

TRANSCRIPT OF PROCEEDINGS

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

Pages: 1 through 298
Place: Fresno, California
Date: February 13, 2024

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UNITED STATES DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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

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TUESDAY,
FEBRUARY 13, 2024

The hearing came to order at 9:00 a.m. at
Office of the Raisin Administrative Committee, located
at 2445 Capitol Street, #200, Fresno, California,
Channing Strother, Chief Administrative Law Judge,
presiding.

BEFORE:

CHANNING STROTHER

Chief administrative Law Judge

1 APPEARANCES:

2 On Behalf of the U.S. Department of Agriculture:

3 CHRISTY PANKEY, Agricultural Marketing Specialist

SANDI DREISONSTOK, Agricultural Marketing Specialist

4 RUPA CHILUKURI, Attorney with the Office of the General
Counsel representing U.S. Department of

5 Agriculture, the Agricultural Marketing Services

SAMANTHA DORSEY, Attorney Advisor with the USDA Office
6 Of General Counsel

BARRY BROADBENT, Acting Branch Chief, Western Region

7 Branch, Marketing Development Division

MARC MCFETRIDGE, Agricultural Economist, U.S. Department

8 Of Agriculture, Agricultural Marketing Services,

Specialty Crops Program, Marketing Development
9 Division.

JEREMY SASSELLI, USDA Marketing Specialist

10 KATHIE NOTORO, USDA Marketing Specialist

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

2 TUESDAY, FEBRUARY 13, 2024, 9:00 A.M.

3 JUDGE STROTHER: Good morning, everyone. Welcome.
4 I'm Channing Strother, Chief Administrative Law Judge,
5 the United States Department of Agriculture. In this
6 capacity, I'll be presiding over today's hearing.

7 We are gathered in this setting to conduct a
8 mandatory hearing on the recommended changes to the
9 federal marketing order for California raisins. This
10 proceeding has been assigned the following docket or
11 case number. 23-J0080 and AMS-SC-23-00339.

12 The California Raisin Administrative Committee
13 locally administers the marketing order programs and
14 regulations that are contained in Title 7 of Code of
15 Federal Regulations, Part 989. The committee
16 recommended the amendments that we will be discussing
17 during this hearing.

18 The Federal Register Notice containing the
19 proposed amendments was published in January 12th, 2024,
20 89 Federal Register, page 2178, as required by 7 CFR
21 900.8(c)(1). This Federal Register Notice will be put
22 into the record as an exhibit along with the affidavit,
23 certificates of the giving of notice of the
24 determination.

25 JUDGE STROTHER: As set out in the notice, the

1 proposed amendments would amend Federal Marketing Order
2 Number 989 to reduce Committee membership. There are
3 several changes to the proposed size reduction -- to
4 achieve the proposed size reduction, including the
5 lowering of the quorum requirement, removal of producer
6 district representation, elimination of the designated
7 cooperative bargaining association member seat, removal
8 of the requirement for separate member and alternative
9 nominations, removal or revision of factors for
10 establishing marketing policy, additional language to
11 clarify the quality of reconditioned raisins, the
12 addition of authority to accept voluntary contributions,
13 and language regarding the ownership of intellectual
14 property. The proposal also contains several conforming
15 changes necessary to affect those amendments to the
16 marketing order.

17 The purpose of this hearing is for the United
18 States Department of Agriculture to gather testimony and
19 other evidence in support of, or in opposition to, the
20 Committee's recommendations.

21 My role as presiding judge is to ensure the
22 hearing adheres to the procedures in Title 7 of Code of
23 Federal Regulations, Part 900, General Regulations,
24 Procedural Requirements Governing Proceedings Pertaining
25 to Marketing Agreements and Marketing Orders.

1 Additionally, it is my responsibility to ensure that the
2 information gathered during this hearing is pertinent to
3 the subject matter of the aforementioned Federal
4 Register Notice. If a witness makes comments or
5 testifies to subject matter outside the scope of the
6 contents of the Federal Register Notice, I have the
7 authority to interrupt and not allow the witness to
8 continue. And people -- folks can interpret -- you
9 know, can object if they see a witness deviating from
10 the subject matter in the Federal Register Notice.

11 But I will not be issuing a decision at the
12 conclusion of the hearing. USDA will refer the -- to
13 the information gathered during this hearing in
14 determining whether to move forward with the Committee's
15 recommendations. By law and regulation, USDA oversees
16 the Committee's activities to ensure compliance with
17 applicable laws and regulations and policies, and
18 conducts rule-making such as these.

19 I will administer the hearing to allow for
20 testimony from or on behalf of interested parties,
21 cross-examination of witness by interested parties or
22 their representatives, and the submission of supporting
23 documents as evidence, again, as specified in Title 7,
24 Code of Federal Regulations, part 900.

25 As an initial step, we will have notices of

1 appearances of all USDA personnel, including technical
2 support people, and of all witnesses so that we are
3 aware of who will be managing different functions of
4 this proceeding. Each will be asked to state and spell
5 their name, give their professional title, and describe
6 their role during the hearing, including identifying on
7 whose behalf they are speaking.

8 I don't know that we have all witnesses here
9 for the raisin committee. Do we want to do that now?
10 Would USDA personnel like to introduce themselves?

11 MS. CHILUKURI: Yes, Your Honor.

12 JUDGE STROTHER: You can choose the order, counsel.

13 MS. PANKEY: Hello. Okay. My name is Christy
14 Pankey. That's C-h-r-i-s-t-y P-a-n-k-e-y. I'm with
15 USDA. I'm an Agricultural Marketing Specialist. My
16 role today is to question the witnesses on the proposed
17 amendments.

18 JUDGE STROTHER: Thank you, Ms. Pankey.

19 MS. DREISONSTOK: Hello. My name is Sandi
20 Dreisonstok. That's S-a-n-d-i D-r-e-i-s-o-n-s-t-o-k. I
21 am with USDA as well, an Agricultural Marketing
22 Specialist, and I'm here to support the USDA team.

23 JUDGE STROTHER: Thank you, Ms. Dreisonstok.
24 Welcome.

25 MS. CHILUKURI: Good morning. My name is Rupa

1 Chilukuri. That's spelled R-u-p-a, first name. Last
2 name is C-h-i-l-u-k-u-r-i. I am an attorney with the
3 Office of the General Counsel, and I represent the U.S.
4 Department of Agriculture, the Agricultural Marketing
5 Services at this hearing. And I will be conducting some
6 cross-examinations of witnesses. Thank you.

7 JUDGE STROTHER: Thank you, Ms. Chilukuri.

8 MS. DORSEY: Good morning. My name is Samantha
9 Dorsey. S-a-m-a-n-t-h-a, Dorsey, D-o-r-s-e-y. I'm an
10 attorney advisor with USDA's Office of General Counsel.
11 I will be representing USDA in this proceeding, and I
12 will be -- I will also be cross-examining witnesses.

13 JUDGE STROTHER: Thank you, Ms. Dorsey.

14 MR. BROADBENT: My name is Barry Broadbent. I'm
15 the acting branch chief for the Western Region Branch of
16 the Marketing Development Division. My name is spelled
17 B-a-r-r-y B-r-o-a-d-b-e-n-t.

18 JUDGE STROTHER: Thank you, Chief Broadbent.

19 MR. McFETRIDGE: My name is Marc McFetridge,
20 spelled M-a-r-c M-c-F-e-t-r-i-d-g-e. I'm an
21 Agricultural Economist for the U.S. Department of
22 Agriculture, Agricultural Marketing Services, Specialty
23 Crops Program in the Marketing Development Division.
24 And I'll be providing economic testimony this morning,
25 and also provide some cross-examination to the

1 witnesses.

2 JUDGE STROTHER: Thank you, Mr. McFetridge.

3 MR. SASSELLI: My name is Jeremy Sasselli,
4 J-e-r-e-m-y, last name S-a-s-s-e-l-l-i. I am a local
5 Marketing Specialist out of Fresno, California, here to
6 assist the team in any way that I can.

7 JUDGE STROTHER: Yes.

8 By the way, what's your last name again,
9 Jeremy?

10 MR. SASSELLI: Sasselli.

11 JUDGE STROTHER: Spell it.

12 MR. SASSELLI: S-a-s-s-e-l-l-i.

13 JUDGE STROTHER: That's great. I just didn't catch
14 it.

15 He's on the corner here, and he will be
16 collecting the -- he will have the -- be the keeper of
17 the official copy of the exhibits, and he'll get a copy
18 in each case, and keep a list, and all that. I'm not
19 sure how we're going to handle exhibits here. I guess
20 if it's your witness, you'll hand them out. Maybe he'll
21 help you hand them out, too, depending how we do it.

22 Okay. Please.

23 MS. NOTORO: My name is Kathie Notoro, K-a-t-h-i-e
24 N-o-t-o-r-o. I'm also a USDA Marketing Specialist here
25 in Fresno, and I'll be taking the names of any witnesses

1 already not on the sign-up sheet.

2 JUDGE STROTHER: Yes. The sign-up sheet is down
3 there on the corner. If additional people are here that
4 want to testify other than what we have already, I
5 guess, they can sign up there. And I'll try to remember
6 to tell people as they come in.

7 This is just for witnesses, right? Okay.

8 Is that it?

9 All right. We've developed a list of
10 witnesses desiring to testify, at least those we know so
11 far. I'll call these witnesses in order so they can
12 appear on the list as it's -- as they appear on the list
13 presented to me.

14 Prior to testifying, each witness will be
15 sworn in and asked to state and spell their name for the
16 hearing record. The regulations also require the
17 witness to provide their occupation and address. In
18 deference to concerns about the public disclosure of
19 personal protected information, I ask that the witnesses
20 do not divulge an address that is the address of a
21 personal resident -- residence, but make sure the
22 reporter has a working, regular mail -- post office
23 address for each of you. Does that make sense? No home
24 addresses because of protected personal information, but
25 make sure that the court reporter has that if your home

1 address is the only address you have.

2 All witnesses entering exhibits should have
3 copies prepared. USDA's technical team can prepare
4 copies -- additional copies of those exhibits for
5 hearing participants if necessary.

6 At the beginning of each witness's statement,
7 the witness should identify all exhibits that they will
8 refer to during their testimony so that everyone is
9 viewing the correct exhibit. To the extent possible,
10 the witness should work with USDA's technical team to
11 provide copies of the testimony prior to hearing.

12 Witnesses and cross-examiners are asked to
13 refer to exhibit documents by the established exhibit
14 numbers during their testimony. Once a witness is
15 finished making his or her statement, I will officially
16 enter those exhibits into the record, subject to any
17 objections made by any other participant at the time.

18 Actually, I may wait until cross-examination,
19 when the witness is about to step down, to enter
20 exhibits into the record just out of caution in case
21 someone had something they wanted to explore with the
22 witness about that exhibit and the reason it shouldn't
23 come in.

24 We're going to label the exhibits seriatim, by
25 the way, one after the other throughout the whole

1 hearing. And maybe it's best to do that when the
2 witness first gets on the stand.

3 I will also swear in the witness when the
4 witness comes up.

5 Objections to testimony and exhibits may be
6 raised -- made be made by raising your hand and saying,
7 "Objection." An objection in this proceeding is
8 distinct from a layman's definition of objection. You
9 may make an objection if you believe there is some
10 violation of procedural rule. For instance, if you
11 believe that the exhibit is not authentic or relevant
12 and material to the subject matter of the hearing, you
13 may object. Objections are not testimony. They're not
14 cross-examination. If you'd like to testify or
15 cross-examine witnesses, there are other mechanisms for
16 doing that.

17 I may also interject my own objections, or
18 without an objection -- objection on my own actions
19 without objections being made by a participant. As I
20 previously indicated, the regulations specifically
21 provide that I'm not to limit the testimony, to avoid
22 any unduly cumulative or necessarily collaborative
23 testimony. With that in mind, people can come and go in
24 this room, just do it -- do it discreetly.

25 By the way, any beverages are allowed in here,

1 apparently, coffee, water, but anything else you have,
2 that's all right with me. But if you have to go out,
3 you don't have to ask me to excuse yourself, but if
4 another cross-examiner gets into a subject matter,
5 whether you're here or not, you're responsible for not
6 having unduly repetitive testimony.

7 Okay. Participants and witnesses are to
8 address each other through me, that is, don't talk back
9 and forth to each other. If you have something to say
10 to the other side, say it to me. And just like a
11 regular judge.

12 In terms of direct and cross-examination,
13 after a witness has completed his or her prepared
14 materials, the party offering up witnesses, that's
15 either members of the USDA or the proponent industry
16 will be given an opportunity to ask the witness --
17 witness additional questions. That's direct
18 examination. Once finished, I will give the party not
19 offering the witness -- the parties not offering the
20 witness and other members of the proponents to industry
21 or USDA an opportunity to ask questions of the witness.

22 I think USDA goes first. Did we decide?

23 MS. CHILUKURI: Right.

24 JUDGE STROTHER: We don't have to. If you want to
25 ask questions, we'll develop an order, I'm sure.

1 After both USDA and the industry proponents
2 have completed their questioning, I'll provide other
3 members of the audience an opportunity to ask questions.
4 Audience members are asked to self-identify by stating
5 and spelling their name and identifying affiliation,
6 affiliations or professional title and whichever group
7 or business you're associated with.

8 For purposes of the reporter, probably better
9 at least in the beginning that each of us -- probably
10 not me, but everyone else in the room identify
11 themselves when they -- when they start talking to keep
12 the record orderly.

13 As I said before, we welcome members of the
14 public to offer testimony and submit exhibits.

15 After I finish these opening remarks, I'll
16 give the opportunity for anyone in attendance here who
17 has not already signed up to be a witness, to sign up to
18 testify. That is just sign up at the end of the table
19 down there. And that sheet will stay there every day so
20 there will be additional opportunity tomorrow, lunch
21 break, whenever.

22 If public members who are going to testify
23 wish to submit documents, including written testimony
24 into evidence, they can work with USDA's technical team
25 to provide copies prior to testifying.

1 Our court reporter is preparing -- is
2 transcribing the entire hearing verbatim. I encourage
3 all participants to speak clearly and slowly to ensure
4 that the court reporter is able to transcribe
5 everything. If the court reporter should have
6 difficulty hearing or understanding a witness, I've told
7 our court reporter she may interject. Careful not to
8 talk over each other, too. I think that's the biggest
9 problem with transcripts is if you try to talk at the
10 same, and it -- the transcript can become very confused.
11 And I'll try to stay on top of that. No disrespect to
12 anybody in any event here.

13 USDA will post the entire transcript, witness
14 testimony, and exhibits to its website in a reasonable
15 time frame after the close of the hearing. I'm not sure
16 how long it takes to get the transcript.

17 Do you know, Ms. Hearing Reporter, Shelly?

18 THE HEARING REPORTER: I think it was requested in
19 ten business days.

20 JUDGE STROTHER: All right. At the close of the
21 hearing, we'll establish a time after the transcript is
22 made available for participants to submit corrections to
23 the transcript and objections. I'll give instructions
24 at that time, but basically don't change the testimony.
25 The idea is to reflect what was actually said. There

1 will be also an opportunity for objections to proposed
2 transcript corrections. Once corrections are accepted,
3 that is my office will go over them and issue
4 transcript -- official transcript corrections, and the
5 transcript is certified, the participants will have an
6 opportunity to file briefs regarding proposed findings
7 of facts and conclusions of law.

