay. Thank you. And then I just
12 want to be sure that I am understanding you
13 correctly. With 20 acres and 10,000 pounds of
14 pecan production, you fall underneath the 30
15 acre, 50,000 pound production threshold. Do you
16 understand that?

17 A Yes, I do. I understand I will not be
18 able to vote, but if I could vote, I would vote
19 for it.

20 Q All right. Thank you. You also
21 mentioned on page 2, I think you're indicating
22 here that you have gift sales?

1 A Yes, ma'am.

2 Q Is that gift sales of pecans?

3 A Yes. We started that when we were in
4 the pecan business and so now one of my
5 daughters-in-law tends to that, we don't really
6 push it. We have that residual business and so
7 she sends out several thousand boxes just at
8 Christmastime.

9 Q And are those your own pecans that
10 you're selling

11 A Generally not, no. Because we grow,
12 as I said, old varieties, and there's much better
13 quality pecans on the market available today than
14 what we grow. We use what few nuts we have
15 generally for seeds and just other assorted
16 things.

17 Q So your pecan production from your
18 orchard, does it enter into the stream of
19 commerce at all?

20 A Very little.

21 Q Very little. Are you familiar with
22 the exemption language in the proposed order?

1 A I have read the proposed order. Yes,
2 ma'am.

3 Q So 986.86, Exemptions. And the reason
4 I'm bringing this up is that based on my
5 understanding of previous testimony, when a
6 grower puts his or her product into the stream of
7 commerce, that causes them to be considered a
8 handler under the terms of this order.

9 A Uh-uh.

10 JUDGE GUTHRIDGE: That's a yes?

11 THE WITNESS: All right. Please,
12 again. Excuse me.

13 BY MS. SCHMAEDICK:

14 Q I said based on my understanding of
15 the proposed order, if a grower places his or her
16 pecans into the stream of commerce, that activity
17 causes them to be a handler, however, in 986.86
18 under Exemptions, it exempts handlers that handle
19 very, very small quantities of pecans. I'm
20 wondering if you fall below or above the
21 exemption threshold stated in paragraph (a) which
22 is 1,000 pounds of inshell, or in (b) which is

1 500 pounds of shelled.

2 A Some years I might, yes, ma'am. I
3 would go over a thousand pounds, yes, ma'am.

4 Q But then you also indicated that you
5 have mail order sales?

6 A Yes.

7 Q So if you look at paragraph (c) it
8 says mail order sales are not exempt.

9 A But I am buying those nuts already
10 shelled.

11 Q Okay.

12 A I don't shell any myself anymore.

13 Q So you're purchasing pecans and then
14 you mail them.

15 A Package them and mail them.

16 Q Okay. So your understanding is that
17 the assessment would have already been paid on
18 those pecans?

19 A Yes, ma'am.

20 MS. SCHMAEDICK: Okay. Great. Thank
21 you. I have no further questions.

22 MS. VARELA: Jen Varela, USDA.

1 BY MS. VARELA:

2 Q Mr. Beshears, I see from your resume
3 that you hail from the Great State of Florida.

4 A Yes, ma'am.

5 Q And since I believe you're our only
6 witness so far from Florida, I wanted to ask you
7 just a few questions to complete our background
8 understanding of the growing area because, as you
9 see, Florida is included in the production area.
10 And I saw that for a while you were president of
11 the Florida Pecan Growers. Is that an
12 organization that still exists?

13 A Yes, ma'am.

14 Q And about how many members would you
15 say that that organization has?

16 A I called yesterday. We have 36 paid
17 members. At one time we had more but as of
18 yesterday it was 36.

19 Q And in your estimation or to your
20 knowledge of the industry, would most growers in
21 the state belong to that organization?

22 A You need to know that in the State of

1 Florida there's probably -- or you need to
2 understand in Florida there's very few commercial
3 growers. Most of ours are sideline things, as
4 described somewhere in there, they've got 20-30-
5 40 acres. Most of the people are smaller growers
6 and retired people trying to grown pecans.
7 There's very few what I would call real
8 commercial orchards in Florida.

9 Q Thank you for that clarification. So
10 in your opinion -- and I know that you have
11 testified so far that you are okay with this 30
12 acre threshold but you personally might consider
13 commercial different threshold. When you say
14 that there are very few commercial growers in the
15 state, are you using that 30 acre definition that
16 we're using here?

17 A Yes, ma'am.

18 MS. VARELA: Okay. Thank you very
19 much. Those are all my questions for you.

20 JUDGE GUTHRIDGE: Ms. Schmaedick

21 MS. SCHMAEDICK: My apologies.

22 Melissa Schmaedick, USDA. I do want to just

1 clarify for the record. I believe there was a
2 reference to the 1937 Price Stabilization Act,
3 and I would like to make sure that we are
4 referring to the Agricultural Marketing Act of
5 1937.

6 MR. DAVIS: That was my intention,
7 yes. Thank you.

8 MS. SCHMAEDICK: Thank you.

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

11 MS. CHILUKURI: No, Your Honor.

12 JUDGE GUTHRIDGE: Mr. Davis?

13 REDIRECT EXAMINATION

14 BY MR. DAVIS:

15 Q I'll pick up on one of Ms. Varela's
16 questions. You own a rather large nursery. Is
17 that correct?

18 A Yes.

19 Q And you are selling pecan trees.
20 Correct?

21 A Correct.

22 Q Are most of your customers, the

1 customers buying those located and planning on
2 planting them somewhere other than Florida?

3 A Absolutely.

4 Q Without giving too much specificity,
5 where would you say the majority of your
6 purchasers come from, or where do they plan to
7 plant those trees?

8 A I'd say our largest state would be
9 Georgia, and we sell Alabama and we sell South
10 Carolina. Alabama, Georgia and South Carolina
11 probably do 80 percent of our business, with
12 Georgia doing 60 percent or 70 percent of that.

13 MR. DAVIS: All right. Thank you.
14 That's all I have.

15 JUDGE GUTHRIDGE: Does USDA have any
16 more questions?

17 (No response.)

18 JUDGE GUTHRIDGE: Does anyone in the
19 audience have a question?

20 (No response.)

21 JUDGE GUTHRIDGE: No questions. Mr.
22 Beshears, you're excused.

1 (Whereupon, the witness was excused.)

2 JUDGE GUTHRIDGE: You have two more
3 witnesses. I hate to do this to you but I would
4 like to take about a ten-minute break.

5 MR. DAVIS: Your Honor, we always
6 agree with Your Honor.

7 JUDGE GUTHRIDGE: Thank you.

8 (Whereupon, a brief recess was taken.)

9 JUDGE GUTHRIDGE: Back on the record,
10 please.

11 Whereupon,

12 JERRY DOWDY
13 having been first duly sworn, was called as a
14 witness herein and was examined and testified as
15 follows:

16 JUDGE GUTHRIDGE: Mr. Quirós.

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

18 DIRECT EXAMINATION

19 BY MR. QUIR S:

20 Q Mr. Dowdy, before we begin your
21 testimony, I have a couple of preliminary things.
22 The first is have you received Exhibit 1 which

1 was a notice published in the Federal Register by
2 the USDA that includes the proposed Federal
3 Marketing Order for pecans?

4 A I have.

5 Q And have you received what is Exhibit
6 23 in these hearings which is an executive
7 summary of the economic analysis of the
8 implementation of a Federal Marketing Order for
9 pecans that was prepared by Dr. Marco Palma?

10 A I have.

11 Q Thank you. I understand you have
12 prepared testimony for us this morning. If you'd
13 please read it, we would appreciate it.

14 A I'd like to preface my remarks by
15 saying if I appear to be nervous it's only
16 because I am.

17 My name is Jerry Dowdy. That's
18 spelled
19 J-E-R-R-Y, D-O-W-D-Y. I'm the president of
20 Atwell Pecan Company, a pecan shelling facility
21 located in Wrens, Georgia, which is about 30
22 miles south of Augusta, Georgia. Atwell Pecan

1 Company started in 1935 as US Highway 1 began to
2 be the main north-south route for travel along
3 the eastern seaboard. At that time there was an
4 opportunity to sell pecans to the traveling
5 public on a small scale. Eventually the Atwell
6 business model shifted to focus on fund-raising
7 which is selling pecan kernels to churches and
8 other groups for resale.

9 Family ties brought me into the pecan
10 business. After graduating from the University of
11 Georgia with a degree in forest resources, I
12 found job prospects were limited in the forestry
13 field. I went to work for Mascot Pecan Company,
14 a small shelling operation at that time, located
15 in Glennville, Georgia. It was owned and
16 operated by my wife's late father, Hugh Oliver,
17 and his brother-in-law, Mills Tarver.

18 In 1971, Mr. Tarver, Mr. Oliver and I
19 purchased At well Pecan Company and continued to
20 focus primarily on the fund-raising business,
21 selling to various clubs and organizations around
22 the country. IN 1986, Mr. Oliver and my wife

1 Susan bought a pecan growing operation in
2 Washington County, Georgia, located between the
3 community of Davisboro, Georgia and the town of
4 Sandersville, Georgia. We operated this orchard
5 until late 2011 when it was sold to the present
6 owner.

7 Today my wife Susan and I own Atwell
8 pecan Company which is now a pecan shelling and
9 candy production business only, handling
10 approximately two million inshell pounds a year.
11 The majority of these are high quality nuts of
12 varieties such as Desirable or Pawnee. With
13 annual gross revenue less than \$7 million, Atwell
14 Pecan qualifies as a small business under the
15 Small Business Administration guidelines.

16 I've reviewed the proposed Federal
17 Marketing Order and I support its adoption. I've
18 also reviewed the summary economic analysis
19 prepared by Dr. Marco Palma. I'm aware that the
20 proposed order may impose some direct costs on my
21 operation, such as the 1 to 3 cents per pound
22 assessment. It's also my understanding that

1 there may be some additional indirect costs in
2 the form of assessments that include the
3 obligation to keep records of the amount of
4 product I handle and the calculation and
5 remission of assessments to the American Pecan
6 Council. I believe these costs are reasonable
7 and are not unduly onerous.

8 Perhaps more importantly, I'm aware of
9 the benefits that will flow from the increased
10 marketing, promotion and research efforts,
11 including more accurate market data. I'm
12 convinced that these benefits outweigh the cost
13 to my business. In the future, the proposed
14 handling authorities for grades, sizes, quality,
15 packaging, transportation, while burdensome in
16 the short term, should prove helpful for my
17 business and the industry as a whole in the long
18 term.

19 I also understand that only shellers
20 that handle more than one million pounds of
21 inshell pecans per year will be eligible to
22 nominate and to be elected to the sheller seats

1 on the Council. I believe this is a fair
2 threshold. First, I'm not aware of any sheller
3 in my area who handles less than one million
4 pounds inshell per year that is in the commercial
5 shelling business. Further, if there is such a
6 sheller, I don't believe it would be commercially
7 viable because of the investment that would be
8 required. Cost of equipment alone would make it
9 difficult for such a small production to turn a
10 profit.

11 As an individual pecan sheller with a
12 deep interest in a strong and thriving pecan
13 industry, I support the proposed marketing order
14 and encourage Secretary Vilsack to adopt and
15 implement it.

16 I'm also a longstanding member of the
17 National Pecan Shellers Association, a member of
18 the NPSA board of directors, and I currently
19 serve as its chairman. The National Pecan
20 Shellers Association is a trade association of 25
21 active shelling members and 66 affiliate members
22 that include growers, brokers, accumulators,

1 equipment and other suppliers to the shelling
2 industry. Of the 25 active or shelling members,
3 18, or 72 percent, qualify as small businesses
4 under the guidelines of the Small Business
5 Administration.

6 As the name suggests, our organization
7 focuses on issues that directly impact the
8 shelling and processing of pecans, regulatory
9 compliance, nutrition research and promotion of
10 pecans. NPSA members, including myself, have
11 attended a number of informative meetings over
12 the last several years. Indeed, I actively
13 participated in NPSA board decisions to support
14 the formation of a U.S. Pecan Council, now
15 calling itself the American Pecan Board. Pecan
16 shellers have been given ample opportunity to
17 express concerns and offer suggestions as the
18 Federal Marketing Order for pecans began to take
19 shape. These concerns and suggestions have been
20 voiced in these proceedings.