8 7 CFR 99 -- I'm sorry.

9 7 CFR 900.9(b), that's to be based on the
10 hearing record. New evidence or alternative proposals
11 may not be included in those briefs.

12 Did we -- Ms. Chilukuri, have you talked to
13 the parties about what kind of briefs we have in mind
14 for this? Just one round, or initial and answering at
15 the same time, or step briefs or --

16 MS. CHILUKURI: Your Honor, I haven't spoken with
17 the RAC or anyone else. We've just spoken internally,
18 and we say just one round. We're still deciding on the
19 potential time frame, but we are thinking 30 days or
20 less after the certification of the transcript. But we
21 would just say it would just be one round of --

22 JUDGE STROTHER: Okay. I just -- I'm here to serve
23 the parties, as well as the agency, so whatever is okay
24 with the participants is okay with me. I guess if
25 something drastic happened in the first round of briefs,

1 I suppose somebody could seek leave to answer that.
2 Okay. We'll do that at the end of the -- at the end of
3 the hearing.

4 All right. I'll be taking periodic breaks,
5 lunch breaks at my discretion. I think I'm going to
6 shoot for 15 minutes in the morning, a lunch break -- do
7 we need more than an hour for lunch? No? Okay. We'll
8 try to take an hour.

9 MS. POWELL: Restaurants are all in walking
10 distance here.

11 JUDGE STROTHER: Good. Just roughly shoot for 15
12 minutes at 10:30 or so, depends on where the witnesses
13 are, where cross is, or anything else, a little after
14 12:00 for lunch, and sometime in the afternoon.

15 If I -- again, Ms. Hearing Reporter, if I'm
16 taxing you, you'll let me know.

17 We have two days scheduled for this hearing.
18 If we finish up before then, I expect to close the
19 hearing at that time.

20 That's all I have for preliminary remarks.

21 Any questions?

22 Should we call our first witness?

23 MS. CHILUKURI: Your Honor, I have a few
24 preliminary matters.

25 JUDGE STROTHER: Oh, I'm sorry.

1 MS. CHILUKURI: No problem.

2 JUDGE STROTHER: Yeah, I should have asked for
3 other housekeeping.

4 MS. CHILUKURI: Sure. And, again, this is Rupa
5 Chilukuri for USDA.

6 And just to remind everyone that the Notice of
7 Hearing was published in the Federal Register on
8 January 12th, 2024, and in that notice it stated that
9 all of the USDA employees involved in the
10 decision-making process are prohibited from ex parte
11 communications regarding the merits of the proposal,
12 right, so with any interested party. So people sitting
13 at this table and any other USDA personnel can't discuss
14 any substantive matters with any interested persons. I
15 just want to reiterate that.

16 And in terms of timing, we're prohibited from
17 discussing the merits of the proposal with interested
18 parties off the record from the issuance of a Notice of
19 Hearing to the publication of the Secretary's decision.

20 And if you do have any procedural questions,
21 we can discuss that.

22 And, Your Honor, I also have -- I guess some
23 foundational exhibits that I want to discuss. So we
24 have filed those with the hearing clerk, and I just
25 wanted to remind everyone what those were.

1 These exhibits are required by the
2 regulations, specifically 7 CFR 900.4, and they're
3 basically about notice to the public about what the
4 proposals are. So the first exhibit was USDA Exhibit 1,
5 and that was a copy of the Federal Register Notice of
6 this proceeding, which was published on January 12th,
7 2024, and that Notice of Hearing contains the proposed
8 regulatory text.

9 Then Exhibit 2 is a certificate indicating
10 that a true copy of the Notice of Hearing was mailing --
11 was mailed to interested persons.

12 Exhibit 3 is a certificate indicating that a
13 news release regarding the Notice of Hearing and the
14 hearing took place.

15 And Exhibit Number 4 is just a certificate of
16 officials notified regarding this hearing, that USDA got
17 in contact with the governor of California and other
18 people to let them know the hearing was taking place.

19 So, again, Your Honor, we had previously filed
20 these with the hearing clerk. I don't know if you think
21 it makes sense for me to offer them again.

22 We do have copies of the Notice of Hearing in
23 the back available for use for anyone, and I would
24 recommend that witnesses feel free to refer to the
25 Notice of Hearing if there's testimony that you --

1 especially supports and want to highlight that, or if
2 you think there needs to be any modifications to the
3 proposed regulatory text, then, of course, please feel
4 free and absolutely refer to the Notice of Hearing. It
5 will really help us in terms of developing a record and
6 writing it up later to be able to refer specifically to
7 those -- to the proposed regulatory texts and any
8 changes thereof.

9 JUDGE STROTHER: Unless there are any objections,
10 I'll go ahead and admit those four exhibits, 1, 2, 3,
11 and 4, the foundational exhibits that regulations call
12 for in the record.

13 (Whereupon, Exhibits 1 through 4
14 were marked for identification and
15 admitted into the record.)

16 JUDGE STROTHER: And make sure the keeper of the
17 exhibits -- whoever is keeping our official copy, which
18 will be filed with the hearing clerk eventually, has --
19 has copies.

20 MS. CHILUKURI: Sure. Okay. Very good. Thank
21 you.

22 So we don't have any other preliminary
23 matters. We do have one witness. And basically the
24 USDA would like to present various data information
25 regarding raisins, so at this time I'd like to call

1 Mr. Marc McFetridge to present this information.

2 And while he's doing that, if somebody from
3 the USDA's technical team could hand out -- get, you
4 know, copies of Marc's testimony that he'll be using to
5 people.

6 If there are copies, I think most important is
7 us and RAC.

8 TESTIMONY OF MARC McFETRIDGE

9 JUDGE STROTHER: Welcome. Please raise your right
10 hand.

11 MARC McFETRIDGE,
12 having been first duly sworn, testified and was
13 examined, as follows:

14 MR. McFETRIDGE: I do.

15 JUDGE STROTHER: Have the exhibits been handed out,
16 the statement been distributed? I need one.

17 MR. SASSELLI: Do you have it?

18 MR. McFETRIDGE: Right there in the blue folder.

19 MS. CHILUKURI: So, Marc, I just want to make sure.
20 Do you have enough copies for Department people? Do you
21 need to make more?

22 MR. McFETRIDGE: We just made two copies of my
23 testimony, but we can make some more real quick.

24 JUDGE STROTHER: I think we're going to need more.

25 (Whereupon, off the record.)

1 JUDGE STROTHER: Back on the record.

2 Your witness, Ms. Chilukuri.

3 MS. CHILUKURI: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MS. CHILUKURI:

6 Q. Could you please state and spell your name for
7 the record?

8 A. Sure. My name is Marc McFetridge, M-a-r-c
9 McFetridge.

10 Q. And you're a USDA employee; is that correct?

11 A. Correct.

12 Q. How long have you been with the USDA?

13 A. I've been with the USDA for 17 years.

14 Q. And what is your -- what is your title?

15 A. I'm an agricultural economist.

16 Q. And what do you do as an agricultural
17 economist at the Department of Ag?

18 A. As an agricultural economist, I help prepare
19 reports using USDA data to help industries, either with
20 imports, exports, and then supporting any type of
21 marketing-order decisions, or for any type of research
22 or promotions. So, yeah, pretty much just data.

23 Q. Okay. Thank you.

24 And have you participated in hearings like
25 this before?

1 A. I have, yes.

2 Q. Okay. And do you know how many times you've
3 done so?

4 A. I believe as an economist, this is my third
5 hearing, but I've also participated in two hearings as a
6 rule writer.

7 Q. Okay. And you've prepared documents for this
8 hearing; is that correct?

9 A. Correct.

10 Q. And we're -- I understand we're getting copies
11 of those documents. Can you tell us what you -- what
12 you prepared?

13 A. Sure. I prepared a written testimony, and
14 then I've also prepared an econ report, it's in the
15 back, basically going over economic data that's been
16 published by the USDA, the National Agricultural
17 Statistics Service for support or for reference during
18 the -- the hearing proceedings.

19 Q. Okay. And that statement, that written
20 testimony that you're referring to, that would be
21 Exhibit 5; is that correct?

22 A. Correct.

23 Q. And I guess the data would follow in sequence,
24 that would be Exhibit 6. And like I said, everyone is
25 going to -- we're passing out copies, so we'll get those

1 to people soon.

2 Okay. So you'll be reading your statement
3 into the record; is that correct?

4 A. Correct.

5 Q. And in preparing these documents, did you
6 prepare them for proponents or opponents or for anyone
7 to use in a specific way, or is it just for general use?

8 A. It's for general use so both sides could use
9 them equally. It wasn't prepared in favor to one side
10 or the other. It was impartial.

11 Q. Okay. Thank you, Mr. McFetridge.

12 MS. CHILUKURI: I don't have any questions. I
13 would ask that we just make sure that people have the
14 copies of whatever documents they are just so they can
15 follow along when Mr. McFetridge is able to get started.

16 JUDGE STROTHER: Okay. Are we going to have the
17 witness read the statement?

18 MS. CHILUKURI: Yes, Your Honor.

19 JUDGE STROTHER: Okay.

20 MS. CHILUKURI: So I just wanted to confirm that,
21 you know, people have those -- those documents.

22 JUDGE STROTHER: I've got this.

23 MS. CHILUKURI: You have that.

24 JUDGE STROTHER: Off the record.

25 (Whereupon, off the record.)

1 (Whereupon, Exhibit 5 and Exhibit 6
2 were marked for identification.)

3 JUDGE STROTHER: Okay. Back on the record.

4 Mr. McFetridge, you may continue with your
5 statement, which is Exhibit 5.

6 MR. MCFETRIDGE: My name is Marc McFetridge. I've
7 worked for the US Department of Agriculture, USDA, since
8 2006. From December 2009 to present, I've worked as an
9 agricultural economist where my duties include preparing
10 economic and fiscal analyses, which are used by
11 government officials to help administer federal programs
12 for specialty crops programs.

13 I received a bachelor's degree in agricultural
14 business management in 2001 from Oregon State University
15 and a master's degree in agricultural and resource
16 economics in 2004 from Oregon State University.

17 For this hearing on California raisins, I've
18 prepared a report titled, "U.S. Raisins, Crop Years:
19 2000 through 2022." The data source is the National
20 Agricultural Statistics Service, NASS, USDA. The
21 purpose of this report is to introduce U.S. government
22 data and other relevant information into the hearing
23 record. The data and graphs include -- included in the
24 prepared report are intended to be used by all parties
25 involved in the hearing in discussing and analyzing the

1 merits of the various proposed amendments. The data
2 used to generate the graphs can be found on page 3 of
3 the report. Data for the 2023 crop year will not be --
4 will not be available until March [sic] 2024, when NASS
5 will release the Noncitrus Fruit and Nut 2023 summary.

6 NASS reports the crop year as the year the
7 raisins were harvested. The federal marketing order
8 defines the crop year as a 12-month period beginning
9 with August 1st of any year and ending with July 31 of
10 the following year. To avoid confusion, I'll be
11 presenting data as NASS reports so interested parties
12 can easily reference NASS publications to verify the
13 information I am presenting.

14 I would also note that after 2017, NASS
15 stopped publishing production and pricing information
16 for raisins in terms of dried tons. Also, when using
17 NASS quick stat database, NASS uses the term
18 "raisin-type grapes" to convey that the numbers are
19 reported in fresh tons. To stay consistence -- to stay
20 consistent, when I refer to raisins for yield,
21 production, and pricing, and value of production, those
22 numbers will be in green tons.

23 For ease of use, note that all percentage
24 calculations have been rounded.

25 In the report, graphs are shown for U.S.

1 raisins. Raisins are primarily produced in California's
2 San Joaquin Valley and are sun-dried.

3 Bearing Acres. The graph on page 4 shows the
4 total bearing acres. Bearing acres reached a 15-year
5 high during the 2000 crop year at 280,000 acres for the
6 U.S. Since the 2000 crop year, bearing acres have
7 trended downwards. For the 2022 crop year, bearing
8 acres were reported at 133,000 acres. Acreage is down
9 2 percent compared to the 2021 crop year and down
10 10 percent compared to the previous five-year average.

11 Yield. The graph on page 5 shows the average
12 yield for raisins in green tons. The average yield has
13 varied greatly over the past 23 crop years, with the
14 average yield being 9.5 tons per acre. Average yields
15 reached a high of 11.4 tons per acre during the 2002,
16 2008, and 2013 crop years. The lowest yield occurred
17 during the 2022 crop year at 7.59 tons per acre. The
18 2022 crop yield was down 2 percent from the 2021 crop
19 year, and down 13 percent compared to the previous
20 five-year average.

21 Production of Raisins. The graph on page 6
22 shows the total production of raisins in green tons. As
23 expected, the production of raisins has seen a
24 significant reduction following the downward trend of
25 bearing acres in the past 23 crop years. Production of

1 raisins reached a high during the 2000 crop year at
2 2,921,000 tons. For the 2022 crop year, the production
3 of raisins was reported at 1,010,000 tons, down
4 4 percent compared to the 2021 crop year, and down
5 22 percent compared to the previous five-year average.

6 Prices Received by Growers. The graph on page
7 7 shows the average prices received by growers. Prices
8 have trended upward as the supply of raisins have
9 trended downward the past 23 crop years. Over the past
10 ten years, the average price of raisins has doubled
11 compared to the price received by growers in the 2000
12 crop year. The prices received for raisin-type grape
13 for the 2022 crop year was reported as \$378 per ton, up
14 7 percent compared to the 2021 crop year and up
15 10 percent compared to the previous five-year average.

16 Total Value of Production. The graph on page
17 8 shows the total value of production. Total value of
18 production was calculated by taking the production of
19 raisins in green tons multiplied by the prices received
20 by growers for raisins in green tons. Over the past ten
21 years, the total value of production was the lowest
22 during the 2020 crop year at \$304,640,000. For the
23 2000 -- that should be 2022 crop year, the total value
24 of production of raisins was \$381,780,000, up 2 percent
25 compared to the 2021 crop year but down 15 percent

1 compared to the previous five-year average.

2 BY MS. CHILUKURI:

3 Q. Okay. Thank you, Mr. McFetridge.

4 And just to confirm, on page 4, you said that,
5 I guess four lines up, it should read, "For the 2022
6 crop year"?

7 A. That's correct.

8 Q. Okay. Thank you.

9 And in preparing these documents, your
10 statements and your data, the graphs and the chart, I
11 just wanted to confirm again that in preparing these
12 documents and using those documents, this is for
13 everyone to use; is that correct?

14 A. That's correct.

15 Q. Okay. Thank you.

16 MS. CHILUKURI: I have no further questions, Your
17 Honor.

18 JUDGE STROTHER: Anyone else have questions for
19 this witness?

20 Seeing none, anyone have any objection to
21 Exhibits 5 and 6 being admitted into the record?

22 They are admitted.

23 (Whereupon, Exhibit 5 and Exhibit 6
24 were admitted into the record.)

25 JUDGE STROTHER: Thank you. You may step down.

1 MR. CROWE: Your Honor, I have a question.

2 JUDGE STROTHER: For me?

3 MR. CROWE: For this gentleman. I'm sorry, but I
4 just thought of it.

5 JUDGE STROTHER: Oh.

6 Do you mind retaking the stand?

7 THE WITNESS: Sure.

8 MR. CROWE: I'm sorry.

9 JUDGE STROTHER: No worries.

10 Welcome back to the stand. You're still under
11 oath.

12 MR. CROWE: Sir --

13 JUDGE STROTHER: You may continue.

14 Identify yourself, please.

15 MR. CROWE: My name is Richard Crowe, R-i-c-h-a-r-d
16 C-r-o-w-e. I'm an independent -- independent grape
17 grower here in Fresno.

18 CROSS-EXAMINATION

19 BY MR. CROWE:

20 Q. During your research for your statement and
21 your charts, did you identify any reasons or factors for
22 the precipitous fall in the production and pricing of
23 raisins? Any, you know, cause for that? Did you come
24 across, or do you recommend, or do you have any
25 information on that?

1 A. I didn't have any information, like industry
2 information on what caused it. I was just reporting out
3 the numbers that NASS had published in either the
4 noncitrus fruit and nuts summaries or what they're
5 reporting on their database, so...

6 Q. You just reported numbers?

7 A. Yes. Correct.

8 Q. No cause or effect?

9 A. No.

10 MR. CROWE: Thank you.

11 JUDGE STROTHER: Is that it? Anyone else?

12 You're excused again. Thank you.

13 MS. CHILUKURI: Thank you, Your Honor.

14 I just wanted to confirm for the court
15 reporter, can you hear if we don't necessarily use the
16 microphones and speak loudly enough?

17 THE HEARING REPORTER: I'll let you know if I
18 can't.

19 MS. CHILUKURI: Okay. Thank you.

20 We don't have any other witnesses at this
21 time, Your Honor.

22 JUDGE STROTHER: Okay. Next witness.

23 Do you have a representative or you're doing
24 this yourself?

25 MR. SCHUTZ: I'm doing it myself.

1 JUDGE STROTHER: Okay. You can do that.

2 On the record by the way. You don't have to
3 take down the oath, but I'll give it.

4 Raise your right hand, please.

5 MONTE SCHUTZ,
6 having been first duly sworn, testified and was
7 examined, as follows:

8 MR. SCHUTZ: I do.

9 JUDGE STROTHER: Do you have exhibits here? Do you
10 have a statement?

11 MR. SCHUTZ: Yes. I just -- I have some general
12 information for the industry, and just some opening
13 remarks.

14 (Whereupon, off the record.)

15 JUDGE STROTHER: Back on the record.

16 7 is this witness's statement. What he
17 labeled A will be 8.

18 (Whereupon, Exhibit 7 and Exhibit 8
19 were marked for identification.)

20 MR. SCHUTZ: So A will be 8?

21 JUDGE STROTHER: There's an 8?

22 All right. I've got a copy now.

23 So Exhibit A, we'll -- we'll label 8 for this
24 hearing record. Exhibit B, which appears to be --

25 Is this your testimony here or in some other

1 proceeding?

2 MR. SCHUTZ: No, that should be it. Exhibit B --

3 JUDGE STROTHER: Oh, wait a minute.

4 MR. SCHUTZ: Exhibit B looks like this,
5 Your Honor.

6 So that would be Exhibit 9?

7 JUDGE STROTHER: Oh, I see.

8 MS. POWELL: Top-right corner.

9 MR. SCHUTZ: Yeah. They're marked in the top-right
10 corner.

11 JUDGE STROTHER: Yeah. My mistake. It just said
12 Monte Schutz testimony, but they are labeled that, it's
13 just associated with your testimony.

14 MR. SCHUTZ: Okay.

15 JUDGE STROTHER: Yes. Okay. Exhibit B, we'll
16 label that 9.

17 Exhibit C, we'll label 10 for identification.

18 Finally, it looks like Exhibit D, we'll label
19 11 for identification.

20 (Whereupon, Exhibit 9 through
21 Exhibit 11 were marked for
22 identification.)

23 JUDGE STROTHER: Everyone good?

24 MS. CHILUKURI: Your Honor, can we confirm the
25 exhibits just once more. Is it Exhibit 7 to 10?

1 MR. SCHUTZ: 11.

2 JUDGE STROTHER: 11.

3 MS. CHILUKURI: 11. Okay. Thank you.

4 JUDGE STROTHER: Anything else?

5 You may give your statement.

6 TESTIMONY OF MONTE SCHUTZ

7 MR. SCHUTZ: My name is Monte Schutz. That's
8 M-o-n-t-e S-c-h-u-t-z. I am a third-generation raisin
9 farmer, and I am the current Chairman of the Raisin
10 Administrative Committee. I farm 350 acres of raisin
11 grapes.

12 I've been a board member of the RAC since
13 2002.

14 I was vice chairman for six years from 2006 to
15 2012.

16 And I've been chairman for the past 12 years.

17 I'm a former Raisin Bargaining Association
18 Member and served as their chairman for ten years.

19 The production area of California raisins
20 consist of Fresno, Madera, Tulare, Kern, and Kings
21 Counties, with the biggest production in Fresno and
22 Madera counties.

23 There is currently approximately 98,000 --
24 98,000 acres in production. And that would be
25 Exhibit 8.

1 The industry has about 1500 producers.

2 During the dormant seasons, during the months
3 of December and January, farmers prune and tie their
4 vines on various type of trellis systems in preparation
5 for the next growing season. Early March, vines start
6 their annual growth cycle when the buds open and the
7 formation of tiny bunches on the new shoots can be
8 found. By mid -- by mid-May, bunches begin to bloom
9 forming the clusters of grapes. Normally in early July
10 the vines begin the veraison process. This is when
11 sugar starts to develop in the berries. Grapes are
12 harvested in late August and September once they reach
13 an optimum level of 18 to 24 brix, depending on the
14 growing year. And brix is defined as the measurement of
15 sugar content.

16 Raisin grapes are harvested using three
17 different methods, traditional, which is hand harvest,
18 mechanical harvest, with is a continuous tray, and the
19 other form of mechanical harvest, dried on the vine, or
20 DOV method. Each method is about one-third of the
21 industry.

22 For an overview of the California raisin
23 industry, I'd like to enter into the record the RAC
24 Industry brochure. That would be Exhibit 9.

25 JUDGE STROTHER: We'll just wait, we'll wait to the

1 end to put in exhibits, admit exhibits.

2 Continue.

3 MR. SCHUTZ: The Raisin Administrative Committee
4 was established in 1949 and was last amended under
5 formal rulemaking in April 2016.

6 The Raisin Administrative Committee is
7 comprised of 35 members representing producers, ten
8 members representing handlers of varying sizes, one
9 member representing the Raisin Bargaining Association,
10 and one public member.

11 Members serve two-year terms of office that
12 begin on May 1st.

13 We currently have 17 handlers and 13
14 dehydrators registered with the RAC.

15 Marketing by the RAC is focused on providing
16 promotional support for the 32 percent or so of our
17 annual production that is shipped into export,
18 approximately 66,000 standard tons each year. Marketing
19 activities are conducted through two government
20 programs, the Market Access Program and the Merchandise
21 Incentive Program, as well as the Raisin Administrative
22 Committee that contributes to marketing activities
23 through handler assessments.

24 Under the MAP fund program, the RAC is able to
25 support marketing activities in 19 countries across the

1 globe, which are managed by ten in-country international
2 representatives and supervised by RAC headquarter staff
3 in Fresno. The annual MAP budget is typically 2.8 to
4 3 million dollars, and the RAC contribution to the
5 overall program is about another 2 million for a total
6 of \$5 million. Those countries supported by active
7 marketing campaigns include Canada, Denmark, Norway,
8 Sweden, Finland, United Kingdom, Germany, Mexico, China,
9 Hong Kong, Vietnam, Indonesia, Japan, South Korea,
10 Malaysia, Philippines, Singapore, Taiwan and Thailand.
11 Supported programs including trade show exhibits, trade
12 webinars and advertising, production development
13 contest, retail promotions, consumer advertising and
14 social media, influencer campaigns, consumer recipe
15 contests and sampling events.

16 Additionally, the RAC manages another program
17 called the Merchandise Incentive Program, which is
18 created to encourage loyalty to California raisins by
19 providing funds based on purchases and market-share
20 achievements to importers and countries in Asia. This
21 program is funded by the RAC at about \$1.3 million per
22 year. The results of this program have been
23 consistently good as California raisins enjoy import
24 market shares in many Asian countries between 50 to
25 80 percent depending on the country. Importers use MIP

1 funds to manage their internally created programs to
2 benefit their industrial and retail customers.

3 Over the past five years, approximately
4 86 percent of raisins sold in the U.S. are California
5 raisins. The remaining percent of product is imported
6 from Turkey, South Africa, Chili, and Argentina, and
7 others. And this would also be a time I'd enter into
8 Exhibit 10.

9 MS. CHILUKURI: Your Honor, I'm sorry to interrupt.
10 My understanding was that all the exhibits would be
11 entered after cross-examination.

12 JUDGE STROTHER: Yes.

13 MS. CHILUKURI: So the witness can resume their
14 testimony.

15 MR. SCHUTZ: Okay.

16 JUDGE STROTHER: Yes, you may. I'm sorry.

17 MR. SCHUTZ: Okay. Yeah.

18 JUDGE STROTHER: You may continue. Yeah, we'll
19 just -- when you're through cross and everything.

20 MR. SCHUTZ: Okay. I don't need to pause, then.

21 JUDGE STROTHER: We'll put them in there. No.

22 MR. SCHUTZ: I only got one more exhibit.

23 Approximately 31 percent of California raisins
24 are exported. In the 2022/'23 crop year, the top ten
25 destinations for California raisins were: Japan,

1 Canada, Philippines, South Korea, Taiwan, Sweden,
2 Mexico, Thailand, China, and Germany.

3 California raisins can be stored by handlers
4 for up to two years from date of harvest in a controlled
5 environment, either in stacks or cold storage.

6 The producer is the grower of California
7 raisins. Once the product is grown and harvested, the
8 producers sell their raisins to the 17 active handlers,
9 who in turn process the product for industrial users,
10 consumers, and for institutional users, such as schools.
11 We also have one large marketing co-op, which is
12 Sun-Maid. It's a voluntary association of producer and
13 growers that join together to process and market their
14 own fruit, as well as that fruit purchased from
15 independent growers.

16 The nature of the relationship between
17 producers and handlers is essentially that between a
18 seller and buyer. These relationships vary in structure
19 and duration. The marketing cooperative typically has a
20 formal long-term relationship with their producers as
21 they operate for the mutual benefit of all parties.
22 Other producers may also have long-term relationships
23 with handlers based on experience and trust. Some
24 producers prefer to shop their fruit on a year-by-year
25 basis to the handler who provides the best purchasing

1 terms at the time.

2 The past 20 years, the industry has gone from
3 255,000 acres of raisin grape vines to 98,000 acres.
4 The major reason for this decline is economic viability.
5 Grower returns have been very volatile the past ten
6 years, in some years returns not even covering overall
7 costs for growing raisins. Multiple years of drought,
8 labor shortage, and increased labor costs have added to
9 the economic burden. Because of these issues, growers
10 have continued to pull out raisin grapes for more
11 profitable crops, such as almonds, citrus, and
12 pistachios.

13 And that concludes my testimony, Your Honor.

14 JUDGE STROTHER: Okay. Anyone have any
15 questions -- well, I guess we'll give USDA first. USDA
16 have any questions for this witness?

17 MS. CHILUKURI: Yes, Your Honor, we do.

18 CROSS-EXAMINATION

19 BY MS. PANKEY:

20 Q. Hello. Okay.

21 Thank you, Mr. Schutz, for your testimony
22 today. I will be asking you a few questions in regards
23 to that, and I will start by asking you some general
24 questions about your involvement in the RAC and your
25 understanding of the proposed amendments.

1 A. Okay.

2 Q. My first question to you is to what extent
3 were you involved in the discussions and deliberations
4 on the proposed amendments?

5 A. As chairman, I conduct the meeting, so I'm
6 involved in the question and answer, the motions, the
7 discussion, general information, so I would say overall,
8 most of it.

9 Q. Okay. So are you -- as chairman, do you also
10 serve on any subcommittees on the RAC?

11 A. I'm on as ex officio, so I attend almost all
12 of the subcommittee meetings.

13 Q. Okay. And are there any subcommittees in
14 particular that were tasked with developing the proposed
15 amendments?

16 A. Yeah. Can I refer to my president for those
17 committees?

18 Q. Sure.

19 MS. POWELL: Rulemaking Workgroup, Amendment Issues
20 Subcommittee, and the RAC. Those were the three groups.

21 JUDGE STROTHER: Can you vouch for that? Does
22 anyone want to --

23 MR. SCHUTZ: Yeah. Do we need to identify Debbie?

24 JUDGE STROTHER: Sure.

25 MS. POWELL: Debbie Powell, President of the RAC,

1 President and General Manager.

2 JUDGE STROTHER: I don't think we need to -- are
3 you testifying later?

4 MS. POWELL: Right after him.

5 JUDGE STROTHER: What the heck, raise your right
6 hand.

7 DEBBIE POWELL,
8 having been first duly sworn, testified and was
9 examined, as follows:

10 MS. POWELL: I do.

11 JUDGE STROTHER: You may continue.

12 MS. PANKEY: Okay. Thank you.

13 BY MS. PANKEY:

14 Q. So did you identify yourself as a small or a
15 large grower?

16 A. I didn't identify myself as either/or. I
17 mean, I don't have -- I mean, we have growers that have
18 20 acres, and we have growers that have 8,000 acres, so
19 I just stated I have 350 acres that I farm, so wherever
20 you want to put me in that category. There's not really
21 an average. There's such a wide range.

22 Q. Okay. So you don't -- so you did not -- you
23 cannot identify yourself as either small or large
24 grower?

25 A. No.

1 Q. Okay. Do you support the amendments that are
2 being proposed today?

3 A. I do.

4 Q. And do you believe the amendments proposed
5 have the broadest of industry support?

6 A. I do.

7 Q. To your knowledge, did all industry groups,
8 including those representing small businesses, have an
9 opportunity to provide input on the proposed amendment?

10 A. I believe they did.

11 Q. Based on your understanding, would you --
12 would any groups in the industry have an unfair
13 advantage as a result of these amendments?

14 A. I do not believe so.

15 Q. Okay. Thank you.

16 Okay. So I would begin asking you questions
17 more closely to your testimony today.

18 A. Okay.

19 Q. In your testimony, you provided that you were
20 a former member of the Raisin Bargaining Association,
21 correct?

22 A. Correct.

23 Q. What was the duration of your membership on
24 that -- for that co-operative?

25 A. I think I began in 1992 up until three years

1 ago, so eight -- 28 years.