21 Several members of the American Pecan
22 Board are also members of the National Pecan

1 Shellers Association. They, along with Mike
2 Adams, have been instrumental in helping
3 shellers, large and small, understand the
4 challenges and the ultimate impact this Federal
5 Marketing Order would have on us as individual
6 shellers and as an industry.

7 In addition to my personal support as
8 a pecan sheller, I've been authorized by the
9 board of the National Pecan Shellers Association
10 to testify on its behalf in support of a Federal
11 Marketing Order for pecans. Furthermore, a
12 letter of support from the National Pecan
13 Shellers Association has been written and is
14 submitted by attachment to today's testimony to
15 Secretary of Agriculture Tom Vilsack.

16 I'll be glad to answer any questions.

17 JUDGE GUTHRIDGE: Mr. Quirós?

18 MR. QUIR S: Yes, Your Honor. We
19 would like to tender this as Exhibit 80 at this
20 time.

21 JUDGE GUTHRIDGE: Does USDA have any
22 objection?

1 MS. CHILUKURI: No objection.

2 JUDGE GUTHRIDGE: Does anyone in the
3 audience have an objection?

4 (No response.)

5 JUDGE GUTHRIDGE: With no objection,
6 Exhibit 80 is admitted into the record.

7 (The document referred to was marked
8 for identification as Exhibit 80 and
9 was received in evidence.)

10 BY MR. QUIR S:

11 Q Mr. Dowdy, I have a few questions for
12 you. The first is the attachment to the letter
13 that you referred to, to Secretary Vilsack from
14 the National Pecan Shellers Association. Would
15 you please read that into the record from the
16 salutation through the signature line?

17 A "Dear Secretary Vilsack, The National
18 Pecan Shellers Association wishes to express our
19 support of the Federal Marketing Order for pecans
20 proposed by the American Pecan Board. Our
21 industry has and continues to face issues of
22 price and supply instability in the market. This

1 situation inhibits our efforts to provide a
2 consistent quality supply of pecans to domestic
3 consumers and makes it difficult for producers
4 and processors to earn a fair profit on their
5 operations. We believe that a Federal Marketing
6 Order will contribute to a more stable market
7 environment that is favorable to growers, buyers,
8 shellers and consumers. The National Pecan
9 Shellers Association goes on record in favor of
10 the order and would greatly appreciate your
11 support. Respectfully submitted, Jerry Dowdy,
12 Chairman."

13 Q Thank you, Mr. Dowdy. And you did
14 testify that this letter was approved and the
15 vote was taken by the board of directors that
16 allows you to be here and to write this letter to
17 Secretary Vilsack. Is that correct?

18 A It is correct, yes.

19 Q Thank you. We heard some testimony
20 this morning from Jeff Worn who said that he was
21 not a member of the National Pecan Shellers
22 Association. Do you believe that the National

1 Pecan Shellers Association represents most
2 shellers in this country of more than a million
3 pounds of inshell pecans?

4 A Yes. I believe we represent the
5 majority.

6 MR. QUIR S: Thank you. No further
7 questions at this time of this witness, Your
8 Honor.

9 JUDGE GUTHRIDGE: Does USDA have any
10 questions?

11 MS. SCHMAEDICK: Melissa Schmaedick,
12 USDA.

13 CROSS-EXAMINATION

14 BY MS. SCHMAEDICK:

15 Q Good morning, Mr. Dowdy. Thank you
16 for your testimony.

17 So in your testimony you state that
18 you were part of several meetings during the
19 process of developing this proposed program, and
20 in your capacity as representing the National
21 Pecan Sellers Association, can you talk to us
22 about any concerns that were specific to the

1 sheller community about the proposed program?

2 A There was a concern early on about
3 equal representation between the growing
4 community and the shelling community, but that
5 was ironed out and everybody is on the same page
6 now.

7 Q Thank you. Yes, we've had previous
8 testimony to that.

9 JUDGE GUTHRIDGE: By being on the same
10 page, what do you mean?

11 THE WITNESS: Everybody is in
12 agreement.

13 JUDGE GUTHRIDGE: Thank you.

14 BY MS. SCHMAEDICK:

15 Q And was there any discussion of the
16 proposed assessment rates, the range of
17 assessment rates and I guess any concern over the
18 fact that those assessments would be collected at
19 the handler and potentially the sheller level?

20 A There was discussion about that, but
21 again, we all came to an agreement that the 1 to
22 3 cent proposal was fair, was reasonable, and

1 that the first handler, the way that was set up
2 was acceptable.

3 Q And does your group understand the
4 proposed concept of the inter-handler transfer
5 and how that would work?

6 A Yes, I believe we do.

7 MS. SCHMAEDICK: All right. No
8 further questions. Thank you.

9 BY MS. VARELA:

10 Q Thank you so much for your time today,
11 Mr. Dowdy. We really appreciate your perspective
12 and that of the shellers.

13 I was interested in something you said
14 on page 4 of your testimony, as it's written in
15 front of me. You talked about the focuses of the
16 shellers association looking at issues that
17 directly impact your industry, and one of the
18 specifics you had here was regulatory compliance.
19 Could you tell me a little bit about regulations
20 that shellers currently have to deal with?

21 A Well, there are some new rules coming
22 out which I think everybody is aware of the FSMA

1 rules that will be out shortly. The shelling
2 industry has always had to put out a product that
3 was basically free from E. coli and salmonella,
4 and two basic methods there of sanitation were
5 either chlorine or hot water bath, and so from
6 that point on, once we receive the nuts they go
7 through the rest of the process in a very
8 sanitary fashion, free of contamination or areas
9 where you could incur contamination. We also
10 send product, we as a company, to a private lab
11 and have it analyzed on a periodic basis. Some
12 of the larger companies, I think, have an in-
13 house lab where they do this in-house. So we've
14 gone to great lengths to ensure that our product
15 goes out to the consumer in a safe manner and
16 free from these harmful items.

17 Also -- well, I'll skip that.

18 Q Well, that's actually very
19 informative.

20 A Well, we're interested also in getting
21 a cleaner product out of the field, and I think
22 there's some work being done on this, and we

1 also, we as the association, the NPSA, has funded
2 a program that has done some extensive testing by
3 Dr. Danyluk from the University of Florida for
4 salmonella or E. coli coming in from the orchard,
5 and her studies I think have been finished, I'm
6 not sure they're published yet, but we now have
7 an understanding of the degree of contamination,
8 and it's been very low, coming in out of the
9 orchards and into our processing plants.

10 Q That's actually very helpful. I think
11 you might be the first we have who has been able
12 to speak to the sheller's side of already having
13 to comply with some types of regulation, even if
14 they're not the same types that we're talking
15 about here, and it makes me wonder if -- and
16 absolutely correct me if I'm wrong here -- some
17 of those steps that you have to take, just as a
18 course of being in business and providing a safe
19 product, are some of those additional steps you
20 take part of what makes being a sheller so
21 capital intensive and might make it difficult for
22 someone to get into that?

1 A It's certainly a factor, yes.

2 Q So would you say that those costs are
3 part of what makes that threshold for being
4 considered a sheller who can have a seat on the
5 proposed Council, are those all part of what goes
6 into why you need to shell a million pounds to
7 really be able to stay in business?

8 A Yes, absolutely. A smaller sheller,
9 less than a million pounds, you just can't afford
10 all the equipment and the tests, certainly can't
11 afford an in-house lab to do all the testing to
12 introduce this stuff into consumer channels. So
13 a larger sheller or above two million pounds, you
14 have to either send it to a private lab or do it
15 in-house.

16 Q So from what you've described here
17 today, it sounds to me like there's a lot more
18 involved in shelling than just cracking.

19 A You bet there is.

20 Q And that's something that I think we
21 need to have clear on the record. I mean, I
22 think we've all made some assumptions along the

1 way but you've really been helpful in describing
2 the water bath and having to do some of those
3 preparatory steps. I think sometimes we don't
4 realize that all of that is there.

5 A I think many people think you take
6 them, you run them through a cracker, you take a
7 little bit of shell off, and then they're
8 presented for sale to the consumer. It's not
9 like that.

10 Q And since we kind of got onto the
11 topic of cracking, we've had a few different
12 witnesses talk about how part of the difference
13 in the value of the different classifications of
14 pecans is that the process to actually get to
15 that nut can be a little different. Can you talk
16 about some of those challenges and how the
17 possibility of proposing standards might come
18 into play there? How that would maybe help your
19 business to have -- or if you think it would be
20 helpful to your business to have some common
21 definitions that all shellers would be operating
22 in concert with.

1 A Well, it would seem to me if you had
2 a certain level of quality that could be brought
3 to your plant by those people who grow the nuts,
4 but the problem there is we have a lot of what I
5 call casual or yard tree production, and
6 frequently those nuts are inferior. But from a
7 shelling company standpoint, if you see enough
8 edible product in what comes into your plant that
9 you think it would be cost-effective to try to
10 recover it, then you go ahead and process it. If
11 you don't, then you discard it and discard comes
12 from what we call an inshell blower which sucks
13 off the lighter weight pecans that have basically
14 nothing in them. Some of the heavier stuff moves
15 on into the flow.

16 I don't know if I've answered your
17 question clearly.

18 JUDGE GUTHRIDGE: When you say
19 discard, would that be something within the
20 definition of disappearance?

21 THE WITNESS: Well, from the initial
22 weigh-in, yes, it would be disappearance.

1 JUDGE GUTHRIDGE: Thank you.

2 BY MS. VARELA:

3 Q Thank you for that. Also looking at
4 that same page of your testimony, you mentioned
5 that the shellers association was involved in
6 forming the group that eventually became what we
7 know as the American Pecan Board, and I was
8 hoping that just kind of historically you could
9 shed a little insight on what the conditions in
10 your industry were that motivated everyone to
11 want to create an additional organization. What
12 were those core problems that you thought needed
13 some extra help?

14 A That really has been stated this
15 morning by such wide fluctuations in prices, and
16 in production you just don't know from one year
17 to the next what the carry-in is, what's
18 available in cold storage, and then what the
19 coming crop is, and then how do you mesh the two
20 together to get a reasonable price to go to your
21 customer or to form a market.

22 MS. VARELA: Thank you very much for

1 all of your testimony.

2 JUDGE GUTHRIDGE: Mr. Hinman.

3 MR. HINMAN: Don Hinman, USDA.

4 BY MR. HINMAN:

5 Q Good morning. I just wanted to follow
6 up on Ms. Varela's question a bit more on quality
7 centered. You've mentioned the importance of
8 high quality, and if you could just explain in a
9 bit more detail the current quality standards
10 that you use in the buying process. Can you
11 explain how well those current standards work or
12 if some of the standards that you currently use
13 may be inadequate?

14 A The standards that we have currently
15 work in the shelling of pecans. When you buy a
16 lot of pecans -- lot meaning pounds, whether it's
17 a tractor-trailer load, 44,000 pounds or a pickup
18 load which may be 2,000 pounds -- and you run a
19 yield test, you generally separate that yield.
20 And by yield I mean you weigh out X amount, we
21 usually use a pound ourselves, and we shell those
22 very carefully by hand so that we can extract all

1 of the pecan meat that's in there. And then we
2 take the brightest kernel which is called fancy,
3 and the brown kernel which may be slightly brown,
4 we call that a choice, and then a third grade
5 which is darker but still edible we call an amber
6 or a standard. And these are the basic three
7 grades that the industry has, and I really don't
8 see a way to change that.

9 When you're trying to assess a lot of
10 pecans, then those are basically the three
11 grades. Now, a better quality pecan, again I'll
12 refer to Desirable and Pawnee often have no
13 inferior grade like a choice or a standard, it's
14 all fancy. You hope it is, anyway, when you buy
15 it. But if you get that sample and you run it,
16 you analyze it, and there is a percent of, say,
17 choice meat or standard meat in there, then you
18 negotiate with whoever sold it to you, whether it
19 was an accumulator or a grower, to have a price
20 adjustment if you've agreed on a price
21 previously.