2 Q. Okay. And you said you also served as the
3 chairman for the RBA?

4 A. I did.

5 Q. Okay. So would you say that you have a fairly
6 well understanding of the RBA's operation and their
7 objectives?

8 A. Yes.

9 Q. Okay. Could you briefly explain your
10 responsibilities and duties as the chairman of RBA, if
11 those are similar to your duties as chairman of the RAC?

12 A. I'm sorry, could -- could you repeat?

13 Q. Could you -- could you briefly explain your
14 duties and responsibilities as chairman of the RBA? So
15 when you were chairman of the RBA, can you briefly
16 explain what those responsibilities that you had when
17 you were the chairman?

18 A. Yeah. The -- the chairman for the RBA -- is
19 that me? Feedback?

20 MS. WILLIAMS: Feedback.

21 MR. SCHUTZ: Okay.

22 Okay. So you want to know the differences
23 between the duties of chairman of RBA and the chairman
24 of RAC?

25 ///

1 BY MS. PANKEY:

2 Q. Yes. I would just like you to explain in more
3 detail what your responsibilities were when you were
4 chairman of the RBA.

5 A. Oh. Well, as chairman of the RBA, I am as
6 chairman you're conducting the meetings, the annual --
7 or the monthly board meetings, but we also had duties,
8 myself and the general manager/president, visiting with
9 all of the handlers, and our basic function at that
10 point was negotiating for field price. So we spent a
11 lot of time visiting all the handlers and having grower
12 meetings and our own board meetings, you know, trying to
13 establish them together, really just negotiating
14 handlers and growers to come to a -- to a price, to a
15 field price.

16 Q. Okay. Thank you.

17 So could you -- so could you explain how the
18 RBA is a benefit to producers?

19 A. I -- I don't think I'm comfortable answering
20 about the RBA because I'm no longer a member.

21 Q. Okay.

22 A. I can talk about the years I was a member, but
23 I am not currently a member, so I think that would be
24 better answered by the members themselves.

25 Q. Okay. That's fine.

1 A. Okay.

2 Q. In your opinion, what factors have contributed
3 to the decline in raisin producers and acreage for over
4 the past 20 years?

5 A. Clearly economic. It was unsustainable for a
6 number of years, and that's why you saw the -- all of
7 Marc's charts, all of my charts, the decline in acreage
8 and the decline in tonnage goes hand in hand, and it's
9 just not profitable.

10 Q. When you say it's not profitable, are you
11 speaking to the cost of production --

12 A. Yes.

13 Q. -- and demand?

14 A. Yes. And the return.

15 Q. So you would say the cost of production was
16 higher than grower returns over the years, and that's
17 why it was --

18 A. It.

19 Q. -- not --

20 A. It has been numerous times. It's very -- very
21 volatile. The graph is ridiculous. The -- I mean, we
22 have very good years, and then we have very bad years,
23 and it can be -- it can be the very next year. It's
24 just really market driven, over supply, supply and
25 demand really affects our industry, and continues to.

1 Q. And, typically, when growers experience this
2 type of problem within the industry with the cost of
3 production being high, how do growers usually respond to
4 that?

5 A. I think you see it in the declining acreage.
6 The ones that can afford to and are resourceful can --
7 they pull out their vines and plant a more profitable
8 crop.

9 Q. And you would say that is a reason why there
10 is a decline in producers, right? You went from 3500 to
11 approximately 1500 producers?

12 A. Absolutely.

13 Q. Okay. Thank you.

14 Could you provide -- you don't -- you're not
15 comfortable speaking about the RBA, but maybe how has
16 this reduction in producers affected the cooperative
17 marketing association? Are you comfortable speaking
18 Sun-Maid a little bit?

19 A. Not really. I mean, when you have
20 representatives here, I think it's better for them to
21 speak.

22 Q. Okay.

23 A. I mean, I can speak overall on the industry.

24 Q. Okay. So overall in the industry, how has the
25 reduction in producers affected the industry?

1 A. The reduction of producers in the industry
2 is -- I mean, it's been a -- it's been a result of the
3 economic problem, so I'm not -- I don't think it affects
4 the industry by having less growers. I mean, it's
5 unfortunate because we're in a declining industry. We'd
6 much prefer to be more producers, more handlers in a
7 rising industry, you know, price and volume. We're just
8 not in that position, so these are just results of the
9 economic condition.

10 Q. Okay. In your testimony, you stated that
11 domestic production of California raisins accounted for
12 86 percent?

13 A. Is consumed, yeah, domestically in the United
14 States.

15 Q. All right. Has that number fluctuated over
16 the years, increased or decreased?

17 A. Yes.

18 Q. How? Has it increased or decreased?

19 A. I'm going to have to refer to Debbie on this.

20 Q. Okay.

21 A. We might be able to get that information for
22 you. I don't have it in front of me.

23 Q. Okay. Well, when -- when Debbie gets up to
24 testify, I can --

25 A. Okay.

1 Q. -- she can provide further information on
2 that.

3 A. I don't know if she has it in front of her,
4 but we can get it for you.

5 Q. Okay. In your testimony, you mentioned that
6 there are handlers and dehydrators. Can you explain the
7 difference between a handler and a dehydrator?

8 A. Dehydrate -- if you think of the golden
9 raisins that are made, those are made with the
10 dehydrators. Most handlers -- I shouldn't say most,
11 some handlers both have a dehydrator and processing
12 plant.

13 Q. So would a dehydrator be considered -- if it's
14 a handler and it has a hydrator, then a dehydrator could
15 also be a handler; is that correct?

16 A. Yes.

17 Q. And are packers also considered handlers?

18 A. Yes. Just a term, handlers, processors, and
19 packers is a term we use within the industry.

20 Q. Okay. Thank you.

21 So can you provide -- how do independent
22 producers, independent handlers, marketing and
23 bargaining cooperative handlers and producers fit within
24 the industry?

25 A. Well, we all basically -- the same function

1 whether we're an independent or belong to the
2 cooperative. I mean, as growers we're selling our
3 product to the -- to the handler, the processor.
4 They're processing and selling it to all the countries
5 that I've listed. The relationship I think is similar.
6 I mean, the handler is paying the grower. Sun-Maid is
7 the cooperative, so they're sharing in their profits of
8 the -- of the processing as the cooperative, the
9 independent grower, and you sell your fruit for a price,
10 and then he sells it on the market for his price.

11 Q. Okay.

12 A. Does that answer your question?

13 Q. It -- yes.

14 So an independent grower can also sell their
15 raisins to Sun-Maid; is that what you were saying?

16 A. I believe so.

17 Q. Okay.

18 A. They have in the past. I don't know.

19 Q. Right. Would independent growers also be a
20 part of the RBA?

21 A. No.

22 Q. Okay. So you have independent producers,
23 right? You have RBA producers?

24 A. Correct.

25 Q. You have Sun-Maid producers and handlers,

1 correct?

2 A. Correct.

3 Q. And then you also --

4 A. You have three -- you have three types of
5 producers -- growers, RBA, independent, and Sun-Maid.
6 That's the growing side. Then you have Sun-Maid and the
7 independent handlers.

8 Q. Right. And the Committee membership as it
9 currently is reflects that, right?

10 A. Yes.

11 Q. In your opinion, does the proposed reduced
12 Committee provide equitable representation of all groups
13 within industry?

14 A. Yes.

15 Q. In your opinion, does the reduction in
16 Committee size allow for an unfair advantage or
17 disadvantage of any industry group?

18 A. It does not.

19 Q. In your opinion, how do Committee vacancies
20 affect the time, effort, or expense incurred by the RAC
21 during the nomination process?

22 A. The Committee vacancies, you mean as far as
23 the -- the people serving on the board?

24 Q. As far as the vacancies that are not being
25 filled on the Committee, how does that --

1 A. It makes it difficult to get a forum. So if
2 we -- we all come down here, and we can't even get a
3 quorum, we've wasted a lot of our time, and the staff's,
4 and we can't have any formal motions made or passed or
5 do any business, so it's very difficult when we have
6 vacant seats.

7 Q. Okay. And have there been instances where you
8 were not able to meet quorum?

9 A. Yes.

10 Q. Okay. Could you further explain how labor
11 shortage and labor costs have contributed to the cost of
12 production being higher for growers over the years?

13 A. Well, when you have a labor -- labor shortage,
14 we're all -- as growers -- when I say "we," as growers,
15 we're all competing for the same -- same people at the
16 same time. We have a very short window to harvest
17 raisin grapes. There's about a six-week window in the
18 fall because of the weather, and the grapes don't get
19 ripe until a certain time, so you -- you have this short
20 window, and you can only harvest certain time, and then
21 fall season comes, which is the rainy season, and that's
22 the worst thing for grapes. So when we're competing for
23 the same people, it just automatically drives the price
24 up.

25 Q. Okay. Can you provide any other contributing

1 factors that may have led to decreases in production
2 because of production costs?

3 A. Costs. Costs. Fertilizer costs. Any --
4 all -- all expenses incurred in growing the crop, when
5 those prices go up, growers look for places to cut, cut
6 their expenses. And when you start to cut expenses, now
7 you're -- you're hurting your vines, and you're hurting
8 your production, and then it shows the next year. When
9 you try not to irrigate, you try to save power, those
10 type of things, the vines suffer for it, and in turn the
11 grape suffers, so your -- your crop declines.

12 Q. Okay.

13 MS. PANKEY: Okay. Thank you. I have no further
14 questions.

15 JUDGE STROTHER: Anyone else?

16 MS. CHILUKURI: Your Honor, we're just going to
17 pass --

18 JUDGE STROTHER: Tag team him on the USDA's part.
19 That's all right. Identify yourself.

20 MR. McFETRIDGE: Marc McFetridge, USDA.

21 CROSS-EXAMINATION

22 BY MR. McFETRIDGE:

23 Q. Monte, I have a few quick questions for you.

24 A. Okay.

25 Q. To reiterate on Christy's question about being

1 a small or large grower, the Small Business
2 Administration defines small agricultural service farms,
3 which includes handlers, as those having annual receipts
4 of less than 34 million and a small agricultural
5 producer is defined as those having annual receipts of
6 less than 4 million. Would you say, being a small
7 grower of having less than \$4 million of receipts for
8 just raisins, would you be able to qualify -- or
9 quantify if you would consider yourself a small or large
10 grower with that definition?

11 A. Yeah. That definition would be small. Yeah.

12 Q. Thank you.

13 Would you feel comfortable discussing what you
14 think, like, the average transportation time and miles
15 for your members for the RAC getting to and from
16 meetings would be?

17 A. I mean, I'm just guessing. I can tell you
18 what I -- you know, just knowing the area, I mean, we
19 are somewhat centrally located here in downtown Fresno
20 because a lot of us come from south valley, some come
21 from north, so I would say 20 miles, you know, up to 30.
22 But we are pretty well centrally located here in the
23 office.

24 Q. From your -- just using your own travel, what
25 would you say the average travel time is it typically

1 for you to get down here for a meeting?

2 A. Twenty minutes.

3 Q. And how many number of meetings do you guys
4 typically have per year?

5 A. Usually the full board is -- is once per month
6 is what we try to do, and lately we haven't even -- it's
7 all based on necessity, business that needs to be done,
8 but that's the most, once a month usually for full
9 board. And then we'll have sub -- subcommittees
10 sprinkled in in between, or sometimes that day to make
11 it more convenient. Zoom has really helped, since --
12 the one positive thing out of COVID, that we were all
13 able to do that, and you get better participation that
14 way, and it's clearly a lot more convenient for all of
15 us.

16 Q. So the meetings you have once per month, are
17 they all in person or are they also offered virtually?

18 A. They're offered both, but I will tell you as
19 chairman, and Debbie I think would agree, I'd prefer it
20 in person. It's so much easier, you know, trying to
21 call on people, raising hands, questions, you're here in
22 the room and you can see, you know, as opposed to on the
23 phone, people are interrupting, talking over each other,
24 very difficult. So for that point, yeah, from my
25 perspective, I think it's a lot more efficient, and --

1 and it -- we have better discussion when we're in
2 person. I think on phone, people just, you know, get
3 distracted, or they're looking at another screen, and
4 you don't get as, you know, much detailed questions.

5 Q. Thank you.

6 Typically how long do your meetings last,
7 your -- your full board meetings, how long do they
8 usually last?

9 A. An hour and a half at the most, that's my
10 goal.

11 Q. I know Christy asked you if you had ever had
12 some meetings where quorum wasn't able to be met. Can
13 you just provide an example, if you can remember one,
14 where quorum wasn't met, and can you provide any -- any
15 topics that weren't able to be voted on because quorum
16 wasn't able to be met? And was there any -- any
17 repercussions or anything that was a detriment because
18 quorum wasn't met for that example?

19 A. Well, it just delays it, because we're going
20 to have to take it up at some point, so whether it was
21 important that day and timely. And, you know, I know
22 staff works very hard at calling people, are you going
23 to be there, are you going to be on the line, and they
24 spend a lot of time trying to ensure that we have, and I
25 am sure Debbie can testify to that, that just to get --

1 and sometimes we're squeaking by one or two, we're
2 actually calling people waiting to start, are you coming
3 on?

4 So, yeah, it's frustrating for those of us
5 that show up or have spent time and we're waiting on the
6 phone, and there's no quorum, so then we just have
7 discussions, but we can't conduct, you know, any
8 business and moving anything forward.

9 Q. So two follow-up questions on that. So you
10 said you've -- you've had to wait, so does this happen
11 frequently where you'd have to wait, what would you say,
12 ten, 15 minutes of the, you know -- the committee's time
13 is, won't say wasted, but not as valuable because quorum
14 hasn't been met? Would you say that -- well, put that
15 into your words. What would you say would be typically
16 and how frequently does it happen that you've got --

17 A. Yeah, usually, I mean, within ten minutes we
18 can get somebody on the phone and kind of fill out that
19 quorum, but it's just frustrating, and I'm not really
20 patient when it comes to that, that we've all gotten
21 here on time, and we're waiting, and -- you know, and I
22 get it, people are busy, but it's frustrating then. You
23 know, and it's hard to gather up that many people to get
24 a quorum.

25 And it seems like it's gotten more difficult

1 in the last year or two as opposed to, gosh, we used to
2 have meetings, this room would be packed, you know. I
3 mean, when you can have 47 members and 47 alternates, we
4 could easily have 60 people in the room and have some
5 lively discussions.

6 Q. Thank you.

7 So quick follow-up. So if the quorum wasn't
8 met and you said that you were planning on voting on
9 something, would you guys typically wait until the
10 following month, or would you guys try to push in
11 another meeting, like, a week or two later? What was
12 your typical --

13 A. Usually push it back or two depending on the
14 urgency and the importance of it. And then, again, they
15 would work to get everybody, to make sure that they had
16 that time available, you know, and start calling, and
17 e-mailing to make sure that we can -- you know, and
18 explaining the issue that we can't move forward with
19 this issue without participation. So, yeah, it's --
20 it's a lot of -- a lot of staff busy work that is
21 frustrating.

22 Q. All right. So would you say that, you know,
23 when quorum isn't met, it creates additional costs and
24 additional time for not only the members, but also the
25 staff to try to create or, you know, propose a new

1 meeting or to carry on down the road to the following
2 meeting?

3 A. I would say yes. I mean, just off the top of
4 my head, if you're paying mileage for us to come here
5 and we didn't conduct business, we're going to come back
6 a week later, you know, that's just something that, off
7 the top of my head, that would be a cost, let alone, you
8 know, when they could be doing their other work and
9 they're calling all of us and trying to pin us down to a
10 certain date.

11 Q. All right. And that -- I guess you kind of
12 answered my other question was so the RAC does provide
13 reimbursement for your travel to and from meetings,
14 correct?

15 A. Yes.

16 MR. McFETRIDGE: Okay. I think that's all the
17 questions that I have at this moment.

18 Thank you, Monte.

19 MS. DORSEY: This is Samantha Dorsey with USDA.

20 CROSS-EXAMINATION

21 BY MS. DORSEY:

22 Q. Monte, going back to an earlier question,
23 speaking from your experience while you were on -- part
24 of the RBA, can you tell us or explain any benefits that
25 were realized by raisin producers based on RBA efforts?

1 A. When we negotiated a higher price, when the
2 supply and demand were in balance, we -- we looked
3 really good and really smart because we got growers a
4 high return. And then when supply was too much and
5 demand fell, we didn't look so smart or so good.

6 Q. Okay. Thank you.

7 And then sort of switching gears, in your
8 testimony you had mentioned cooperative marketing
9 associations. Can you just explain a little bit further
10 sort of the function of those associations?

11 A. As far as Sun-Maid, the marketing?

12 Q. Yes, the cooperative marketing association or
13 Sun-Maid.

14 A. I think they're better -- they're better to
15 answer that question than me. I'm on the outside
16 looking in.

17 Q. Sure. Okay. And then I think we touched on
18 this a little bit, but is there typically any
19 interaction between the CMAs and the RBI?

20 A. CMA, I'm sorry?

21 Q. Yeah. The cooperative marketing associations
22 and the RBI.

23 A. I'm sorry, can you repeat the question again?

24 MR. CROWE: RBA or RBI?

25 MS. DORSEY: RBI.

1 MR. SCHUTZ: Can you repeat the question? I'm
2 sorry.

3 BY MS. DORSEY:

4 Q. Are there typically any sort of intersection,
5 any instance where they're working together in tandem,
6 the RBI or the marketing association?

7 A. When we come here to the Raisin Administrative
8 Committee --

9 Q. Okay.

10 A. -- then we're working on behalf of the raisin
11 industry trying to -- trying to get agreement on
12 industry issues, moving forward.

13 MS. DORSEY: Okay. Thank you.

14 CROSS-EXAMINATION

15 BY MS. CHILUKURI:

16 Q. Rupa Chilukuri for USDA.

17 And just following up on Ms. Dorsey's
18 question, we're -- some of us are -- you know, we're
19 attorneys, we're laypeople, so we're trying to
20 understand how the industry works so we appreciate your
21 testimony.

22 So just trying to understand, can you be a
23 member of RBA and Sun-Maid?

24 A. No.

25 Q. No?

1 A. No.

2 Q. So Sun-Maid producer and RBA producers are
3 separate and distinct, but Sun-Maid as a handler and RBA
4 is a producer; is that possible?

5 A. Sun-Maid is a handler, it's a cooperative and
6 a producer. The technical -- I don't know what RBA's
7 status is. I know that we filed, back when I was a
8 member, as a handler, but they need to answer that
9 question, whether they consider themselves a handler. I
10 can't answer that.

11 Q. Okay. And then following up, just relating
12 back to your testimony, you indicated the industry has
13 about 1500 producers. Do you have sort of a rough
14 breakdown of how those producers fit into these
15 different categories of independent producer,
16 cooperative bargaining association, cooperative
17 marketing association producers? And if you don't, if
18 someone else has those details, that's fine.

19 A. Yeah, I think Debbie can give the exact stats,
20 but if you look at the representation at the RAC level,
21 you look at -- because it's broken down by
22 representation by tonnage, so you can look at our own
23 numbers, how many producers there are of Sun-Maid, how
24 many -- representative, how many are RBA, and how many
25 are independent, and that will give you your answer.

1 Q. Okay.

2 A. And I'm not trying to be smart about, you
3 know, the percentages --

4 Q. Right.

5 A. -- but that -- I don't have it on the top of
6 my head, but if you look at the numbers, the one with
7 the largest representatives has the larger
8 representation, so they have the larger tonnage in the
9 industry.

10 Q. So the current regulations has written base
11 producer presentation on acquisitions?

12 A. Yes.

13 Q. Is that correct?

14 A. Right.

15 Q. And the proposal does the same; is that
16 correct?

17 A. Exactly.

18 Q. Okay. So you had mentioned -- well, you had
19 mentioned before that you were chairman on RBA, and I
20 believe in the 1990; is that correct?

21 A. Yes.

22 Q. Okay. With -- with that, you -- RBA would
23 have had a designated seat on the RAC; is that right?

24 A. Yes.

25 Q. In addition to producer membership?

1 A. Right.

2 Q. How does that -- do you recall from your time
3 in the 1990s who that person would have been?

4 A. It was always the general manager or president
5 of the association at that time. It was not a -- which
6 he also -- a couple of them, looking back, they were
7 producers as well, but that was just the position pretty
8 much held for -- for the general manager or the
9 president over the -- over the course of the -- the
10 years I was there.

11 Q. Okay. And in the time that you were there,
12 would -- do you recall at all in terms of the
13 acquisitions, are they similar to what they are now, or
14 are the -- I guess the breakdown of acquisitions,
15 Sun-Maid, RBA, independent?

16 A. I think there was a lot --

17 Q. Is it the same or different?

18 A. Yeah. Back then when we had so many more
19 growers, when we had the 5,000 growers, it was more
20 equally distributed. It was almost a third, a third,
21 and a third of independent, Sun-Maid, and RBA --

22 Q. Okay.

23 A. -- probably at our highest point of grower and
24 acreage.

25 Q. Okay. Thank you, Mr. Schutz. I just wanted

1 to follow up on the exhibits you presented. Is there
2 anything in Exhibit 9 -- Exhibit 9 is just an overall
3 kind of introduction to the industry. I just wanted to
4 make sure that there wasn't anything you wanted to
5 highlight for USDA specifically.

6 A. What letter -- what letter was 9?

7 Q. Exhibit C.

8 UNIDENTIFIED VOICE: That was the brochure.

9 MR. SCHUTZ: That one?

10 And I'm sorry, the question?

11 BY MS. CHILUKURI:

12 Q. Oh, yeah. No, just in terms of exhibits, I
13 just wanted to make sure there wasn't anything else you
14 wanted to add or that you wanted to draw our attention
15 to, like, hey, take a look at certain year or certain
16 page or anything. No?

17 A. No. I want to be done.

18 Q. You will be. I think soon enough.

19 A. You guys asked me a lot more questions this
20 year than you did in 2016, from what I remember.

21 Q. Okay. So in your testimony, I also see that
22 you reference, "We currently have 17 handlers and 13
23 dehydrators." So those 13 dehydrators, are they --
24 they're captured within that 17 number; is that correct?
25 It's not 30 total, it's 17?

1 A. Yeah, it's not 30 total.

2 Q. Okay.

3 A. Because you can be the handler and have a
4 dehydrator, so there's some crossover.

5 Q. Right. With that 17 handlers number, do you
6 have a sense of the breakdown for that in terms of
7 Sun-Maid affiliates versus other types of handlers? And
8 if you don't, that's okay.

9 A. You mean as far as size, or what are you --

10 Q. In terms of the breakdown of handlers in terms
11 of -- I know that the regulations reference different
12 types, so I was trying to see if you have a -- an
13 overall breakdown for us. No?

14 A. No, I would not.

15 Q. Okay.

16 A. Again, that goes to the breakdown of the
17 acquisitions or the tonnage that's handled.

18 Q. Yeah. Okay.

19 A. So it's in the old regulation and in the new
20 proposed as well.

21 Q. Okay. Thank you. No more -- no further
22 questions.

23 A. Thank you.

24 JUDGE STROTHER: Any other questions for this
25 witness?

1 Anything further you wanted to say since
2 you're your own representative?

3 All right. We have Exhibits 7 through 11.
4 Any objection to the admission of those into evidence?

5 Exhibits 7 through 11 are admitted.

6 (Whereupon, Exhibit 7 through
7 Exhibit 11 were admitted into the
8 record.)

9 JUDGE STROTHER: You're excused. Thank you.

10 Let's take a ten-minute break. Let's be back
11 at 25 of 11:00.

12 (Whereupon, a break was taken.)

13 JUDGE STROTHER: Okay. Ms. Powell, do you have
14 anyone to represent you?

15 MS. POWELL: Just me.

16 JUDGE STROTHER: Yes. Go ahead and state your name
17 and occupation, address, not a personal one, for the
18 record.

19 THE WITNESS: Okay. My name is Debbie Powell,
20 D-e-b-b-i-e, Powell, P-o-w-e-l-l. I'm the Raisin
21 Committee's president and general manager.

22 JUDGE STROTHER: Okay. And you have -- let's mark
23 exhibits, I said we're --

24 MS. POWELL: Yes.

25 JUDGE STROTHER: -- going to mark them at the

1 beginning. You've got a statement?

2 MS. POWELL: I do.

3 JUDGE STROTHER: And let's mark that Exhibit 12.
4 Debbie Powell's Description of Proposed
5 Amendments-General will be marked as Exhibit 12.

6 (Whereupon, Exhibit 12 was marked
7 for identification.)

8 JUDGE STROTHER: Next up you've labeled an
9 exhibit -- Debbie Powell Testimony - Exhibit A, let's
10 mark that 13.

11 (Whereupon, Exhibit 13 was marked
12 for identification.)

13 JUDGE STROTHER: Document previously marked as
14 Debbie Powell Testimony Exhibit B will be marked
15 Exhibit 14.

16 (Whereupon, Exhibit 14 was marked
17 for identification.)

18 JUDGE STROTHER: Debbie Powell Testimony Exhibit C
19 will be marked Exhibit 15.

20 (Whereupon, Exhibit 15 was marked
21 for identification.)

22 JUDGE STROTHER: Exhibit D marked Exhibit 16.

23 (Whereupon, Exhibit 16 was marked
24 for identification.)

25 JUDGE STROTHER: Exhibit E will be marked Exhibit

1 17.

2 (Whereupon, Exhibit 17 was marked
3 for identification.)

4 JUDGE STROTHER: Exhibit F will be marked
5 Exhibit 18 for identification.

6 (Whereupon, Exhibit 18 was marked
7 for identification.)

8 JUDGE STROTHER: And then we have a two-page --
9 two-page document, Raisin Packers 2023/2024 Season,
10 we'll mark that Exhibit 19 for identification.

11 (Whereupon, Exhibit 19 was marked
12 for identification.)

13 JUDGE STROTHER: Did I get everything?

14 MS. POWELL: Yes, Your Honor.

15 JUDGE STROTHER: Okay. You may proceed with your
16 statement.

17 TESTIMONY OF DEBBIE POWELL

18 MS. POWELL: Again, my name is Debbie Powell,
19 President of the Raisin Administrative Committee. I've
20 worked with 32 years with marketing orders; four with
21 Navel Valencia Orange Administrative Committee and
22 almost 29 with the Committee. I've been the
23 President/General Manager since February 2015.

24 The Committee is one of the oldest federal
25 marketing orders. It was established in 1949. The

1 Committee's current membership is the largest of all
2 federal marketing orders, with 47 members and 47
3 alternates.

4 The California raisin industry is in flux.
5 Twenty years ago, the raisin industry had 225,000
6 bearing acres and approximately 3500 producers. As of
7 2022, there was only 98,000 bearing acres and
8 approximately 1500 producers.

9 The last time the Committee went through
10 formal rulemaking was in April of 2016. The primary
11 reason at that time was to remove volume control from
12 the marketing order. Reducing the size of the Committee
13 was suggested by the USDA, but the Committee chose not
14 to restructure at that time.

15 The RAC had previously organized a key group
16 of Committee members to form what is referred to as the
17 Rulemaking Workgroup. The Workgroup reports to the
18 Administrative Issues Subcommittee, which then any
19 motions are ratified by the RAC.

20 The subject to reduce the Committee size was
21 discussed again in January 2020. COVID delayed further
22 serious talks until early January 2021, when the
23 committee staff were directed to work with the
24 Rulemaking Workgroup to flesh out several reduction
25 options, both size and structure. It was also

1 determined that while rulemaking was in progress, the
2 Committee would take the opportunity to include some
3 housekeeping items as well.

4 There were approximately 12 meetings where
5 in-depth discussions were held and multiple proposals
6 were presented and revised, Exhibit 12. Oh, I'm sorry,
7 now it's Exhibit 15. These meetings took place in the
8 Rulemaking Workgroup, the Administrative Issues
9 Subcommittee, and the Full Committee. Ultimately, on
10 August 17th, 2022, the Full Committee met for a motion
11 to proceed with the four amendments passed. It was not
12 unanimous, however, the vote consisted of 20 "yes" and
13 ten "no" votes, Exhibit -- now I believe it is 14. The
14 Committee met again on October 5th, 2022, where the
15 9-Point justification was approved and staff was
16 directed to submit to USDA. Now I believe that's
17 Exhibit 15.

18 I'm here to provide a brief summary of the
19 four proposed amendments per our 9-Point Justification.
20 Other industry representatives will provide additional
21 details in their testimony.

22 Proposal 1: Reduce and modifying the size of
23 the Raisin Administrative Committee, reduce the quorum
24 and remove Producer District Representation.

25 A review of the meetings held August 2019

1 through June 2023, attendance records show that the --
2 show for the 23 full Committee meetings held, the number
3 of acting members, member or voting alternate, available
4 to conduct Committee businesses -- business, averaged 33
5 out of the 47 positions, or 70 percent. The current
6 quorum is 25. There were several meetings where only 26
7 to 28 of the 47 positions were represented and available
8 to conduct business -- Committee business, which
9 averaged 57 percent of the total. Exhibit 16.

10 The Committee's term of office is a two-year
11 period. Over the past five terms of office, the results
12 of the elections provided on an average vacancy of 11
13 for independent producers and two for the handler
14 category. However, vacancy numbers increased during
15 each term as members and/or alternates were either
16 removed or left the RAC for various reasons, for
17 example, membership within their respective groups
18 changed, and they chose not to continue serving, or
19 other reasons. Exhibit 17.

20 The Committee believes that reducing the size
21 of its membership will make conducting business more
22 efficient and will bring Committee into balance with the
23 overall size of the industry. Both the declining size
24 of the industry, the large number of vacancies, and the
25 meetings attendance records support the restructuring of

1 the Committee.

2 The Committee's membership has also been under
3 scrutiny by the USDA for nepotism. There are many
4 vertically integrated members who are producers and
5 handlers who have representation by multiple family
6 members in both producer and handler seats. Reducing
7 and restructuring should make for a competitive process
8 and reduce the nepotism.