22 Does that make sense?

1 Q That's fine. In terms of choice of
2 fancy, could you foresee that if the market order
3 went into effect you would participate in an
4 effort to redefine, improve, make more clear
5 those standards, such as choice?

6 A I think what we have works now.

7 MR. HINMAN: Thank you. No further
8 questions.

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

11 (No response.)

12 JUDGE GUTHRIDGE: No. Mr. Quirós?

13 MR. QUIR S: No, Your Honor.

14 JUDGE GUTHRIDGE: Are there any
15 questions from the audience?

16 (No response.)

17 JUDGE GUTHRIDGE: No questions. Mr.
18 Dowdy, you're excused.

19 (Whereupon, the witness was excused.)

20 JUDGE GUTHRIDGE: Ms. Wray, any sign-
21 ups?

22 MS. WRAY: No sign-ups, Your Honor.

1 JUDGE GUTHRIDGE: One witness left, it
2 looks like.

3 MR. QUIR S: Yes, Your Honor. And
4 just maybe a moment of brief comments before we
5 call our last witness. Your Honor, even though
6 Mr. Davis and I have served as pro bono counsel
7 for the American Pecan Board, we have tried to
8 present fully the colorful mosaic of the pecan
9 industry in all three regions during this
10 testimony and be advocates for our Proponent
11 Group. We could have been accused, and it might
12 be so, of taking our job too seriously, and
13 that's true because we know how meaningful it
14 will be to this industry if this proposed Federal
15 Marketing Order is approved.

16 We have described our testimony in the
17 last eight days as a jigsaw puzzle, and so we
18 want to call our final witness, who has testified
19 before, Mr. Mike Adams, who can kind of settle
20 all those things. Each witness we felt like was
21 important to describe the industry. Even as Ms.
22 Varela pointed out, our last witness added

1 information that no other witness had, so we
2 believe our record is now complete.

3 But we would be remiss if we called
4 Mr. Adams without, as lawyers, publicly thanking
5 the USDA for all their help and guidance that
6 we've received over the last five months of
7 working with them. We especially want to thank
8 Ms. Melissa Schmaedick and Ms. Jen Varela. Thank
9 you both and thank you all for all of your help.

10 And now we'd like to call our last
11 witness, Mr. Mike Adams.

12 JUDGE GUTHRIDGE: Mr. Adams.

13 Whereupon,

14 MIKE ADAMS

15 having been previously duly sworn, was recalled
16 as a witness herein and was examined and
17 testified further as follows:

18 DIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q Good morning, Mr. Adams.

21 A Good morning.

22 Q I thought I would be saying good

1 afternoon to you, so I'm glad to say good morning
2 to you. Yesterday afternoon did you meet and
3 discuss with us some items that had come to your
4 attention during the course of these proceedings,
5 as the president of the Proponent Group, that you
6 thought it might help clarify the intent of the
7 board in the actual language that's incorporated
8 in the proposed marketing order?

9 A I did, yes.

10 MR. DAVIS: Your Honor, I would now
11 like to tender and hand out what has been marked
12 Exhibit 81. I'm sorry. I'm not tendering it,
13 I'm going to let Mr. Adams identify it, but I
14 will hand out what has been tentatively marked as
15 Exhibit 81.

16 JUDGE GUTHRIDGE: All right.

17 (The document referred to was marked
18 for identification as Exhibit 81.)

19 BY MR. DAVIS:

20 Q You now have before you a copy of what
21 has been tentatively marked as Exhibit 81 to
22 these proceedings.

1 A I do, yes.

2 Q And if you would take a second and
3 glance through that, is this, in fact, a version
4 of Exhibit 1 with the pen and ink corrections
5 that you would like to discuss on the record here
6 today?

7 A Yes, I would.

8 MR. DAVIS: Your Honor, at this time
9 I tender Exhibit 81.

10 JUDGE GUTHRIDGE: Is there any
11 objection from USDA?

12 MR. HILL: I have no objection, Your
13 Honor.

14 JUDGE GUTHRIDGE: Is there any
15 objection from the audience?

16 (No response.)

17 JUDGE GUTHRIDGE: With no objection,
18 Exhibit 81 is admitted as part of the record.

19 (The document referred to, having been
20 previously marked for identification
21 as Exhibit 81, was received in
22 evidence.)

1 BY MR. DAVIS:

2 Q Now let's walk through this document
3 and discuss the specific ministerial or
4 clarification changes you'd like to make. On the
5 page that has the page number from the Federal
6 Register 38024, would you get that before you,
7 and if you would draw your attention down to the
8 pen and ink changes that are on that,
9 particularly Section 986.9, Crack or Cracks.
10 What are the proposed clarifications that you
11 would like to make on that paragraph?

12 A Well, previous testimony indicated
13 that those really were inclusive of two different
14 definitions in one, and so I think for clarity
15 we'd like to separate cracks and crack in the
16 definitions.

17 Q So you would merely just take the two
18 definitions that currently appear in Section
19 986.9 and break those into separate definitions,
20 be that as a new number section point something
21 or other or an (a) and (b) under Cracks.

22 A Whatever is convenient, but I think

1 separating the two would, again, lend itself to
2 clarity because they're used in different
3 contexts.

4 MR. DAVIS: Do you want me to give the
5 contexts, Your Honor?

6 JUDGE GUTHRIDGE: Well, actually I
7 wasn't sure whether you were through with asking
8 about this particular definition.

9 MR. DAVIS: Yes.

10 JUDGE GUTHRIDGE: But I think, as we
11 did going through the testimony with Dr.
12 Hudson --

13 MR. DAVIS: Exactly. I'll stop after
14 every one.

15 JUDGE GUTHRIDGE: Every one.

16 BY MR. DAVIS:

17 Q And again, to put context to that,
18 there was testimony that in the industry the word
19 "crack" may well be, and in fact is used as a
20 part of the processing of pecans, for example,
21 done by a sheller, they would crack the hard
22 shell and take the meat out, and that is

1 distinguished from cracks with an S, and that's
2 just something where a product is damaged in the
3 collection in harvesting or handling. Is that
4 correct?

5 A Yes, that's stated correctly.

6 MR. DAVIS: Those are the last of my
7 comments on that section, Your Honor.

8 JUDGE GUTHRIDGE: Does USDA have any
9 questions on crack and cracks and the proposal to
10 divide into two definitions?

11 MR. HILL: No, Your Honor.

12 JUDGE GUTHRIDGE: Mr. Davis.

13 MR. DAVIS: Yes, Your Honor.

14 JUDGE GUTHRIDGE: Maybe we ought to do
15 the audience also. We do have some, I guess,
16 experts in pecans out there who might have
17 relevant comments.

18 So Mr. Adams has been testifying about
19 dividing what was in the original proposal as
20 986.9, Crack or Cracks into two definitions, and
21 with the audience now having copies of that, does
22 anyone in the audience have any questions for Mr.

1 Adams about that proposal?

2 (No response.)

3 JUDGE GUTHRIDGE: Apparently no
4 questions, so proceed.

5 BY MR. DAVIS:

6 Q Let's move on to the next change we'd
7 like to discuss, 986.28, subsection (a)(2) which
8 I believe appears on page 38025 in this Exhibit
9 81, and you'll see there under that subheading
10 .28(a)(2) a non-exclusive list of improved
11 varieties of pecans and you see that we're
12 proposing to add Gracross and Gratex, spelled
13 G-R-A-C-R-O-S-S and C-R-A-T-E-X to that non-
14 exclusive list -- G-R-A-T-E-X, excuse me -- and
15 was it your memory that in an earlier draft that
16 had been submitted for publication those two
17 improved varieties had been included and were
18 somehow inadvertently dropped?

19 A Yes. Those two varieties were in the
20 original draft that came out of the very first
21 version. At some point they got dropped and
22 we're not sure why but there were a number of

1 iterations, so adding those two would be
2 appropriate.

3 Q So again, in keeping with our last
4 comments, do you believe it was the intent of the
5 board that those two improved varieties be added
6 to this non-exclusive list?

7 A Yes.

8 MR. DAVIS: Okay. Thank you. No
9 further questions, Your Honor.

10 JUDGE GUTHRIDGE: Does USDA have any
11 questions on Section .28?

12 MS. SCHMAEDICK: No questions n that
13 section.

14 JUDGE GUTHRIDGE: Does anyone in the
15 audience have any questions for Mr. Adams on
16 Section .28?

17 (No response.)

18 JUDGE GUTHRIDGE: No questions. Mr.
19 Davis, proceed.

20 BY MR. DAVIS:

21 Q Let's move along. Staying on that
22 same page under Section 986.38, Trade Supply, do

1 you recall that during the testimony that we have
2 heard it has been pointed out that trade supply
3 is defined as a quantity of merchantable inshell
4 or shelled pecans, and I'll just stop right
5 there. And then if we refer back to Section
6 986.26, the definition of merchantable pecans --
7 and again, I'm paraphrasing -- means those pecans
8 that meet the standards that have been put in
9 place by the Council, which has yet been seated,
10 and the hypothetical was posed: Well, how would
11 you define trade supply if there were no
12 regulations in place? And did you believe that
13 that was an ambiguity that needed to be
14 addressed?

15 A I did, yes.

16 Q Would you read into the record what
17 you would proposed to add to the current
18 definition of trade supply in Section 986.38 in
19 order to clarify that?

20 A Picking up at the very end of he
21 current definition, these words would be added:
22 or in the absence of handler regulations, Section

1 986.69, setting for the minimum grade regulations
2 for merchantable pecans, the sum of handler
3 cleaned production and grower cleaned production.

4 Q Now let's go back for just a second.
5 My reading of that would be, "or in the absence
6 of handler regulations, Section 986.69, setting
7 forth the minimum grade regulations..." Is that
8 your reading of that?

9 A That's correct, yes. That's my
10 reading now.

11 Q And do you believe that that would
12 clarify what we would mean by trade supply in the
13 event that there are not regulations in place at
14 any given time?

15 A Yes, I do.

16 MR. DAVIS: No further questions then,
17 Your Honor.

18 JUDGE GUTHRIDGE: Does the USDA have
19 any questions?

20 MS. SCHMAEDICK: Melissa Schmaedick,
21 USDA. Your Honor, we may have questions after
22 the presentation of all the corrections, but at

1 this point we have no questions on this specific
2 definition.

3 JUDGE GUTHRIDGE: All right. Does
4 anyone in the audience have any questions on
5 986.38?

6 (No response.)

7 JUDGE GUTHRIDGE: No. Mr. Davis.

8 BY MR. DAVIS:

9 Q And again staying on that same page,
10 I draw your attention to Section 986.45, it
11 appears that one, two, three, four, five lines
12 down in that paragraph the line beginning
13 "nominated and selected" in the same you would
14 propose to delete the word "way" and insert
15 "nomination process."

16 A Yes.

17 Q And do you recall what prompted that
18 question to come up?

19 A Again for clarity, rather than using
20 the word "way" specifically insert what "way"
21 means.

22 Q And again, just paraphrasing, it means

1 that the alternate member will be nominated and
2 selected using the same nomination process that
3 is described for the member.

4 A That's correct.

5 Q And then skip on down to the very end
6 of that -- excuse me, it's not the end, but under
7 Section 986.45(b)(1), Grower Seat, where it's
8 talking about Seat 3 allocated to a grower whose
9 acreage -- it appears that you've deleted "does
10 not exceed 175" and have inserted "is less than
11 176." Did I read that change correctly?

12 A Yes.

13 Q And what is the purpose of that
14 change?

15 A Just again, clarity to take care of
16 that one-acre gap.

17 Q I believe it was pointed out by
18 someone that if large is described as 176 and
19 above and small is defined as 175, we could have
20 that pesky farmer with 175.5 acres and we would
21 not know what to do with him.

22 A Yes

1 Q But now we know.

2 A We know.

3 Q We know what we were proposing. All
4 right. I think we move on --

5 JUDGE GUTHRIDGE: Any questions on
6 .45? Does USDA have any questions on 986.45?

7 MR. HILL: We'll continue to wait
8 until the end, Your Honor.

9 JUDGE GUTHRIDGE: Does anyone in the
10 audience have any questions about 986.45?

11 (No response.)