9 A. The total number of Committee member and
10 alternate seats would be reduced from 47 to 21 seats.
11 Exhibit 18.

12 The 21 seats would be comprised as follows:

13 12 Producer Member seats, reduced from 35.
14 Those will consist of RBA and Sun-Maid receiving their
15 proportionate share and the independents receiving the
16 remaining seats, of which one producer seat would be
17 allocated to a non-affiliate producer, which is someone
18 with no proprietary or employment affiliation with a
19 co-op marketing association, a co-op bargaining
20 association, or any handler;

21 Also, eight handler member seats reduced from
22 ten;

23 And one public member;

24 The seat representing the co-op bargaining
25 association would be removed;

1 The requirement that independent producer
2 members represent designated districts would be removed;

3 Each committee member position would continue
4 to have one alternate.

5 B. Reduce the quorum requirements from 25
6 voting members or alternates, which is 53 percent, to 14
7 voting member or alternates, which is 67 percent.

8 C. Remove District representation for
9 independent producers. Currently, there is a designated
10 seat for one member and one alternate each for Districts
11 1 and 2. Both Districts represent a very small number
12 of producers in comparison to District 3, which has a
13 very large producer base. Reducing the Committee's
14 independent producer seats does not support keeping the
15 three districts as that would create unbalanced
16 representation and an unfair advantage to the smaller
17 Districts 1 and 2.

18 Proposal Number 2: Remove separate nomination
19 producers for independent and small cooperative
20 producers.

21 This was added to the order in 2016. The
22 rational at that time was to encourage participation by
23 those who wished to be on the committee specifically as
24 a member or alternate. Ultimately, this did not help
25 increase participation. As I noted earlier, the vacancy

1 numbers have remained high. Reducing and restructuring
2 should make for a competitive process and where the
3 number of votes will determine member or alternate
4 positions.

5 Proposal 3: Update marketing policy and
6 quality standards for reconditioned raisins.

7 A. Remove Factor 4 of the Marketing Policy
8 requirement section 989.54(a)4: The estimated desirable
9 carryout at the end of the crop year is no longer
10 necessary now that there is no volume control authority
11 under the order.

12 B. Remove the words "considering the
13 estimated world raisin supply and demand situation" from
14 section 989.54(a)5 as the Factor 5 of the Marketing
15 Policy requirement: The USDA source providing this
16 information, USDA-NASS, "Raisins: World Market and
17 Trade Report," was discontinued in 2019. That
18 information is also not needed in the absence of volume
19 regulation authority.

20 C. Quality standards for reconditioned
21 raisins: This adds language that clarifies the
22 successfully reconditioned fruit that meets the Order's
23 minimum grade requirements shall not be deviated from
24 other fruit.

25 And, finally, Proposal 4: Add contribution

1 authority and patent/trademark authority.

2 A. Contribution authority will enable the
3 Committee to receive funds other than assessments
4 through the handler.

5 B. Patents and trademark authority. This
6 language provides oversight on properties developed and
7 created by the Committee.

8 And that concludes my testimony.

9 JUDGE STROTHER: You're not represented, so is
10 there anything you want to add as your own
11 representative?

12 MS. POWELL: No, sir.

13 JUDGE STROTHER: USDA have any questions?

14 MS. PANKEY: Hello. Hello. All right.

15 JUDGE STROTHER: Thank you, Ms. Pankey.

16 MS. PANKEY: Thank you. I speak softly, that's why
17 I choose to use the mic.

18 CROSS-EXAMINATION

19 BY MS. PANKEY:

20 Q. Thank you, Ms. Powell, for your testimony.
21 I'll begin with some general questions, and I'll be
22 asking this of all witnesses today, just a few general
23 questions.

24 The first question for you is to what extent
25 were you involved in the discussions and deliberations

1 on the proposed amendments?

2 A. I was head of all of the staff here, so we
3 prepared a lot of the stuff for them. And we're in the
4 RAC meetings.

5 Q. And what is your perception of the industry's
6 views on the proposed amendment?

7 A. As staff, I really don't have a perception.
8 Whatever happens in there, I just implement it, so I
9 don't have an opinion or perception on that.

10 Q. Okay. To your knowledge, did all industry
11 groups, including those representing small businesses,
12 have an opportunity to provide input on the proposed
13 amendments?

14 A. Yes.

15 Q. How do industry members not serving on the RAC
16 have an opportunity to participate in the Committee
17 meetings and deliberation?

18 A. Well, all of our meeting notices are published
19 on the website, and they're all public meetings.

20 Q. In your view, why are these changes being
21 recommended?

22 A. Well, honestly, I think it's because trying to
23 get quorums together, and trying to get participation in
24 the meetings, and with everything -- acreage declining
25 and things like that, the industry is smaller so there's

1 a need for the Committee to be smaller for that.

2 Q. Okay. Thank you.

3 So I'm going to refer to Exhibit -- Exhibit
4 Number 13 where you have the history of minutes where
5 rulemaking was addressed. Could you explain the process
6 on how these proposed amendments came to be recommended
7 to USDA in regards to the subcommittee? I know you
8 discussed the Rulemaking Workgroup and the
9 Administrative Issues Subcommittee. Could you provide
10 more detail on exactly what was the process?

11 A. Yes. So RAC got together, and they decided to
12 do the work of this in the rulemaking and/or the
13 amendment issues, so we all got together, and here we --
14 we kind of threw darts on the board trying to figure out
15 where we want to go with this. And we talked about
16 possibly 70 percent reduction, we went through the whole
17 scenarios on what that would look like, a 60 percent,
18 and a 50 percent. And then we talked about, as stated
19 in here, the details that were in here, and then we got
20 to a point where we, I guess for lack of a better way,
21 had to take a break because we weren't getting anywhere
22 with that. And then we came back, and I believe it was
23 Sun-Maid that pulled that -- the -- I think it was the
24 50 percent, and we started working with that. And
25 that's where we got to today, the one that's down from

1 47 to 21 members.

2 And the RAC voted for that, and I believe it
3 was 20 to 10.

4 Q. Okay. So from what my understanding, both the
5 Rulemaking Workgroup and the Administrative Issues
6 Subcommittee were working in tandem on what the --

7 A. Yes.

8 Q. -- what the reduction --

9 A. Yes.

10 Q. -- and the new composition would be?

11 A. That's correct.

12 Q. So according to Exhibit Number 13, it would
13 look like discussions began in 2020; is that correct?

14 A. Yes.

15 Q. And then the recommended -- do -- when -- do
16 you know when USDA officially -- I'm sorry.

17 Do you know when RAC officially recommended
18 the proposed amendments to USDA?

19 A. They're just submitted. That was in
20 August 17th, 2022, I think we did -- yes. And then we
21 presented our nine points on October 5th, 2022.

22 Q. Okay. So can -- would you say that the RAC
23 has been discussing the reduction in the Committee and
24 changing of composition as well as updating the
25 marketing order --

1 A. Yes.

2 Q. -- for the past two years?

3 A. Yes, that's correct.

4 Q. Okay. I'm going to move to your Exhibit -- I
5 think it's Exhibit Number 12. Is it? Sorry.

6 Sorry. Exhibit Number 14, I don't seem to
7 have that.

8 I have it. Thank you.

9 Okay. So Exhibit Number 14, which is the
10 meeting minutes from the RAC on August 17th, 2022, is
11 there anything in particular that we should be focusing
12 on in these meetings -- in this -- in this packet, in
13 this Exhibit Number 14?

14 A. No. I think I -- I think I included that
15 because I wanted you to see what the votes were, but
16 that was in there, that's on page 5, in the middle of
17 the page it's highlighted, just to show the 20 "yes"
18 votes and the ten "no" votes.

19 And the motion to that is on page 4 at the
20 bottom, just that we recommended to USDA the proposed
21 language changes to Marketing Order 989, and the
22 9-Points Justification, which supports the previously
23 recommended Marketing Order adjustments, and this
24 includes the elimination of Factor 4 and the title
25 change of Factor 5 of the Marketing Policy.

1 Q. Okay. Thank you.

2 So with the vote from RAC, 20 yes and ten nos,
3 would you say -- does that mean that there were 30
4 voting members there --

5 A. Yes.

6 Q. -- that day?

7 A. Yes.

8 Q. And the date that they voted on the proposed
9 amendments was March 30th, 2022?

10 A. No. This -- this one, August 17th, 2022.
11 Underneath the title, Minutes of the RAC, there's a date
12 up there.

13 Q. Okay. So there are 30 voting members there
14 that day?

15 A. Uh-huh. Yes, ma'am.

16 Q. Okay. This is just for clarification. On
17 Exhibit Number 16, I believe you have a column that
18 says, "Total Voting, Members and Alternates, in
19 attendance." I see number 18, August 17, 2022, I see
20 36. Is this chart showing that there were 36 total
21 members voting that day?

22 MS. WILLIAMS: That doesn't mean everybody voted.

23 MS. POWELL: Yeah. Yeah. It doesn't -- we did a
24 roll-call vote, so you could still be in attendance, and
25 then you just didn't vote. And -- and remember this is

1 also Zoom calls, so somebody is there, and they just
2 didn't vote.

3 BY MS. PANKEY:

4 Q. So you had members that abstained?

5 A. Could have, uh-huh. Yep.

6 Q. Okay. Do you have -- do you have record of --
7 can -- can you provide us with how many members
8 abstained from voting that day?

9 A. We didn't -- because normally what happens is
10 Monte will say, those in favor, those not in favor,
11 those abstaining. Nobody abstained, they just didn't
12 vote.

13 Q. Okay. So from the 38 member, total voting
14 members -- I'm sorry -- 36 total voting members that
15 were there that day, 30 members voted?

16 A. Yes.

17 Q. So six no votes?

18 A. Yeah. And/or they could have been on the
19 phone, on the computer monitor, and we said their name,
20 and they didn't respond.

21 Q. Okay.

22 A. Because it was a roll-call vote, so every
23 person's name was called.

24 Q. Okay. And is that usual? Is that typical
25 during Committee business and votes, that you have

1 members that choose not to vote?

2 A. It happens.

3 Q. Okay. Okay. So can you briefly describe to
4 us what each column represents in Exhibit 6 -- in
5 Exhibit 16?

6 A. Yes. Okay. So the date, the column that
7 says, "Date of Meeting," those are the dates that we had
8 the RAC meetings, because these are all Full RAC
9 meetings.

10 So the next is your percentage in attendance,
11 so basically you take the column to the right, which
12 "Total Voting, Member and Alternate, attendance," and
13 divide that by the 47 members, and that tells you the
14 percentage of participation that's in there for column
15 two.

16 Column three is the "Total Voting, Members and
17 Alternates, Attendance."

18 The next column is your "Members in
19 Attendance."

20 The next column is your voting alternates, the
21 next is your total alternates in attendance, and the
22 next is your vacancies.

23 And then I believe the yellow cells are
24 telling you that the public member was not appointed at
25 that time. We had them, and it was probably waiting for

1 the Secretary of Agriculture to appoint them, so that --
2 one of those seats in there is vacant because of that.

3 And then your green ones is calling your
4 attention to that's the smallest amount of participation
5 we had in there out of 47 members.

6 And then down at the bottom in that, I guess
7 tan-beigy color, those are some averages in there.

8 Q. Okay. And those averages are showing that
9 based on this chart from your meetings that you had
10 between August 15th of 2019 to June 28th of 2023, your
11 average participation was 70 percent?

12 A. Correct.

13 Q. And vacancies for that period of time was also
14 37 percent of the Committee?

15 A. Correct.

16 Q. So a little more than one-third of the
17 Committee is vacant?

18 A. Yes.

19 Q. Okay. And just to clarify, so I understand
20 this chart correctly, when I'm looking at total --
21 "Total Alternates in Attendance," just looking at
22 August 15th of number 1, first line, that's 15
23 alternates in attendance, two of them were actual voters
24 during that meeting, that's the column to the left,
25 "Voting Alternates in Attendance," and then you have

1 your 36 members in attendance, for a total of 38 total
2 voting members?

3 A. That's correct.

4 Q. Okay. I believe this might have been a
5 question that was asked before, but are all your
6 meetings in person? And if they are, do they also have
7 that additional component for them to be virtual?

8 A. Yeah, all our meetings are either/or. It's
9 whatever your convenience is.

10 Q. Okay. So you -- so you have meetings in
11 person, and then if they can attend, they can also
12 attend --

13 A. Correct.

14 Q. -- by telephone or virtually?

15 A. Yep. Yep.

16 Q. Okay. In your "Vacancies" column here, does
17 that figure also include members and alternates that
18 are -- that are vacant positions?

19 A. Yes.

20 Q. Okay. At any point in time between the time
21 frame provided in Exhibit Number 16, was the committee
22 unable to meet quorum requirements?

23 A. Yes. We had -- I think we had one meeting and
24 it was January 29th, 2020, that we actually -- people
25 came in here, and we had to -- we did not have the

1 meeting.

2 Q. I don't see that -- is that on this chart?

3 A. No. That is in my first one. I think it's
4 Number 13 where I list all the RAC minutes out, history
5 of the minutes.

6 And the reason why it's not showing on the --
7 the current test -- Exhibit 16 is because if the RAC
8 meets, and there's no quorum, there's no minutes,
9 there's no formal meeting, so no formal meeting has made
10 the log here. You just all go home -- well, committee
11 members do.

12 Q. January 29th, no quorum was met?

13 A. January 29th, 2020, yes.

14 Q. I notice -- in going back to Exhibit
15 Number 16, some of the cells that you have highlighted
16 green, you said that was where you had the lowest
17 attendance for voting members, correct?

18 A. That's correct.

19 Q. I see two other dates, I think. January 29th,
20 2022, also had 28 voting members in attendance. That's
21 just one additional date.

22 A. Yeah, there's another one down at the bottom,
23 too.

24 Q. Right. June 28, 2023, 28 members total in
25 attendance.

1 A. Uh-huh.

2 Q. So did you just miss -- miss the highlight?

3 A. Yes. Yes.

4 Q. In your opinion, what other factors may have
5 contributed to low attendance during this time frame as
6 compared to others? So those cells that you have
7 highlighted, is there a reason why you think there might
8 have been low attendance --

9 A. No.

10 Q. -- during those particular dates versus the
11 other meeting dates in that time period?

12 A. No. I -- I have no idea.

13 Q. Okay. Because I notice that there's kind of a
14 cluster of them in 2021.

15 A. Yeah. No, I don't have any idea, because
16 we -- we publish -- we reserve a date every month for
17 our meetings, so everybody -- and we do that once in
18 January of every year, we block out a day every single
19 month, so everybody clearly knows when they are, so
20 whether or not they come in, I have no idea.

21 Q. Based on the information that you have
22 provided, why has the Committee had difficulty making
23 full attendance at meetings?

24 A. I don't know the answer to that. Why they're
25 not showing up at meetings? I don't know, because it --

1 I know staff makes every effort, we're even calling
2 people the day of meetings to get people in here to get
3 the quorum. Like, the last two years it's been like
4 that. And calling 47 members and 47 alternates is a
5 lot, but we do it, and e-mail, and every possible thing
6 that we can do.

7 I think you've got all -- everybody has got
8 their own businesses going on and could be a timing on
9 that day, they could have a -- you know, an issue at the
10 plant, they could have an issue at the shop, I don't
11 know. All kinds of things.

12 I think part of the problem, though, I will go
13 on the record to say, when you only have a member and
14 you don't have an alternate, all that -- anything goes
15 on the member now to show up, where if something does
16 happen in a plant or something, you can call your
17 alternate to show up, but when you have 17 vacancies of
18 alternates, and that member can't make it, you've lost a
19 voting seat.

20 Q. So are you saying that the majority of vacant
21 seats are in the alternate position --

22 A. Correct.

23 Q. -- that are vacant?

24 A. Correct.

25 Q. And because members -- and because there are

1 those -- those alternate positions are vacant, when a
2 member is absent, then there's no other person --
3 there's no alternative to another -- that individual to
4 step in and attend that meeting?

5 A. That's correct.

6 Q. Can you explain how does the number of
7 vacancies affect the time, effort, and expenses incurred
8 by the Committee during the nomination process?

9 A. Say that one more time.

10 Q. How does vacancies and your inability to fill
11 vacancies or the large number of vacancies on the
12 Committee affect the time, effort, and expenses incurred
13 by the Committee during the nomination process?

14 A. Well, with that many vacancies, it -- as I
15 just stated before, if the members don't show up, and
16 they don't -- and there's no alternate, we're preparing
17 for meetings that aren't going to happen.

18 Q. So during the nomination process, right, you
19 conduct nomination meetings?

20 A. Uh-huh.

21 Q. In the districts, correct?

22 A. Yes.

23 Q. And if you're unable to fill those vacancy
24 positions, what other means do the staff or the
25 Committee exercise in regards to trying to fill those

1 positions?

2 A. Well, all that we can do, the way it works
3 right now is -- is we have 47 seats, and we have 35
4 producer seats. Of those 35 producer seats, Sun-Maid
5 gets their proportionate share. They prepare a list,
6 and they give us our members and alternates, check.
7 RBA, same thing, their proportional share, and then they
8 give us a list, check. Now, whatever is remaining is
9 the independent. We have producer meetings in order for
10 them to nominate, and then we put out ballots that are
11 mailed to all of the independent growers that are out
12 there, they have their chance to vote, and they vote,
13 and we tally them up. And it is -- the numbers are what
14 they are. You'll have -- currently, you could pick if
15 you want to be a member or an alternate. We put all
16 those together, and we figure out what that is.

17 And in the last election that we had, I think
18 we had 16 -- 14 or 16 vacancies that were in there.
19 Once we added them up and tabulated, we're done. We
20 submit it to USDA, and they've been approved without
21 filling those vacancies.

22 Q. Okay. So what types of outreach is conducted
23 during the nomination process?

24 A. Oh, we -- for instance, this particular -- for
25 the elections that we're doing right now, Matthew --

1 Malcolm Media had a -- an event, and we -- Dori and I
2 went to that and half the people in here went, and we
3 passed out flyers to let them know that we were having
4 independent nominations. We put it in numerous -- The
5 Fresno Bee, The Journal. We send out something to each
6 and every independent grower. And that's how we do our
7 outreach.

8 Q. In your opinion, is that level of outreach
9 sufficient?

10 A. Yeah. Yes, I believe it is.

11 Q. Okay. Thank you.

12 I'm going to start asking you some questions
13 in regards to your statement that you provided.

14 Can you please explain how you calculated the
15 average of 57 percent for those meetings with low
16 attendance?

17 A. Okay. Hold on. Let me find mine.

18 Oh. Okay. So of the four columns on
19 Exhibit 16, I believe, you take the Total Voting,
20 Members and Alternates, Attendance, which is the 27, and
21 you divide that by the 47 members, and that comes up
22 with the 57 percent.

23 Q. For the past 28 years of service, and for
24 which the last nine years acting as president and
25 manager, has level of attendance increased or decreased

1 over the years?

2 A. Decreased.

3 Q. In your opinion, why is nepotism an issue on
4 committees and boards? And how would the proposed
5 resizing and restructuring eliminate that?

6 A. I think you just asked the question of issue.
7 I mean, I don't have an issue with the nepotism, I think
8 we've just heard from USDA on it, but when you have an
9 industry that's vertical integrated where you have
10 handlers and producers, and you have, like, the -- my
11 last exhibit there with the handlers, you'll look in
12 there and see handlers and you'll see dehydrators,
13 they're integrated in there. You'll see several
14 handlers that also have a -- have a dehydrator. And in
15 this case, you'll have a packinghouse that has a father
16 that's running the packinghouse and the son that's a
17 producer there, and they're both on our board, or a
18 father and a daughter, or a brother and a sister. So
19 it's -- it's -- one is representing the independent
20 producer or the handler, and the other is representing
21 the other one.

22 Q. Okay. And how will the proposed resizing and
23 restructuring kind of limit this nepotism?

24 A. Well, you're going to reduce from 47 to 21 so
25 that right there is going to do it, because you're going

1 to have -- you're still going to have your proportional
2 share for the -- for the handlers and the producers.
3 Sun-Maid will get their proportionate share, RBA will
4 get their proportionate share, so now your independent
5 handlers will go from 19 seats to 5, so it -- everything
6 is reduced, so that in itself will do that.

7 Q. Okay. So from what I understand, that reduces
8 the availability of members to serve on the committee
9 because there are less seats?

10 A. Exactly.

11 Q. Okay. In Exhibit 16, it shows -- not 16, I'm
12 sorry. In Exhibit 13, on January the 27th of 2021, it
13 shows that the Rulemaking Workgroup were discussing
14 various reductions of the Committee, 50, 60, and
15 70 percent, but the Committee ultimately voted on a
16 reduction down to 55 percent, which would be the 21
17 seats. Can you provide why 21 members and alternates
18 was ultimately decided as the suitable number for the
19 committee?

20 A. In my opinion, I think what happened is we
21 were meeting several times, and we weren't getting
22 anywhere, and so we all agreed to just take a break, and
23 when we came back, it was Sun-Maid that brought that one
24 forward and said, look, let's start with this. And they
25 had the layout there, and at the end of the day,

1 everybody voted -- voted for it.

2 Q. Okay. Everybody, being the independent --

3 A. The RAC, yes.

4 Q. All agreed --

5 A. Yes.

6 Q. -- to 21 members in all?

7 A. Well, yes, until we went to take the vote, and
8 that's why it's 20 to 10, because there was the -- the
9 removal of the RAC seat, that was something that the RBA
10 did not favor.

11 Q. So that 10 opposing votes was from those
12 members representing the RBA?

13 A. Say that again.

14 Q. The 10 opposing votes when you voted on the
15 17th was those 10 members of the RBA?

16 A. No, I don't believe it was all of them.
17 Maybe. Yeah, I think it was all -- no.

18 MR. SPATE: Six of them.

19 MS. POWELL: No. Sahatjian is in there.

20 MR. SPATE: Six of them were RBA.

21 MS. POWELL: Yeah. It's only six.

22 MS. PANKEY: Six members were RBA?

23 MR. SPATE: Six of the ten.

24 MS. PANKEY: And the other four?

25 MR. SPATE: Other members.

1 MS. POWELL: Either -- I don't have their
2 affiliation with me. It's either a handler or an
3 independent.

4 BY MS. PANKEY:

5 Q. Okay. And that opposition was in, primarily,
6 to the removing the designated bargaining designation
7 seats?

8 A. Well, that -- that was part of what was
9 represented, yes, the -- yeah.

10 Q. Okay. In your opinion, can you please explain
11 why 14 was selected by the committee as the suitable
12 number to meet quorum?

13 A. Yeah. I think what we were -- what we were
14 looking at is we -- we thought it was -- let me see what
15 I said. It's a higher percentage of votes to ensure
16 more participation, so we just put it -- upped it a
17 little bit more to get more people in here.

18 Q. When you say get a higher participation, could
19 you explain that a little?

20 A. Well, because normally the quorum would be
21 less -- when you have 21 members, your quorum is, what,
22 half plus one or something like that. This is higher.
23 So instead of doing -- currently today, we have 53
24 percent at 25, we said let's up it a little bit more,
25 and put a little bit higher quorum on the 21

1 requirement, and so we did 14, which is 67 percent. So
2 we have 67 percent of that 21 membership saying yes or
3 no to something.

4 Q. Okay. And so the 21-member reduction, that
5 reduces 35 producers to 12 producers, correct?

6 A. Yes.

7 Q. And then ten handlers to eight handlers,
8 correct?

9 A. Correct.

10 Q. So would you -- so are you saying -- my
11 understanding is that by having 14 as the quorum, that
12 ensures that there are both producers and handlers at
13 meetings?

14 A. Yes.

15 MR. SPATE: Can I clarify when I said there was
16 six? It was actually eight. I was conferring, and it's
17 actually eight.

18 JUDGE STROTHER: Can you identify yourself for the
19 record?

20 MR. SPATE: Steven --

21 THE HEARING REPORTER: I'm sorry, your last name?
22 Last name?

23 MR. SPATE: Spate, S-p-a-t-e.

24 JUDGE STROTHER: Are you going to testify later?

25 MR. SPATE: Later, yeah.

1 JUDGE STROTHER: Let's swear you in now. Raise
2 your right hand.

3 STEVEN SPATE,
4 having been first duly sworn, testified and was
5 examined, as follows:

6 THE WITNESS: Yes, I do.

7 JUDGE STROTHER: Thanks.

8 MR. SPATE: So when I mentioned it was six, there
9 was a past cooperative member that I forgot had moved to
10 the RBA, so it's actually eight of the ten votes were
11 RBA in this case.

12 MS. PANKEY: Okay.

13 MR. SPATE: On that vote.

14 MS. PANKEY: Thank you for that clarification.

15 JUDGE STROTHER: I guess I should have asked
16 whether there was an objection to doing that. I feel
17 like anything that -- it's not a criminal trial, or it's
18 a little bit informal here, and whatever helps the
19 record. I didn't mean to not offer the opportunity for
20 someone if they had a problem with it.

21 Proceed.

22 MS. PANKEY: Okay. Thank you, Your Honor.

23 BY MS. PANKEY:

24 Q. Ms. Powell, could you explain how producer
25 districts are established, and what they -- what they

1 are, what they mean?

2 A. So as I stated earlier, you have the RBA and
3 Sun-Maid, and then you have the independents. So the
4 independents have districts. They have District 1,
5 which is north of Fresno or Madera, and then they have
6 District 2, which is south of Fresno, Tulare, that area,
7 and then District 3 is Fresno. So the way the order
8 states is that District 1 gets one member and one
9 alternate, District 2 gets one member and one alternate,
10 and District 3 gets the balance.

11 Q. Okay. And during the nomination process, when
12 you hold those nomination meetings, are you holding
13 those in the district, in those three districts?

14 A. Yes.

15 Q. You're having three nominations meetings in
16 each -- one for each district; is that correct?

17 A. That's correct.

18 Q. In your opinion, why are producer districts no
19 longer necessary?

20 A. Well, right now if you have 17, 18, or 19
21 seats it would make sense that you're doing that, but
22 now -- once RBA and Sun-Maid receive their proportionate
23 seats, you're going to have a balance of somewhere
24 around five. Doesn't make sense to do districts if you
25 have -- of those five, District 1 is going to get one,

1 District 2, and the other are going to get the
2 remainder. Typically in District 1 and District 2, it's
3 the same people that get it every year.

4 Q. Is -- and why is that?

5 A. Because you only have so many growers in
6 Madera, and so many growers in Tulare, very few.

7 Q. So from my understanding, so because producers
8 have reduced from 3500 to 1500, there are less
9 independent --

10 A. That's correct.

11 Q. -- producers?

12 A. That's correct.

13 Q. And that -- that has led to the same producer
14 being nominated multiple times for one -- for one or two
15 districts?

16 A. Yes.

17 Q. Okay. From your understanding, is this the
18 only time the RAC has removed a designated seat or has
19 proposed to remove a designated seat from a committee?

20 A. Yeah, in my 29 years here, uh-huh.

21 Q. In your opinion, why were separate nomination
22 procedures not helpful at filling vacancies?

23 A. I have -- I have no idea.

24 Q. If -- if separate nomination procedures were
25 to be implemented, were to be approved, how would that

1 be implemented?

2 A. I think regardless of the amount of seats,
3 we'll still do the same procedure, so obviously if you
4 eliminate districts, you would just have the one
5 district -- the one independent, we would still mail the
6 ballot to every single person in a message -- in a
7 meeting notice, and still put it in all the newspapers,
8 and attend any other meetings that we attend. I don't
9 think that we change any of that, it would just be less
10 seats.

11 Q. Are they certainly -- so are they currently
12 indicating on that ballot whether or not if they want to
13 be an alternate or a member?

14 A. Yes, currently they are. Uh-huh.

15 Q. Okay. So if -- if you were to remove that,
16 that would change --

17 A. Yes.

18 Q. -- that?

19 A. Yes.

20 Q. They would no longer do that, they would just
21 be nominated?

22 A. Yes. And whoever gets the most votes is the
23 member, and then so on after that, yep.

24 Q. In regards to proposal number three, updating
25 the marketing policy to remove factor number 4 and part

1 of factor number 5, how are these two factors used by
2 the Committee?

3 A. Factor 4 is an estimated desirable carry-out
4 at the end of the crop year. Back when we had reserve
5 pools and trade demand, we needed that number. Today we
6 don't need that. There is no reserve pool, there's no
7 trade demand calculation. It's -- it's not needed.

8 Factor 5, the estimated market demand for
9 raisins considering the estimated world raisin supply
10 and demand situation, as I stated in my testimony, we
11 used to use a NASS report that gave us the data for
12 that. That's no longer there. And the industry -- it's
13 just not needed in our industry. Now we just record our
14 domestic and export shipments. We don't -- we don't do
15 any statistics or anything on the world raisin supply.

16 Q. Okay. So you want to remove these factors
17 because you don't consider that information when you're
18 deliberating and discussing and developing your market
19 policy?

20 A. Correct. The statement -- factor 4,
21 completely get rid of it. Factor 5, just take out of
22 the title "considering the estimated world raisin supply
23 and demand situation," because we still want our
24 estimated market demand for the raisins, just not the
25 world supply.

1 Q. Okay. And just a few more questions in
2 regards to -- this is proposal number four, voluntary
3 contributions and trademark authority. In your opinion,
4 why is patents and trademark language important and
5 necessary for the order?

6 A. Well, right now, all of our -- everything that
7 the -- our trademarks and things are owned by the CDFA,
8 and in trust for the producers. Right now, anything new
9 that's created, it -- the RAC would own that, or the
10 U.S. government, and I think that's important. If we
11 end up having movies or anybody wants to use any IP
12 stuff, I think it's important that the RAC ends up with
13 the revenue from that, and able to use that and the
14 ownership of it.

15 Q. Okay. You say -- from your testimony, you say
16 proposal number 4A, "Contribution authority will enable
17 the Committee to receive funds other than assessments."
18 What type of funds are we -- are you referring to?

19 A. So currently, we have a -- some movie
20 producers that have talked to us about possibly putting
21 a movie together, so if that works and there's no
22 royalties from that, we don't have an avenue to be able
23 to receive those, because the only funds that's in the
24 marketing order is assessment funds, so by adding that
25 to the order, we would be able to get that and be able

1 to use those in the ways that the marketing order lets
2 us do that, marketing or promoting or whatever.