12 JUDGE GUTHRIDGE: No. Mr. Davis.

13 BY MR. DAVIS:

14 Q Let's move on. The paragraph actually
15 begins on the same page but continues on, the
16 correction is on the next page, of Section
17 986.46, Council Nominations and Voting, and on
18 the top of the next page under subsection (a),
19 counting down one, two, three, four, five, six,
20 seven, eight lines, it appears that the sentence
21 "eligible to cast" you've inserted the word
22 "votes on nomination forms." Do you see that?

1 A I do.

2 Q And again, what's the purpose of that
3 change?

4 A Clarity.

5 Q Moving on in that section into the
6 next column under what appears to be paragraph
7 (b)(3)(ii), the second line, the word
8 "nomination" has been deleted and the words "vote
9 for the nominee candidates" has been inserted.
10 Is that correct?

11 A That's correct.

12 Q And again, what is the purpose of that
13 change?

14 A Again, just to make it more clear.

15 Q Let's go on down then to the next
16 subsection which would be Section
17 986.46(b)(3)(iii) and counting down one, two,
18 three, four, five lines the line beginning
19 "Volume of production" it appears that you've
20 added "(pounds of inshell pecans). Do you see
21 that?

22 A I do.

1 Q And again, what was the purpose of
2 that change?

3 A Again, the vote is going to be in
4 inshell pounds and that was just to kind of
5 restate and differentiate inshell from shelled.

6 Q And continuing on down that same
7 column to 986.46(b)(3)(v), the first line you
8 have deleted "175 or fewer" and inserted "less
9 than 176." Is that correct?

10 A That's correct.

11 Q And again, what is the purpose of that
12 change?

13 A Same argument as the other correction.

14 MR. DAVIS: I'll stop at this time,
15 Your Honor.

16 JUDGE GUTHRIDGE: Does USDA have any
17 questions on this section?

18 MR. HILL: We're going to continue to
19 hold off, Your Honor.

20 JUDGE GUTHRIDGE: All right. Does
21 anyone in the audience have any questions on
22 Section 986.46?

1 (No response.)

2 JUDGE GUTHRIDGE: No. Mr. Davis.

3 BY MR. DAVIS:

4 Q Next, Mr. Adams, I'm sure you and the
5 audience will be glad to know we're moving on
6 over to Section 986.55 which appears at page
7 38028, and if you will follow with me down
8 through 986.55 subparagraph (c) subparagraph (1),
9 you'll see four lines down in that subparagraph
10 you have inserted a colon and then deleted the
11 words following that newly inserted colon, and I
12 quote "and must be approved at an in-person
13 meeting." Do you see that deletion?

14 A Yes.

15 Q Explain why you think this change
16 should be made.

17 A Well, this came up in testimony,
18 actually in questioning, and I think a very
19 appropriate question from USDA was that this may
20 inhibit the functioning of the Council, and so in
21 discussions with the board, we felt like this was
22 an appropriate deletion.

1 MR. DAVIS: We have nothing further on
2 that paragraph, Your Honor.

3 JUDGE GUTHRIDGE: Does USDA have any
4 questions on 986.55?

5 MR. HILL: Not at this time, Your
6 Honor.

7 JUDGE GUTHRIDGE: Does anyone in the
8 audience have any questions on 986.55?

9 (No response.)

10 JUDGE GUTHRIDGE: No questions. Mr.
11 Davis.

12 BY MR. DAVIS:

13 Q Mr. Adams, move on with me, if you
14 will, to 986.62, Inter-handler Transfers, and
15 that appears on page 38029. Do you see that it
16 appears that on the third line of that paragraph
17 you have struck the sub-parenthesis (I) and
18 inserted (h). Is that correct?

19 A Yes.

20 Q And was that just a scrivener's error
21 that's being corrected?

22 A Yes, just a correction.

1 Q Moving on --

2 JUDGE GUTHRIDGE: No further questions
3 on that one?

4 MR. DAVIS: I'm sorry. No further
5 questions.

6 MR. HILL: No, Your Honor, no
7 questions.

8 JUDGE GUTHRIDGE: No questions from
9 USDA. Does anyone in the audience have any
10 questions?

11 (No response.)

12 JUDGE GUTHRIDGE: No questions. Mr.
13 Davis.

14 BY MR. DAVIS:

15 Q I would move then to Section 986.65
16 and go down to subparagraph (f), and you'll
17 notice that we've just put in brackets the phrase
18 "trade inventory" with a question mark there as
19 to whether that should be taken out. Is that
20 quite simply because there just doesn't seem to
21 be a defined term for "trade inventory"? And
22 perhaps a definition could be current inventory

1 or something else, but right now since that's not
2 a defined term, it's not really clear, is it?

3 A That's correct.

4 Q So you would welcome some
5 clarification of that?

6 A Yes.

7 MR. DAVIS: Nothing further at this
8 time, Your Honor.

9 JUDGE GUTHRIDGE: Does USDA have
10 questions?

11 MR. HILL: Not at this time, Your
12 Honor.

13 JUDGE GUTHRIDGE: Does anyone in the
14 audience have a question?

15 (No response.)

16 JUDGE GUTHRIDGE: Mr. Davis.

17 BY MR. DAVIS:

18 Q Let's move on then on that same page
19 to Section 986.69, subparagraph (b) subparagraph
20 (1), and it appears that in the second line of
21 that subparagraph you have inserted "and approval
22 by the Secretary." Do you see that insert?

1 A I do, yes.

2 Q And was that just to make that
3 consistent with other paragraphs where
4 recommendations of the Council, it is made clear
5 that it must later be approved by the Secretary?

6 A Exactly, yes.

7 MR. DAVIS: No further questions or
8 comments on that, Your Honor.

9 JUDGE GUTHRIDGE: Does USDA have
10 questions on 986.69?

11 MR. HILL: Not at this time, Your
12 Honor.

13 JUDGE GUTHRIDGE: Anyone in the
14 audience have a question on 986.69?

15 (No response.)

16 JUDGE GUTHRIDGE: No. Mr. Davis.

17 BY MR. DAVIS:

18 Q Your Honor, let's move on a page or
19 two to 986.94, Termination, subparagraph (d)
20 where you have deleted, counting down 14 lines,
21 you have deleted "a representative" and have
22 inserted "an appropriate" then you have left the

1 word "period" and then you have inserted "of
2 time" after that. Do you see that?

3 A Yes.

4 Q And again, why was that change made?

5 A Well, representative period is
6 actually defined and we thought it would suit
7 this paragraph better to insert "an appropriate
8 period of time" rather than "representative
9 period" because there is a specific definition
10 for that.

11 Q And that definition would not be
12 appropriate at this point.

13 A That's correct.

14 MR. DAVIS: And Your Honor, I believe
15 that those are all the proposed changes that we
16 would make.

17 JUDGE GUTHRIDGE: Was it USDA's
18 intention now to cover all these proposed changes
19 to the proposal?

20 MR. HILL: Yes, we're going to ask
21 some questions but we'd like to have about ten
22 minutes so we could confer with each other. It

1 would helpful and it would probably go faster.

2 JUDGE GUTHRIDGE: Any objection?

3 MR. DAVIS: No. I enthusiastically
4 support that.

5 JUDGE GUTHRIDGE: Off the record.

6 (Whereupon, a brief recess was taken.)

7 JUDGE GUTHRIDGE: We recessed a few
8 minutes ago for USDA to go over Exhibit 81.
9 Everybody is back, and so USDA, what questions,
10 if any, do you have about Exhibit 81?

11 MS. SCHMAEDICK: Yes. Thank you.

12 So I'd like to ask the question would
13 you prefer -- USDA has some questions about
14 sections that have not been addressed yet in this
15 Exhibit 81. Would you prefer that I ask
16 questions on all the sections identified in 81
17 and then shift to USDA questions, or would you
18 like me to go through the exhibit one section at
19 a time.

20 THE WITNESS: I'd prefer the first way
21 but if you prefer otherwise.

22 JUDGE GUTHRIDGE: Are you saying just

1 start with Section 1 and go through 90 whatever
2 it is, or first address the changes that Mr.
3 Adams has already testified about?

4 MS. SCHMAEDICK: Correct. And so I
5 understand it's your preference to do your
6 proposed changes first?

7 THE WITNESS: I'm really indifferent.

8 MR. DAVIS: I'm sorry. I understood
9 the witness to say he would prefer that you just
10 go in numerical order.

11 THE WITNESS: Right.

12 MR. DAVIS: It would just be easier to
13 follow.

14 JUDGE GUTHRIDGE: That might be easier
15 for somebody reading the transcript to follow,
16 and that's always my perspective or one of my
17 perspectives.

18 MS. SCHMAEDICK: Okay. All right. In
19 that case, starting with 986.26, Merchantable
20 Pecans.

21 MR. DAVIS: I'm sorry. Did you just
22 say paragraph 26?

1 MS. SCHMAEDICK: 986.26, Merchantable
2 Pecans.

3 JUDGE GUTHRIDGE: Let me interrupt
4 just for one thing. Has this been admitted yet?

5 MR. DAVIS: Yes. It was tendered and
6 admitted.

7 JUDGE GUTHRIDGE: Exhibit 81, do you
8 have that as being admitted?

9 MR. DAVIS: I would not have asked him
10 questions until it was admitted.

11 JUDGE GUTHRIDGE: Okay. I didn't
12 annotate mine. Sorry.

13 THE WITNESS: Are we going by number
14 or by -- I guess I'm unclear how we're taking it.
15 And the reason I ask is you're going to .26 and
16 we had a correction on .9

17 MS. SCHMAEDICK: We have no comment on
18 the correction on .9.

19 THE WITNESS: Okay.

20 MR. DAVIS: So 1 through 25 you don't
21 have any comments.

22 MS. SCHMAEDICK: Correct.

1 THE WITNESS: I'm with you.

2 CROSS-EXAMINATION

3 BY MS. SCHMAEDICK:

4 Q So the question in 986.26 is -- well,
5 it's a little bit complicated so let me see if I
6 can work up to it. Based on the proposed
7 modification of 986.38, Trade Supply -- and I'll
8 read that proposed change into the record.
9 You're recommending inserting language that
10 states "or in the absence of handler regulations,
11 986.69, setting forth minimum grade regulations
12 for merchantable pecans, the sum of handler-
13 cleaned production and grower-cleaned production
14 would define trade supply." So what we're trying
15 to grasp and make sure is explained clearly in
16 the record is that in the absence of handling
17 regulations -- and perhaps I'm restating the
18 obvious -- but in the absence of handling
19 regulations merchantable pecans would be the sum
20 of grower and handler cleaned production, and
21 therefore, disappearance would be zero.

22 A It is a complicated -- I mean, you

1 stated the question but to put my mind around it.

2 Q So let me put that into perspective.
3 So right now if we were turn disappearance into a
4 mathematical equation, you have the sum of
5 grower-cleaned and handler-cleaned production.

6 A Right.

7 Q And then you're subtracting from that
8 sum the available supply of merchantable pecans,
9 but if there are no merchantable pecans because
10 there are no handling regulations in effect, the
11 difference becomes zero.

12 A I see that.

13 Q Okay. The reason we're asking is that
14 disappearance has been used in many different
15 ways throughout witness testimony, and we want to
16 be sure that the way it is defined here is
17 consistent in terms of how it's used throughout
18 the proposed document.

19 A And I hear what you're saying.

20 Q And perhaps this is something that you
21 want to think about and then respond to later.

22 MR. DAVIS: I can't ask the USDA a

1 question, but perhaps if I could ask a question
2 to the witness, that could prompt a question from
3 USDA, Your Honor

4 JUDGE GUTHRIDGE: Certainly.

5 REDIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q Mr. Adams, we made a proposed change
8 to Section 986.38 to make clear that we were
9 going to use the definition of merchantable
10 pecans but in the absence of regulation then it
11 was going to be those two sums. Take a look if
12 we were to insert the phrase "or in the absence
13 of regulations pursuant to 986.69, then the sum
14 of handler-cleaned production and grower-cleaned
15 production" to the definition of inshell
16 merchantable pecans and shelled merchantable
17 pecans, paragraph .26, do you think that that
18 would clarify that later and make the definition
19 of disappearance more meaningful?

20 A I'm unsure about it. I mean, I've got
21 to spend more time thinking about that than
22 obviously both of you have. I don't want to

1 testify to something I haven't thought about for
2 a while

3 MS. SCHMAEDICK: Certainly, and given
4 the importance of this testimony and clarity in
5 the record, we understand that.

6 JUDGE GUTHRIDGE: Can we anticipate
7 that it might be appropriate to take another
8 break after USDA asks its questions on other
9 sections of 986, then reconvene so we can
10 anticipate another break here? That would give
11 Mr. Adams an opportunity to consult with counsel.

12 MR. HILL: If counsel wants that, we
13 would definitely be fine with that. Yes.

14 MR. DAVIS: Thank you.

15 JUDGE GUTHRIDGE: All right. Thanks.

16 RE-CROSS-EXAMINATION

17 BY MS. SCHMAEDICK:

18 Q So shifting to 986.45, American Pecan
19 Council -- oh, I'm sorry -- shifting to 986.41,
20 Warehousing, so we've heard testimony that
21 warehousing of both assessed and unassessed
22 pecans can occur at the handler level.

1 A Yes.

2 Q And so we are wondering if there might
3 be two clarifications that would work. One would
4 be to modify the definition of warehousing to say
5 warehousing means to hold inventory in cold
6 storage or to hold inventory into the next fiscal
7 year, or something along those lines.

8 A Cold storage wouldn't work in every
9 situation.

10 Q At any rate, to modify that particular
11 definition so that it is not limited to
12 unassessed inventory, but then also include a
13 corresponding clarifying change to 986.61,
14 paragraph (h) which states: "On August 31 of
15 each year, every handler warehousing inshell
16 pecans" so we would clarify that to state:
17 "Every handler warehousing unassessed inshell
18 pecans."

19 A Again, going back to the way it works,
20 you will have a handler that's warehousing both
21 assessed and unassessed, and the August 31 count
22 rule, which purpose is to separate old crop and

1 new crop, would trigger the assessment of the
2 unassessed inventory. So that's the purpose and
3 the way it was intended to work.

4 Q Okay. Thank you. And now moving to
5 986.45, American Pecan Council, and the Proponent
6 Group is recommending a modifying change that
7 would remove the word "way" and insert
8 "nomination process." So just for clarification,
9 is it the intent to have a ballot that is
10 specific to an alternate member?

11 A No.

12 Q So for clarification, we are wondering
13 if simply the removal of "and selected in the
14 same way" would be clearer given that the actual
15 nomination voting process is further described in
16 986.46.

17 JUDGE GUTHRIDGE: So how would it end
18 up reading?

19 MS. SCHMAEDICK: The new sentence
20 would read: "The American Pecan Council is
21 hereby established, consisting of 17 members
22 selected by the Secretary, each of whom shall

1 have an alternate member nominated with the same
2 qualifications as the member."

3 MR. DAVIS: Let's consider that.

4 THE WITNESS: We'll consider that.

5 Yes.

6 BY MS. SCHMAEDICK:

7 Q And again, the purpose is to avoid
8 confusion that there are two processes.

9 A I understand.

10 Q Moving on to 986.55, Procedure,
11 Proponents have recommended -- I apologize.
12 Before getting to Procedure, let's go to --

13 A See, I don't even know what you're
14 apologizing for. That's between you and Ms.
15 Sharrow.

16 Q 986.32(b). Currently it says: "With
17 the approval of the Secretary, the boundaries of
18 any district may be changed pursuant to 986.58."
19 Given that your proposed programs doesn't have
20 districts, it has regions, would it be
21 appropriate to clarify that that means regions?

22 A Yes.

1 Q Okay. Thank you. Back to 986.55, the
2 Proponent Group is recommending removing the
3 language under (c)(1) that states that "a
4 concurring vote of Council members must be
5 approved in an in-person meeting." And given the
6 abundance of testimony to the importance --

7 JUDGE GUTHRIDGE: They're just
8 proposing removing "and must be approved by an
9 in-person meeting." Is that what you said? I
10 thought you started earlier than that.

11 MS. SCHMAEDICK: I believe that's what
12 I intended to say.

13 JUDGE GUTHRIDGE: So they would insert
14 a colon after members and delete the next.

15 MS. SCHMAEDICK: Delete the words "and
16 must be approved at an in-person meeting."

17 JUDGE GUTHRIDGE: Thank you.

18 BY MS. SCHMAEDICK:

19 Q So given the abundance of testimony
20 with regard to the importance of these issues,
21 and given the witness testimony that clearly
22 indicates that the preference would be a face-to-

1 face meeting but that there might be also a
2 preference to the types of alternatives sought,
3 we're wondering if you could look at 986.55
4 paragraph (c)(2) there's a proviso that reads --
5 and this is pertinent directly to securing a bank
6 loan -- but it reads that "in the event of an
7 emergency that warrants immediate attention
8 sooner than a face-to-face meeting is possible, a
9 vote for financing may be taken. In such event,
10 the Council's first preference is a video
11 conference and second preference is a phone
12 conference, both followed by written confirmation
13 of the members attending the meeting."

14 So my question is would it be
15 appropriate to create a proviso using this
16 similar language that was discussed with Ms.
17 Helen Watts as being an appropriate alternative?

18 A Yes. And if I might, that's a board
19 decision and I'm expressing to you the sense of
20 the board with this change, but Your Honor, can I
21 ask questions of the audience? I've got two
22 board members back there.

1 JUDGE GUTHRIDGE: You're the one who's
2 testifying.

3 MR. DAVIS: Let's do that at the
4 conference.

5 JUDGE GUTHRIDGE: You can do that at
6 the conference.

7 THE WITNESS: I think the answer is
8 going to be yes, but again, I don't want to take
9 full authority for that without conferring with
10 some board members.

11 BY MS. SCHMAEDICK:

12 Q So just to clarify, the intent that
13 we've heard on the record is that there's
14 flexibility.

15 A Yes.

16 Q But we've also heard that these are
17 important issues.

18 A Correct.

19 Q So our concern is that that is
20 adequately addressed.

21 A That's correct. Yes.

22 Q 986.62, Inter-handler Transfer. The

1 Proponent Group has recommended changing the
2 reference to 986.61(I) to 986.61(h), and we're
3 wondering if it might be clearer to say both (h)
4 and (I).

5 A Yes.

6 MR. QUIR S: I think (I) --

7 MR. DAVIS: Let's just add that to the
8 conference list.

9 JUDGE GUTHRIDGE: Again, as I
10 anticipate what we're doing now, we're getting
11 certain areas in which the proponents are going
12 to need to consult and then come back, and this
13 appears to be one of them.

14 MR. HILL: I think that's reasonable,
15 Your Honor.

16 BY MS. SCHMAEDICK:

17 Q Just to clarify, in 986.62, paragraph
18 (I) -- .61, paragraph (I), the first sentence
19 reads: "On August 31 of each year, all
20 inventories warehoused by growers from the
21 current fiscal year shall cease to be eligible
22 for inter-handler transfer treatment." In your

1 opinion, is it clearly stated that this would be
2 an exception to 986.62, Inter-handler Transfer?

3 A Are you reading (I) or (h)?

4 Q (I).

5 A I would really like to be able to
6 conference on this.

7 Q Okay. Certainly. No problem. For my
8 next question I'd like to start by having you
9 look at the proposed definition of variety which
10 is 986.40, and I'll read it into the record for
11 you. 986.40 reads: "Varieties mean and include
12 all cultivars, classifications or subdivisions of
13 pecans." Do you see that?

14 A I do, yes.

15 Q And then if we turn to 986.28 which is
16 the definition of pecans, that first paragraph
17 (a) reads: "Pecans means and includes any and
18 all varieties or sub-varieties of genus Carya,
19 species illinoensis, expressed also as Carya
20 illinoensis..."

21 A We understand. Before this hearing I
22 practiced that word and I still can't say it.

1 Q "...including all varieties thereof,
2 excluding hicans, that are produced in the
3 production area and are classified as:" So if
4 you then turn your attention to 986.69,
5 Authorities regulating handling --

6 JUDGE GUTHRIDGE: If I may interject
7 at this point, Ms. Schmaedick, are you referring
8 to the word "varieties" in .28(a)(1), that that
9 word is used in that definition, but varieties,
10 as used in 986.40, does not seem to include the
11 native pecans?

12 BY MS. SCHMAEDICK:

13 Q What I'm trying to understand is if
14 the intent of the board is that in the definition
15 of varieties where it states "includes all
16 cultivars, classifications or subdivisions" and
17 then by using the term "classified" under the
18 definition of pecans, is that the common thread
19 that allows under 986.69(a)(1), would that common
20 thread allow for handling regulations specific to
21 native and seedlings to be established?

22 A Yes.

1 Q And let me just further add that if
2 that is the intent, might it not be an
3 appropriate clarification to modify paragraph
4 986.69(a)(1) to state: Establishing handling
5 requirements or minimum tolerances for particular
6 grades, sizes or qualities, or any combination
7 thereof, of any or all varieties or
8 classifications of pecans during any period?

9 A Yes.

10 MS. SCHMAEDICK: Thank you.

11 JUDGE GUTHRIDGE: Ms. Schmaedick, I
12 think you raised my horse from the dead.

13 MS. SCHMAEDICK: Mine too.

14 (General laughter.)

15 BY MS. SCHMAEDICK:

16 Q And then similarly, would a
17 clarification in 986.69(a)(2) to read: Establish
18 different handling requirements or minimum
19 tolerances for particular grades, sizes or
20 qualities, or any combination thereof, for
21 different varieties or classifications, for
22 different containers, for different portions of

1 the production area, or any combination of the
2 foregoing during any period?

3 A And basically the intent is it include
4 the native classification. I think that's
5 appropriate.

6 Q Okay. Thank you. I just again want
7 to be sure that the intent of the American Pecan
8 Board is carried forward.

9 A When we said in (a)(1) and (a)(2),
10 when we were saying varieties of pecans, that was
11 inclusive of pecans.

12 Q Inclusive of native?

13 A All pecans, going back to the
14 definition of pecans.

15 MS. SCHMAEDICK: Okay. Thank you.

16 We have no further questions, Your
17 Honor.

18 JUDGE GUTHRIDGE: All right. Does
19 anyone from the audience have any questions
20 before we take another recess?

21 (No response.)

22 JUDGE GUTHRIDGE: No. If I followed

1 correctly, I think there's going to be
2 consultation on the USDA's on 986.26, .41, .45,
3 .55, and .62. Did I get them all?

4 MR. QUIR S: I have one other, Your
5 Honor.

6 JUDGE GUTHRIDGE: And then I don't
7 know whether you want to talk any more about the
8 varieties issue which there have been several
9 sections come up, just to make sure that that's
10 clear.

11 MR. DAVIS: Wasn't the definition of
12 disappearance also implicated?

13 JUDGE GUTHRIDGE: Was that one also?

14 MR. DAVIS: It was .12, .26 and .12.
15 We're going to try to limit our discussion to
16 only those areas that we'd like to clarify.

17 JUDGE GUTHRIDGE: Some of those
18 affected more than one, like .26 also related to
19 the change in .38.

20 MR. DAVIS: Yes, sir. And can we
21 retrieve the tendered Exhibit 81 so that what
22 would be on the official record would have all

1 the pen and ink changes to which we've agreed?

2 JUDGE GUTHRIDGE: Does USDA have any
3 problem with that, or would it be better to
4 handle that all at once after your consultation?

5 MR. DAVIS: It would be after, I would
6 think it would be after.

7 MR. HILL: I have no objection, Your
8 Honor.

9 JUDGE GUTHRIDGE: All right.

10 MR. DAVIS: We'll retrieve it when we
11 finish.

12 JUDGE GUTHRIDGE: And you want to take
13 a recess?

14 MR. DAVIS: Yes.

15 JUDGE GUTHRIDGE: And do you have a
16 time estimate?

17 MR. DAVIS: I believe this should be
18 short, ten minutes.

19 JUDGE GUTHRIDGE: Fifteen.

20 Ms. Wray, has there been anyone sign
21 up?

22 MS. WRAY: No.

1 JUDGE GUTHRIDGE: All right. We'll
2 take a recess.

3 (Whereupon, a brief recess was taken.)

4 JUDGE GUTHRIDGE: Back on the record.
5 We've been on a break where there's been
6 consultation among the Proponent Group.

7 MR. DAVIS: And again for the record,
8 with permission of counsel from USDA and the
9 Court, I have retrieved the tendered Exhibit 81
10 and I'm going to annotate it in accordance with
11 Mr. Adams's testimony, so it being our intent
12 that Exhibit 81 will have all of the consented
13 ministerial changes that Mr. Adams would like to
14 make to Exhibit 1. That is our intent.

15 JUDGE GUTHRIDGE: And there is no
16 objection from USDA on that?

17 MR. HILL: No objection.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q All right. First I think Mr. Adams
21 would like to thank USDA for pointing out what
22 could possibly be considered an ambiguity between

1 the current definitions of .38, .26 and .12
2 concerning the disappearance and merchantable
3 pecans. Unfortunately, with the given
4 definitions, we could not come up with a proposed
5 fix and so we would just recognize that for a
6 relatively, hopefully, limited period of time
7 when there are not definitions of merchantable
8 pecans in place, handling of merchantable pecans,
9 that it would appear the definition of
10 disappearance will result in zero, but we think
11 that that will be for just a limited time, and
12 therefore, we recognize that that's the result,
13 it's not a long-term result, it will be short-
14 term, and then all the definitions will work
15 together. Is that correct, Mr. Adams?

16 A Yes, that's correct.

17 Q All right. Now moving on to more
18 positive territory, Mr. Adams, is it true that
19 you believe that it was the intent of the board
20 to, in fact, in paragraph .32, subparagraph (b)
21 that the word "district" should be "region"?

22 A Yes.

1 MR. DAVIS: And so, Your Honor, the
2 Proponent Group is making that change to Exhibit
3 81.

4 JUDGE GUTHRIDGE: All right.

5 BY MR. DAVIS:

6 Q Move to paragraph .41. Mr. Adams, is
7 it your testimony that the board of the Proponent
8 Group intended that warehousing would mean to
9 hold assessed or unassessed inventory?

10 A Yes.

11 Q And do you propose that definition?

12 A Yes.

13 Q And I'm making that change, inserting
14 the words "assessed or" so that paragraph .41
15 will now read: "Warehousing means to hold
16 assessed or unassessed inventory." Is that
17 correct, Mr. Adams?

18 A Yes.

19 Q Moving on to paragraph .45, do you
20 agree that it was the intent of the board to in
21 paragraph (4) to have the first sentence now
22 merely read: "The American Pecan Council is

1 hereby established, consistent of 17 members
2 selected by the Secretary, each of whom shall
3 have an alternate member nominated with the same
4 qualifications as the member." Is that your
5 intent?

6 A Yes.

7 Q So we propose to delete "and selected
8 in the same way and." Is that correct?

9 A Yes.

10 Q I will now make that change to Exhibit
11 81.

12 Let's focus on the comments that were
13 made on paragraph .55, if you would, please,
14 .55(c), I believe. And there was some suggestion
15 that perhaps .55(c)(1) should be modified in some
16 way to suggest that there is a preference of in-
17 house meetings but you could provide for
18 alternatives. Do you believe that with the
19 change we had proposed previously, read in
20 conjunction with subparagraph (b) that it would
21 be clear that in-house meetings, of course, could
22 be held but in the alternative you could have

1 telephone or video conferences?

2 A Yes. We think that .55(b) will
3 address the deletion and cover the preference of
4 the board.

5 Q And in fact, although there has been
6 testimony about how important the issues are in
7 (c) that with modern technology, in fact, if it
8 is a very important issue, more people could
9 participate by using video conferences and
10 telephone conferences and the groups could be
11 better represented with this technology rather
12 than just insisting on an in-person meeting. Is
13 that correct?

14 A We do, yes.

15 MR. DAVIS: So we are not agreeing to
16 any change to the change that we already have in
17 Exhibit 81. All right, Your Honor?

18 JUDGE GUTHRIDGE: Run that by me
19 again.

20 MR. DAVIS: We had made a proposed
21 change in Exhibit 81 and that proposed change
22 stands.

1 JUDGE GUTHRIDGE: You mean in
2 .55(c)(1)?

3 MR. DAVIS: Yes. We're just going to
4 take out "and must be approved in an in-person
5 meeting." We'll leave the colon and delete that
6 next clause.

7 JUDGE GUTHRIDGE: Okay. I would point
8 out that the proviso in (2) refers specifically
9 to a vote for financing.

10 MR. DAVIS: Correct.

11 JUDGE GUTHRIDGE: So that proviso
12 would not necessarily by its terms be applicable
13 in (1).

14 MR. DAVIS: We understand that, but we
15 are referring to paragraph (b) which, of course,
16 would apply to all the proceedings. You see
17 under paragraph (b) it says: "The Council may
18 provide for meetings by telephone or other means
19 of communication and any vote cast at such
20 meeting will be confirmed." So we just don't
21 think there's anything else needed. It would be
22 cumbersome and perhaps more confusing if we made

1 any change to (c)(1).

2 JUDGE GUTHRIDGE: And (2) would remain
3 with the proviso?

4 MR. DAVIS: Yes. We're not going to
5 change that.

6 JUDGE GUTHRIDGE: I haven't sort of
7 parsed through it myself. Okay.

8 BY MR. DAVIS:

9 Q Going on to .62, Mr. Adams, our
10 proposed amendment was (h). A friendly
11 suggestion was pointed out that perhaps that
12 should be (h) and (i). Do you agree with that
13 change?

14 A Yes.

15 Q So I'm making that annotation on
16 Exhibit 81, paragraph .62.

17 And then finally, it just simply
18 wasn't addressed by the USDA but we did want to
19 make clear that we would propose .65(f) that the
20 words "trade inventory" simply be deleted. Is
21 that your testimony, Mr. Adams?

22 A Yes.

1 Q I'm making that annotation.

2 And we believe that those are all of
3 the paragraphs that needed to be addressed. And
4 with that, I will return Exhibit 81.

5 MS. SCHMAEDICK: Your Honor, there was
6 also the question of 986.69, paragraphs (a)(1)
7 and (a)(2), potentially adding classification to
8 varieties.

9 MR. DAVIS: I thought he had agreed to
10 that, but we do agree to that.

11 MS. SCHMAEDICK: Okay.

12 MR. DAVIS: Let me make those changes
13 then. That's paragraph?

14 MS. SCHMAEDICK: 986.69, paragraphs
15 (a)(1) and (a)(2).

16 MR. DAVIS: Where would I insert that
17 word, Ms. Schmaedick?

18 MS. SCHMAEDICK: After "any or all
19 varieties or classifications." Do you want me to
20 read the new sentence into the record?

21 MR. DAVIS: I'm just looking for the
22 spot, and I think I've found it in (1) and then

1 in (2) it's the same add after varieties.

2 MS. SCHMAEDICK: Varieties.

3 MR. DAVIS: For different varieties or
4 classifications?

5 MS. SCHMAEDICK: Correct.

6 MR. DAVIS: All right. I think that
7 those are all the changes now.

8 JUDGE GUTHRIDGE: Anything else, Mr.
9 Davis?

10 MR. DAVIS: Yes, but let me tender
11 Exhibit 81 back to the court reporter.

12 JUDGE GUTHRIDGE: As amended.

13 BY MR. DAVIS:

14 Q First, Mr. Adams, at your request did
15 your attorneys reach out to Mr. Timothy
16 Haithcock, who is the president of the North
17 Carolina Shellers Association, and ask him for an
18 affidavit authenticating that his organization
19 had sent in a letter of support for the proposed
20 marketing order to the Secretary of Agriculture?

21 A Yes.

22 Q And is this the affidavit that we

1 received?

2 A Yes.

3 MR. DAVIS: The Proponent Group
4 tenders Exhibit 82, and Mr. Hill has not had an
5 opportunity to review this so let me give it to
6 him.

7 JUDGE GUTHRIDGE: And you're moving
8 for the admission?

9 MR. DAVIS: Let me give Mr. Hill an
10 opportunity to review it.

11 JUDGE GUTHRIDGE: Mr. Hill, have you
12 had an opportunity to review 82?

13 MR. HILL: Yes, I have.

14 MR. DAVIS: Your Honor, the Proponent
15 Group tenders Exhibit 82.

16 JUDGE GUTHRIDGE: Any objection from
17 USDA?

18 MR. HILL: I will not object.

19 JUDGE GUTHRIDGE: Any objection from
20 the audience?

21 (No response.)

22 JUDGE GUTHRIDGE: And as it may

1 already be clear to you, it's an affidavit
2 stating that the attached letter, how it was
3 prepared and that it is authentic. So no
4 objection from the audience, 82 is admitted as
5 part of the record.

6 (The document referred to was marked
7 for identification as Exhibit 82 and
8 was received in evidence.)

9 BY MR. DAVIS:

10 Q Mr. Adams, at your request did counsel
11 reach out to Mr. Robert Knight, the president of
12 the Oklahoma Pecan Growers Association, who was
13 unable to attend because of a farming emergency
14 the hearings in Dallas, and ask him if he could
15 submit an affidavit authenticating a letter from
16 the Oklahoma Pecan Growers Association to
17 Secretary of Agriculture Tom Vilsack in support
18 of the proposed marketing order for pecans?

19 A Yes.

20 Q And let me show what has been
21 tentatively marked s Exhibit 83. Is that that
22 affidavit that we received?

1 A Yes.

2 MR. DAVIS: Your Honor, the Proponent
3 Group tenders Exhibit 83, the affidavit of Robert
4 B. Knight and the attached letter.

5 JUDGE GUTHRIDGE: Does USDA have any
6 objection?

7 MR. HILL: One moment, Your Honor. I
8 won't object.

9 JUDGE GUTHRIDGE: No objection from
10 USDA. Does anyone in the audience have an
11 objection?

12 (No response.)

13 JUDGE GUTHRIDGE: No objection,
14 Exhibit 83 is admitted into the record.

15 (The document referred to was marked
16 for identification as Exhibit 83 and
17 was received in evidence.)

18 MR. DAVIS: Thank you, Your Honor, for
19 admitting 83.

20 BY MR. DAVIS:

21 Q Mr. Adams, there's been a number of
22 tributes to you for your hard work on behalf of

1 the American Pecan Growers and Shellers and I
2 will not add to those, but do you believe that
3 you have -- well, tell us your current state of
4 mind about the support for the proposed marketing
5 order, both in the sheller community and the
6 grower community in the production area.

7 A Notwithstanding the fact that I'm
8 ready to get back to Texas, my current state of
9 mind is there is strong support, and I think
10 we've heard from witnesses, not the least of
11 which was Jerry Dowdy this morning, representing
12 National Pecan Shellers Association, and some
13 more growers and shellers today, I think it's
14 positive.

15 Q And your state of mind is that based
16 in part upon the testimony you've heard in these
17 proceedings?

18 A No question. Yes.

19 Q Is it in part because of the many
20 visits and hours that you spent meeting with
21 pecan growers and shellers across the production
22 area in all regions of the production area?

1 A All regions. Yes.

2 Q And is your state of mind concerning
3 that state of support in any way influenced by
4 the number of letters and correspondence that
5 have been delivered to Secretary Vilsack voicing
6 their support?

7 A Correct. In other words, people
8 willing to put their signature on a piece of
9 paper saying they support it.

10 Q And you were copied on a number of
11 such correspondence. Is that correct?

12 A I was, yes.

13 Q So you have personally received such
14 correspondence. Is that right?

15 A I have.

16 Q Did you ask your counsel to accumulate
17 all of the letters of support that you have
18 personally received from any organization or any
19 entity that was forwarded to Secretary Vilsack in
20 support of this proposal?

21 A Yes.

22 MR. DAVIS: Your Honor, I'm going to

1 give to counsel for USDA a packet and give them
2 an opportunity to view it, but it would be
3 proposed Exhibit 84, before I publish it.

4 JUDGE GUTHRIDGE: All right.

5 (The document referred to was marked
6 for identification as Exhibit 84.)

7 BY MR. DAVIS:

8 Q So let me ask a couple of foundational
9 questions. You now have what has been
10 tentatively marked as Exhibit 84. It has not
11 been admitted yet so I'm not going to publish it,
12 but is the first page of Exhibit 84 a complete
13 and accurate list of all letters of support that
14 have been forwarded to Secretary Vilsack, of
15 which you were copied and which you have
16 firsthand knowledge of such delivery, is that a
17 full and complete list?

18 A You bet.

19 Q And then attached, the remaining pages
20 of Exhibit 84 are, in fact, copies of all such
21 correspondence?

22 A Yes.

1 Q Is it true and correct copies of all
2 such correspondence?

3 A Yes.

4 MR. DAVIS: Your Honor, the Proponent
5 Group tenders Exhibit 84.

6 JUDGE GUTHRIDGE: I'm going to have to
7 object again, Your Honor. This witness can
8 testify to his own knowledge of who did so, but I
9 can't accept the actual letters.

10 JUDGE GUTHRIDGE: Are any of these in
11 84, a couple of them look familiar.

12 MR. DAVIS: The vast majority of them,
13 and there are two, in fact, to be full
14 disclosure -- three, I think I've just been
15 told -- United State Senate letters from United
16 States senators which are the first two pages,
17 and then the second is letters from United States
18 congressman, and then the very last one, Western
19 Pecan Growers Association letter, have not
20 previously been tendered. But I believe I've
21 laid a foundation and would ask that Your Honor
22 rule.

1 JUDGE GUTHRIDGE: And USDA objects on
2 what grounds? Hearsay grounds?

3 MR. HILL: Yes.

4 JUDGE GUTHRIDGE: As we talked about
5 before. Let me preface it by saying, as we
6 discussed the other day, this does come in as --
7 it remains with the transcript but I think that
8 Mr. Hill is correct insofar as the letters have
9 not been authenticated through other testimony by
10 their authors, would be hearsay, and so I'll
11 sustain the objection, but as we talked about the
12 other day, the Proponent Group can brief that
13 issue with the Secretary and he might disagree.
14 I can't imagine.

15 MR. DAVIS: Your Honor, I think we've
16 made our point, but let me say thank you for your
17 ruling. I assume the objection has been
18 sustained?

19 JUDGE GUTHRIDGE: It has been, yes.

20 MR. DAVIS: I have an alternative
21 position for Your Honor that I would propose to
22 the USDA. Based on Mr. Adams's testimony of his

1 personal knowledge of what he received, if I just
2 submitted page 1 of proposed Exhibit 4, would you
3 object? My proposal would be I'd just admit page
4 1 based on his personal knowledge of what he has
5 received, adding to his state of mind of why he
6 knows there's widespread support. We're not
7 going to attach the letters, we're just going to
8 say he compiled this list of letters that are in
9 his possession.

10 JUDGE GUTHRIDGE: USDA?

11 MR. HILL: This witness can always
12 testify as to what he believes he received.

13 MR. DAVIS: And this exhibit would
14 just summarize that.

15 JUDGE GUTHRIDGE: So you would propose
16 separating the letters?

17 MR. DAVIS: Page 1 of Exhibit 84.

18 JUDGE GUTHRIDGE: I suppose you could
19 do that, but that would then remove the letters,
20 I suppose, from consideration from an argument to
21 the Secretary that they should be considered,
22 they should come in, and have you considered

1 maybe making just the cover page a separate
2 Exhibit 85 so they would all remain with the
3 transcript?

4 MR. DAVIS: All right. I'll accept
5 that as a friendly amendment, and I've got a new
6 Exhibit 85 then, Your Honor.

7 JUDGE GUTHRIDGE: It would just be the
8 cover page.

9 MR. DAVIS: Just the cover page.

10 JUDGE GUTHRIDGE: And if you could
11 show that to the witness.

12 (The document referred to was marked
13 for identification as Exhibit 85.)

14 BY MR. DAVIS:

15 Q Is what has now been marked as Exhibit
16 85 a complete list of all the letters of support
17 that you have received from industry
18 organizations and other entities in favor of the
19 proposed marketing order for pecans?

20 A Yes.

21 MR. DAVIS: Your Honor, we now tender
22 Exhibit 85.

1 JUDGE GUTHRIDGE: Any objection from
2 USDA?

3 MR. HILL: No objection.

4 JUDGE GUTHRIDGE: Any objection from
5 the audience?

6 (No response.)

7 JUDGE GUTHRIDGE: No objection. So 85
8 is just that one page without the attached
9 letters?

10 MR. DAVIS: Correct.

11 (The document referred to, having been
12 previously marked for identification
13 as Exhibit 85, was received in
14 evidence.)

15 BY MR. DAVIS:

16 Q Mr. Adams, if you now would read
17 Exhibit 85 into the record.

18 A "The Honorable Tom Vilsack, Secretary
19 of Agriculture, Letters of support for the Pecan
20 Federal Marketing Order:

- 21 1. United States Senate
22 2. United States Congress

- 1 3. Georgia Agricultural Commodity
- 2 Commission for Pecans
- 3 4. Georgia Pecan Growers Association,
- 4 Inc.
- 5 5. Louisiana Pecan Growers
- 6 Association
- 7 6. Mississippi Pecan Growers
- 8 Association
- 9 7. National Pecan Growers Council
- 10 8. National Pecan Shellers
- 11 Association
- 12 9. New Mexico Pecan Growers
- 13 10. North Carolina Pecan Growers
- 14 Association
- 15 11. Oklahoma Pecan Growers Association
- 16 12. Southeastern Pecan Growers
- 17 Association
- 18 13. Texas Pecan Board.
- 19 14. Texas Pecan Growers Association
- 20 15. Western Pecan Growers Association"
- 21 MR. DAVIS: Thank you very much.
- 22 At this time that concludes the

1 questions concerning this exhibit, Your Honor.

2 BY MR. DAVIS:

3 Q Mr. Adams, do you have any remarks
4 you'd like to make in closing?

5 A Yes.

6 Q Please.

7 A On this our eighth day, I said I count
8 everything, I should have counted the days, but I
9 do want to express personally, and on behalf of
10 the American Pecan Board, the effort that
11 everyone involved has exerted.

12 Thank you, Your Honor. I think you
13 know more about pecans than you did seven or
14 eight days ago, as evidenced by your more astute
15 questions as we go along. You know the
16 difference between native and you seem to have
17 caught on to that native idea. But thank you, we
18 appreciate it.

19 And to the USDA staff, I thank you.
20 You have persevered and I want to thank you not
21 only for the last eight days but the USDA staff
22 that was assigned to us that literally held our

1 hand for a year and a half, and so thank you, and
2 I hope those of you know who I'm talking about,
3 and we appreciate it.

4 I would be remiss in not recognizing
5 the American Pecan Board. The American Pecan
6 Board has literally worked tirelessly for a
7 couple of years, and we've got some gentlemen
8 here, Randy Hudson, Larry Wilson, from the board.
9 And if I get emotional in this thing, I apologize
10 in advance. I won't get the ovation that Louie
11 Salopek got.

12 But anyway, it's been an effort, and
13 going back to Helen Watts, we all heard her
14 testimony. Helen has been in this business 30
15 years and she's a expert in the shelling
16 industry. And then Bruce Caris, you heard his.
17 If there's one man in the United States that can
18 tell you more about the market and like that we
19 don't have very good data, it would be Bruce
20 Caris, and Bruce's testimony was indicative of
21 that.

22 And then I'll mention Louie again.

1 Those of you that know Louie, he's a special guy
2 and made a special board member, and he makes a
3 unique contribution that I don't think anybody
4 else in the country can make. I wish Louie were
5 here to thank him from New Mexico.

6 And then Dan York. Dan, I think was
7 one of the first witnesses to talk about the
8 natives, and Dan has a real visceral feeling for
9 the native community, not only from a grower but
10 a sheller.

11 And then Scott Landgraf from Oklahoma,
12 he's right in the middle of the native country,
13 and so we called Scott the conscience of the
14 board because he never says anything but when he
15 finally does you'd better listen.

16 And then Homer Hinson, whom you heard
17 testimony from yesterday, he has been the
18 conscience of the small sheller. He's brought
19 that to the board.

20 And those perspectives in those board
21 meetings were invaluable in designing this thing.
22 And then I've mentioned Larry and Randy, you know

1 the contribution they've made, time, effort,
2 intelligence, wisdom. So they're here, I'm going
3 to thank Randy and Larry. We appreciate it.

4 If I didn't thank these two guys, I
5 might as well leave.

6 JUDGE GUTHRIDGE: By these two guys
7 you're referring to Mr. Quirós and Mr. Davis?

8 THE WITNESS: Yes. I know we can't
9 write down a point, but my finger is headed in
10 the direction of Mr. Quirós and Mr. Davis, who
11 have contributed pro bono, literally we're
12 probably into the thousands of hours, I know
13 we're well into the hundreds of hours of work,
14 telephone conversations, conference calls, and so
15 for the record, thank you. Appreciate it.

16 So it's been a collaborative effort
17 going back to that November day in 2013 when this
18 thing started -- Ms. Sharrow, you were there --
19 and we have fully intended that it be a
20 collaborative effort, and that's the way we've
21 taken it from the get-go. Mr. Durando, even
22 though we've not seen her since, Laura May, she

1 sat in for Mr. Durando that day. And so we
2 appreciate everybody that was in that meeting.

3 But that began a process, coming up to
4 July 20 when these hearings started, and what we
5 wanted to do as an industry and as a board,
6 representing the pecan industry in these 15
7 states is attempted to give you a face of the
8 pecan industry so as you took that year and a
9 half tour with us and you began to see what this
10 industry was about.

11 We wanted to inform you about pecans
12 and the goodness of pecans and the goodness of
13 the people and to show you our people. We wanted
14 to tell our story, understanding the whole time
15 you were holding our hands regarding the Act,
16 because we had read the Act but we were really
17 relying on you for guidance, and we felt that
18 that was a good partnership. But I think that
19 our story was really crystallized in these last
20 eight days.

21 You probably don't even remember Bud
22 Brunner in Las Cruces. If you can think back --

1 and that seems like a long time ago but it was
2 about a week and a half -- there was an elderly
3 gentleman sitting on the front row in Las Cruces.
4 I never met him but in the break, the morning
5 break, Bud Brunner came up from Arizona and told
6 me he'd driven 500 miles to get five questions
7 answered, and I answered his questions, the
8 firsts one being: Mr. Adams, am I going to be
9 able to plant trees after this? And I said,
10 There is no volume control in this order. And we
11 went on through is other four questions,
12 handwritten on a pad, and I answered them for him
13 and he left. He not only left the state, he left
14 the auditorium and drove 500 miles back. It's
15 the story of Bud Brunner.

16 It's the story of Dave Salopek,
17 talking about his mom and dad and the year that
18 they finally had a good crop in their orchard in
19 Las Cruces, and I relate to Dave. And then the
20 hail came and wiped out their best crop ever, and
21 he said that it left a few acres that weren't
22 destroyed and his dad felt like it would have

1 been better if those had been destroyed because
2 he wouldn't have known what he missed.

3 Tom Chavez had spent his life in
4 concrete, finally got enough working in concrete
5 to buy a little orchard. John Turner, I wish I
6 had a video of John Turner's testimony. I do. I
7 mean, I've got his quotes, I've written them
8 down. But there was a wisdom there that it
9 communicated to me.

10 There's another young grower, I'll
11 tell you, I carried this particular story with me
12 for a long time. It didn't happen at the
13 hearings, it happened at a pecan meeting when I
14 was speaking in Perry, Georgia and I left -- I
15 think we had a meal, Randy, that night there in
16 Perry, and I walked out and I was talking to
17 Louie Salopek and this young guy walks up, and I
18 wish I could call his name but I don't remember
19 it, and he was just passionate. He said, Mr.
20 Adams, you've got to help us. And he related how
21 he'd just gotten in the business and he couldn't
22 make a profit. He said, You've got to help us.

1 He was almost pleading with me, I recall that,
2 and those are the kind of folks that I've done
3 what I've done for.

4 And then I want to mention our large
5 growers because sometime because you think that
6 they're large and successful that they didn't
7 struggle, but every one of our large growers
8 didn't wake up one night and walk out the back
9 door to a thousand acres of trees. They all
10 started somewhere. All of our large growers were
11 at one time a small grower, and so I don't
12 discount at all Lalo Medina, Thomas Mason, R.G.
13 Lamar, Jeb Barrow -- did I get your attention,
14 Jeb? But those guys, and you've heard stories,
15 sometimes it was two or three generations ago.
16 Homer talked about he used to hold the scale in
17 the back of his dad's pickup, now he's a
18 successful small sheller, but he started holding
19 the scale in the back of his dad's pickup.

20 So I could tell you my story, I didn't
21 start out a large grower. So we've got a bunch
22 of 30 and 40 year overnight successes that you've

1 heard from, and that's part of the face of our
2 industry too, whether it's the guys I've
3 mentioned or numerous others that you've heard
4 testify. But when we started the listening tour
5 to see what the industry wanted, that's exactly
6 what it was. We knew that a Federal Marketing
7 Order had to be constructed, compiled, composed
8 by the stakeholders in the industry. That's the
9 only way it would work. You heard this morning
10 Fred talk about some of the earlier mistakes.
11 But the American Pecan Board knew that if we
12 didn't get a sense of the industry, we didn't
13 have a chance of getting anything done.

14 And so we go out and the one message
15 that we were communicating was that we thought we
16 were recommending a -- because it was going to
17 be pecan money that was spent by pecan people for
18 the benefit of the pecan industry. Even though
19 it was overseen by our government, it was still
20 pecan program, it was a self-help program. And
21 so we heard loud and clear what the industry was
22 telling us.

1 Let me enumerate. One thing they told
2 us right out of the box: No volume control. We
3 heard that and so we took that out of the
4 toolbox. We heard the fact that I just stated
5 that it be administered by pecan folks, the
6 stakeholders. We heard that they wanted us to
7 spend their money wisely, and being in our Texas
8 Pecan Board which I've been involved with, our
9 board has been sensitive from the get-go that
10 that money was spent wisely. I mean, that money
11 is hard earned, and so when it comes to another
12 entity, particularly a pecan industry, being
13 sensitive to where that money comes from and how
14 that money is spent it's critical. You've got to
15 watch it. It doesn't fall from the sky, it's
16 hard earned by those folks that you've heard
17 from.

18 We heard that they wanted to move
19 domestic demand. Our MAP program and now the
20 U.S. Pecan Growers Council has really taken the
21 ball and run with it on our international, but
22 the domestic demand -- which would particularly

1 speak to the shelling industry, Vicky -- is
2 important. To have a healthy domestic shelling
3 industry is critical. They can shell them
4 better, healthier, whatever. And so applying
5 these funds to increase domestic demand was an
6 important component.

7 Accurate data, you are tired of
8 hearing that, but that's because it's so
9 important that we have accurate data. Supporting
10 research, you heard our scientists, you heard
11 Lenny talk about how the pecan industry is kind
12 of still in the dark ages in terms of
13 horticultural research and how this could move us
14 forward in that arena. Product research, and not
15 to minimize the last one, but a workable,
16 sensible standards, grading, that was another
17 tool that we wanted to put in. Dan York was a
18 champion of that -- Dan has been at every board
19 meeting, you guys know -- because he saw what
20 that could do for the industry.

21 But we heard loud and clear those
22 aspects, and basically the industry was telling

1 us that if you'll listen to us and if you'll
2 compose an order that comports with what we're
3 telling you, we'll embrace it. I mean, that was
4 the message: we'll embrace it. And so that's
5 what we began to listen and interact with. And I
6 still remember the testimony of Joe Massey. Joe
7 was in Dallas and Joe talked about not only the
8 early skeptics but the early opponents and how
9 once you sit down with people in the industry you
10 can turn an opponent and a skeptic into a
11 supporter. And I think that's what we've done,
12 Randy. That has been a process, that has been a
13 process, and quite honestly, it's unified this
14 industry to a point. I was skeptical sometimes
15 that we could get there because of our history.

16 So the American Pecan Board set out to
17 compose a Federal Marketing Order that got it
18 right, and I think it's not perfect but it's
19 pretty close to getting it right. And so we
20 think that we've delivered to the USDA an order
21 that reflects the wishes of the industry and
22 meets the needs of the industry within the law.

1 It took a lot of people to get here and some of
2 those people are sitting in this room, and we're
3 indebted as an industry to those of you that I
4 hope you know that I'm talking about.

5 I think that part of the task for us
6 as representatives of the industry was to get the
7 industry, the stakeholders to catch the vision of
8 what we can be. We're healthy, we're a truly
9 American nut, we've seen what our sister tree
10 nuts have done, and if we can catch that
11 vision -- and I think we have -- of what we can
12 be, then that's going to take the pecan industry
13 to new heights. That's my hope.

14 I'll tell you a story, this is a true
15 story that happened in Rusk County, Texas that's
16 kind of where I'm from. And there was a young
17 doctor that came to town and he's a good guy, I
18 don't want to disparage him even though he -- he
19 was a doctor and he'd made some money early and
20 so he goes out and buys him 100 acres of land,
21 and he was adjoining a gentleman that had been in
22 the county for a good while, one of those 40 year

1 overnight successes that I was telling you about,
2 that had quite a bit of land. And the older
3 farmer was out one day working on his fence and
4 the young doctor drives up in his new tractor and
5 he wanted to meet his new neighbor. And he walks
6 up to the older gentleman and he begins to brag
7 on -- he was proud of his 100 acres, began to
8 brag on his 100 acres, and the old farmer
9 listened to it a while and finally the young
10 doctor said, Mr. Jones, I've got this 100 acres
11 but I understand you own a lot more land across
12 this fence than I do. And the old farmer looked
13 at him and said, Son, I don't own any land, he
14 said, I just get to take care of some for a
15 while.

16 Over the past week and a half you have
17 met the caretakers of the pecan industry. We'll
18 continue to take care of it for a while. We
19 intend to be good stewards, regardless. At times
20 I think we're rather presumptuous to think that
21 we're the ultimate authority. I catch myself in
22 that situation sometimes. But we can't make the

1 sun shine, we can't make it rain, we have nothing
2 to do with photosynthesis, but all of those
3 things assist us in this process. And so we're
4 simply asking our government to the extent that
5 you have the authority to assist us in this
6 stewardship process.

7 Thank you, Your Honor.

8 (Applause.)

9 JUDGE GUTHRIDGE: Mr. Davis, do you
10 have any more questions?

11 MR. DAVIS: No further questions, Your
12 Honor.

13 JUDGE GUTHRIDGE: Does USDA have any
14 questions?

15 MR. HILL: No further questions, Your
16 Honor.

17 JUDGE GUTHRIDGE: Does anyone in the
18 audience have any questions for Mr. Adams?

19 (No response.)

20 JUDGE GUTHRIDGE: No. Mr. Adams,
21 before you go, in response to your words about
22 us, I've been an employee of the United States

1 Government for 34 years, two of it in military
2 and 32 civilian, and I see my coming down here as
3 a government employee doing his job, and I think
4 contrary to some claims you might hear, I think
5 if not all, almost all of us, and if not all the
6 time, almost all the time, are doing our jobs. I
7 think that's very much exemplified by
8 particularly the seven USDA persons who have done
9 the questioning, including Ms. Luft, but not only
10 them but the behind-the-scenes persons who have
11 been here, such as Ms. Wray, and not only them
12 but other employees up in Washington and I
13 understand Winter Haven, Florida has folks, I
14 guess there are more in Utah where Ms. Schmaedick
15 is from, and so on behalf of all for them, I
16 thank you for your kind words.

17 THE WITNESS: I never doubted that.

18 (Whereupon, the witness was excused.)

19 MR. DAVIS: Your Honor, the Proponent
20 Group has no further evidence, so we use those
21 words: The Proponents rest.

22 JUDGE GUTHRIDGE: All right.

1 Is there anything else from USDA at
2 this point?

3 (No response.)

4 JUDGE GUTHRIDGE: Oh, Ms. Wray, has
5 anybody signed up to testify?

6 MS. WRAY: No, Your Honor.

7 JUDGE GUTHRIDGE: I think before we
8 close we'd need to do that too.

9 Ms. Schmaedick?

10 MS. SCHMAEDICK: Your Honor, I think
11 the only issue left to address is the briefing
12 period and the ability to file briefs.

13 JUDGE GUTHRIDGE: Right. Well, we
14 addressed that a little bit at the beginning. We
15 sort of tentatively set an August 31 date. Is
16 that inappropriate? I mean, you USDA folks are
17 more --

18 MR. HILL: August 31 would be the
19 date.

20 JUDGE GUTHRIDGE: All right. All
21 briefs would be due by August 31.

22 MR. DAVIS: I thought it was tied to

1 a transcript date or something.

2 MR. HILL: The transcript is scheduled
3 to be here within five days.

4 MS. SCHMAEDICK: Five business days
5 from the close.

6 JUDGE GUTHRIDGE: By here you mean
7 where?

8 MR. HILL: Available within five
9 business days.

10 MS. SCHMAEDICK: And also, just to
11 further clarify, all the exhibits that we have
12 received have been continuously posted on the AMS
13 website, along with the exhibits that we have
14 received today, those will also be posted, and
15 once we have received the transcript, the
16 transcript will be posted. And the briefing
17 period is open for corrections as well as briefs
18 to be filed.

19 JUDGE GUTHRIDGE: And in the event it
20 should happen, is there any mechanism for someone
21 asking to have that period extended?

22 MS. SCHMAEDICK: I believe that if the

1 briefing period needs to be extended that they
2 can file a request for that extension.

3 JUDGE GUTHRIDGE: Would that come to
4 me?

5 MS. SCHMAEDICK: Brian, does the
6 request for extension go to the judge? I believe
7 it does.

8 MR. HILL: It may come through the
9 Administrator.

10 JUDGE GUTHRIDGE: The Administrator,
11 AMS?

12 MR. HILL: AMS. Correct.

13 MR. DAVIS: Your Honor, I believe Mr.
14 Quirós would like to hand out the extra copies of
15 Exhibit 84. I thought I gave those out.

16 JUDGE GUTHRIDGE: I think I made some
17 notes on that of my own.

18 MR. DAVIS: Your Honor, is that the
19 last of the administrative?

20 JUDGE GUTHRIDGE: Not quite. The
21 hearing was scheduled for July 27 through July 29
22 in Tifton, Georgia, and it goes on to say All

1 hearing sessions are scheduled to begin at 8:00
2 a.m. and will conclude at 5:00 p.m, and it goes
3 on to say or at any other time as determined by
4 th presiding administrative law judge. So it is
5 now 1:06, well before 5:00, but given the fact
6 that there have been no witnesses who have signed
7 up to testify and not been able to testify, it
8 would seem appropriate at this point to recess.
9 But I would like to hear the USDA's input on
10 that.

11 MR. HILL: I just want to make a
12 correction. It would be filed with the hearing
13 clerk but it could be extended by the Judge or by
14 the Administrator.

15 JUDGE GUTHRIDGE: So a request for
16 extension of the briefing session would be filed
17 with the hearing clerk and would either go to the
18 Administrator or perhaps to me.

19 MR. HILL: Right.

20 JUDGE GUTHRIDGE: Okay. Since USDA
21 would then have to pay my salary for signing
22 that, they'd probably have the Administrator do

1 it.

2 So is there anything else from USDA or
3 the Proponent Group?

4 MR. DAVIS: Nothing further, Your
5 Honor.

6 JUDGE GUTHRIDGE: Or from the
7 audience?

8 (No response.)

9 MR. DAVIS: There is a grand tradition
10 in Georgia courts -- and I know this is not a
11 court proceeding -- where adversaries in the
12 court shake hands.

13 JUDGE GUTHRIDGE: I'm not sure there
14 have been any adversaries here.

15 With that then, this hearing is
16 adjourned.

17 (Whereupon, at 1:08 p.m., the hearing
18 was adjourned.)

19
20
21
22

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In the matter of: Public Hearing

Before: USDA

Date: 07-29-2015

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