3 Q. Final question is in regards to Exhibit
4 Number 19, you entered this -- you added this at -- as
5 the last exhibit. What is the relevance of this
6 exhibit?

7 A. Say that again.

8 Q. Exhibit Number 19, can you please explain what
9 the relevance is?

10 A. Oh, yeah. So this is the raisin packer list,
11 it's the first page, and the second page is your
12 dehydrator list. So earlier in Monte's testimony, you
13 were asking, you know, is it 17 of one and eight of the
14 other. I just wanted to show you kind of -- not
15 necessarily nepotism but where you can see there's some
16 interaction there, like, for instance, on the packer --
17 one, two, three -- four down, third column over, you'll
18 see our River Ranch Raisins. Then if you turn the page,
19 the third column, third down, River Ranch Raisin
20 Dehydrator. So right there you're seeing that there's a
21 handler that also has a dehydrator.

22 Q. Thank you.

23 And I -- I believe I asked the question
24 earlier about domestic consumption, whether if that's
25 increased or decreased over the years, and that relation

1 to the -- these decreases in producers and production
2 and bearing fruit.

3 A. Man, I wish I could answer that for you. I
4 don't have anything in front of me on that.

5 MS. PANKEY: Thank you. I have no further
6 questions.

7 JUDGE STROTHER: Questions from anyone else?

8 CROSS-EXAMINATION

9 BY MR. McFETRIDGE:

10 Q. Marc McFetridge of the USDA.

11 Debbie, I just have a few questions for you.

12 Do you have, like, a rough estimate for, you
13 know, per month, per meeting that you typically
14 reimburse the members for travel? Do you have a rough
15 number? Like, is it per meeting, do you have a rough
16 number of what your reimbursements are typically?

17 A. No. We do -- we do quarterly billing. I will
18 say since Zoom is there, it's significantly less. But
19 off the top of my head, I -- huh-uh.

20 Q. So would you say most likely that if the --
21 the board is able to reduce its number from 47 to 21,
22 then you would see a reduction in those reimbursement
23 costs most likely?

24 A. Absolutely.

25 Q. Quick question. For reimbursement for

1 mileage, do you guys follow the federal reimbursement
2 rate or is it the state rate?

3 A. Federal.

4 Q. Federal.

5 Now, feel free to tell me that we need to ask
6 somebody else, but when the subcommittee for the
7 rulemaking -- were you part of those discussions, or
8 were you outside of those discussions?

9 A. No, I was here.

10 Q. Do you know, did -- did the subcommittee, did
11 they review other federal marketing orders and their
12 structure when making their decision?

13 A. You know, I don't -- we didn't have a formal
14 handout, but we did discuss it knowing that we were the
15 largest and what other commodities are doing.

16 Q. So -- so you kind of fed into my next
17 question. So when you guys were kind of reviewing that,
18 those structures, you did realize that raisins were the
19 largest, correct?

20 A. That's correct.

21 Q. Did you notice that you guys were large --
22 larger -- how do I put this -- significantly larger than
23 the other committees that you guys were looking at, or
24 were you guys --

25 A. Uh-huh.

1 Q. So you were significantly larger than other
2 federal marketing order makeups?

3 A. Uh-huh. Yes. Correct.

4 Q. Going to your testimony on -- what was it --
5 removing the words, "considering the estimated world
6 raisin supply and demand situation," just a quick
7 question. When the subcommittee, rulemaking
8 subcommittee was making that recommendation, did the --
9 did the committee or the subcommittee look into possibly
10 obtaining that information from other sources besides
11 NASS?

12 A. No.

13 Q. No. Okay.

14 On reconditioned raisins, do you know for
15 current USDA purchases of raisins, does USDA allow for
16 reconditioned raisins?

17 A. They do now.

18 Q. They do now.

19 Do you know if current USDA specifications
20 have been modified to drop the term "reconditioned"?

21 A. I believe so.

22 Q. So USDA in current purchases does not
23 distinguish between reconditioned or I guess regular
24 raisins?

25 A. That's correct.

1 MR. McFETRIDGE: I think that's all I have then.
2 Thank you, Debbie.

3 CROSS-EXAMINATION

4 BY MS. DORSEY:

5 Q. This is Samantha Dorsey with USDA.

6 Ms. Powell, in your statement you had noted
7 that in April 2016 during the formal rulemaking process,
8 USDA had suggested reducing the committee size. So at
9 that time, was there low attendance for the committee
10 during meetings?

11 A. Yeah, I don't think it was as bad as it is
12 right now, but yes.

13 Q. Okay. So it's increased since 2016?

14 A. Uh-huh.

15 Q. Okay. And you also noted the Committee chose
16 not to restructure at that time. Was that because the
17 attendance rate was still manageable for moving forward
18 with committee voting, and --

19 A. No. I -- I think it was -- it was different
20 leadership at the time, and the industry was just
21 different back then. You had different people in this
22 room making those decisions back then than you do today.

23 Q. Okay. And is it fair to say that it's been a
24 continuing downward trend of low attendance rates since
25 2016?

1 A. Yes.

2 MS. DORSEY: Okay. Thank you, Ms. Powell.

3 CROSS-EXAMINATION

4 BY MS. CHILUKURI:

5 Q. Rupa Chilukuri for USDA.

6 Ms. Powell, I just had a few questions.

7 So in your testimony, you state that the
8 current membership is the largest of all federal
9 marketing order with 47 members and 47 alternates.
10 Based on your tenure with the RAC and just your
11 knowledge of its history, do you know why that's the
12 case? How that came to be?

13 A. I have no idea. Huh-uh.

14 Q. Okay. And in terms of alternates and the
15 expectations regarding just their participation on the
16 Committee, is it expected that they should attend
17 meetings just generally for their development or in case
18 they need to vote or for any other reason?

19 A. Well, that -- that would -- yeah. I mean,
20 that -- I would assume that if you're an alternate, you
21 should show up here. And some people do a better job
22 than others getting them in there, but like I said, the
23 last couple of years, we're calling everybody. If we
24 call a member and a member is not there, we're calling
25 their alternate to try to get them in here for that. So

1 staff is really -- I mean, you've got e-mails, phone
2 calls, texts, everything to get them in here.

3 Q. And how long has that virtual option for
4 meetings been available?

5 A. COVID.

6 Q. Since COVID?

7 A. Since COVID.

8 Q. Okay. And in terms of, I guess the
9 composition of the RAC, it's currently 47 members and 47
10 alternates. Do you know if there's been any changes
11 over time, either in your tenure in terms of the size or
12 the composition or prior to your tenure?

13 A. Huh-uh. Since I've been here in 1995, it's
14 been the same.

15 Q. Okay.

16 A. The same makeup.

17 Q. And do you know of any changes prior to 1995?
18 No?

19 A. No, ma'am.

20 Q. Okay. And in terms of -- I guess you had said
21 that on August 17th, 2022, the Full Committee met and
22 voted 20 "yes" and ten "no" votes, and that was in terms
23 of the whole package of proposed amendments?

24 A. That's correct.

25 Q. Is that correct?

1 A. That's correct.

2 Q. Okay. So those ten votes, they may not
3 necessarily be opposed to the proposal relating to
4 reconditioned raisins or marketing policy or some other?

5 A. That's correct.

6 Q. So if you could turn to your Exhibit 14, and
7 so I see the first page -- this is the minutes of the
8 Raisin Administrative Committee, so that first page, it
9 lists the member and the alternate in two volumes. That
10 reference to "a" in brackets, that means absent --

11 A. Correct.

12 Q. -- is that correct?

13 Okay. And turning to -- I think it's
14 Attachment B in that same document, Exhibit 14, so it's
15 right after page 8.

16 A. Uh-huh.

17 Q. Can you tell us what -- what this is?

18 A. Yeah. So this is what the proposal was from
19 47 members to 21. So basically it's taking the producer
20 members from 35 to 12, and then it is breaking them into
21 the -- Sun-Maid would get their proportionate share of
22 that 12, the RBA would get their proportional share, and
23 then the balance would go to the independents. Taking
24 that balance, in this case it's five, and one of those
25 would be a non-affiliated producer, meaning can't have

1 anything to do with a handler or packer, so it's a
2 designated producer seat, and then the remaining of
3 that, which in this case was four, would be your
4 independent producer.

5 Then at the bottom, it takes your handler
6 positions, which were ten, and it gives Sun-Maid their
7 proportionate share, and then it takes your four largest
8 handlers, whoever they are on -- based on production, or
9 acquisitions, designated two seats. Then the remaining
10 handlers, which could be up to ten of them, will make
11 up -- will get the remaining three seats. And then, of
12 course, you get a public member.

13 Q. Okay. And there will be more testimony
14 specifically on this --

15 A. Yes.

16 Q. -- list?

17 A. Yes.

18 Q. Okay. So I won't go too much into it.

19 When you say Sun-Maid, that -- you're
20 referring to the cooperative marketing --

21 A. Correct.

22 Q. -- association?

23 A. Correct.

24 Q. Okay. And when you refer to RBA, that's the
25 cooperative bargain association?

1 A. That's correct.

2 Q. And you say here you used 2020, slash, '21
3 statistics; is that right?

4 A. Yes.

5 Q. What does the reference to "2022/2024 Term
6 Stats" up above mean?

7 A. So what this means is the proposed utilizes
8 the 2022 -- this was at the -- this was as if we were
9 going to seat the board in '22/'24. We used the
10 statistics from the 2020/'21 year.

11 Q. Okay.

12 A. The data from that year.

13 Q. And do you know if the data -- if the more
14 recent data for 2021 to 2022 or 2022 --

15 A. Yeah.

16 Q. -- has changed?

17 A. Yes. Yes. I don't think it's going to change
18 this makeup any that's in here. It's pretty close to
19 this.

20 Q. Okay. So the data would still -- would still
21 require the same proportionate share numbers?

22 A. Yes. Yes. Because we -- every -- every year
23 stands on its own, so every two years, you just take the
24 last completed year of data to -- in order to calculate
25 this out.

1 Q. And if the proportional share shifted between
2 Sun-Maid or RBA or someone else, then the membership
3 would change according?

4 A. Yes. Uh-huh.

5 Q. And then turning the page, Attachment C is
6 just -- can you tell us what Attachment C is?

7 A. This is, I believe all the way the language
8 would change in the marketing order if all these
9 proposals were accepted.

10 Q. And then what is Attachment D?

11 A. I'm trying to remember this. I think --
12 Dori, I don't remember this.

13 We did some scenarios on -- I'm sorry, I'm
14 trying -- I'm trying to remember, this is so long ago.

15 MS. WILLIAMS: This was how the unaffiliated
16 producer seat could play out depending on a couple of
17 different scenarios.

18 BY MS. CHILUKURI:

19 Q. And we can certainly -- I can ask questions of
20 other people or revisit it some other time.

21 A. Yeah. I'm trying to figure it out.

22 Q. Okay. All right. So why don't I actually
23 turn to Exhibit 15, which I think is the 9-Point
24 Justification. And what is -- I guess, you know, as a
25 consumer, what impact would these proposals have on me?

1 A. I don't think it would have any on you. None
2 on you. None.

3 Q. Actually, I should have asked more. What --
4 can you go into a little more detail of what the 9-Point
5 justification is?

6 A. Well, first one is, "What is the purpose of --
7 of the proposal and amendment?" So we just go through,
8 and -- and pencil out exactly how we want the Committee
9 to look.

10 And so we modify the size of the Committee,
11 the quorum, and the voting requirements.

12 And, again, I just went through that earlier
13 where we gave the 21 seats, comprised of 12 producers,
14 eight handlers, a public member, removing the RBA,
15 removing the districts, and each member would have an
16 alternate. We would reduce the quorum. And then we
17 would remove the language that allows nominees the
18 option to choose whether they want a member or
19 alternate.

20 We're going to add language that clarifies
21 that successfully reconditioned fruit that meets the
22 order's minimum grade shall not be differentiated from
23 other fruit.

24 And modify the factors 4 and 5 in the order.

25 Then it's, "What problem is the proposal

1 designated to address? Explain and quantify."

2 California -- and, again, I read this earlier, that our
3 acreage is down, producers are down, we have a tough
4 time reaching quorums.

5 Then we talk a little bit about the
6 reconditioned fruit. The Committee believes that there
7 is the impression in the raisin market that the quality
8 of reconditioned raisins have been reworked or
9 reinspected to meet the Order's minimum grades. The
10 Committee believes that this additional language will
11 help to dispel the negative impression by defining
12 natural condition raisins as any raisins that have been
13 inspected and meet the order's minimum requirements,
14 whether or not the fruit has been networked at some
15 point.

16 Then we talk about the marketing policy and
17 how those two factors are no longer relevant without
18 volume regulations.

19 What are the current requirements or industry
20 practices relative to the proposal? Currently, the
21 Committee, again, 47 members, explaining what that is
22 and how we reduce it.

23 What are the expected impacts on producers,
24 handlers, and consumers? And I don't believe there's
25 any impact on any of those by reducing the size of this

1 committee.

2 How would the proposal tend to improve returns
3 to producers? As the proposal primarily affects the
4 administrative functioning of the Committee, the
5 proposal is not expected to impact returns to producers.

6 What are the expected impacts on small
7 businesses? There should be no negative impact on any
8 businesses, small or large.

9 Would the proposal increase or decrease costs
10 to producers, handlers, committees, and/or the USDA?
11 There would be a decrease in costs with reduced
12 Committee size as it would reduce the Committee meeting
13 mileage expense reimbursement. In addition, it would
14 lower the amount of Committee staff time allocated to
15 the administration of members and alternates as the
16 number of individuals would be reduced from 94 to 42.
17 There would be no financial impact as a result of any of
18 the other proposed changes.

19 How would the proposal be implemented? The
20 Committee is selected on a biannual basis. The proposed
21 reduction in Committee size and structure would be
22 implemented for the next cycle after publication of the
23 final rule, hopefully for the '24/'26 term. The
24 Committee would hold nominations for Committee members
25 and alternates in a manner prescribed after the

1 amendments. The members and alternates serving
2 immediately prior to the Committee size reduction may be
3 nominated to serve on the new Committee if they remain
4 eligible to do so. Producer nominees will be nominated
5 for member or alternate positions and would be seated in
6 accordance -- seated in accordance with the number of
7 votes they receive, as the requirement that producers be
8 nominated for either a member or alternate position, but
9 not both, would be removed.

10 Handlers in their respective groups would
11 provide their nominations for handler member and
12 alternate positions in the same manner as before the
13 changes.

14 The cooperative marketing would select theirs.

15 The cooperative bargain would select theirs.

16 The dedicated coop bargaining association
17 position would be eliminated upon implementation of the
18 new Committee structure.

19 And, B, the clarification description added
20 for natural conditioned raisins would be added to the
21 CFR immediately.

22 And, C, the changes to the Marketing Policy
23 factors would be implemented for the crop year following
24 the publication of the rule.

25 How would compliance with the proposal be

1 affected? The proposal would not make any changes to
2 the Order's handling, assessment, or reporting
3 requirements. There should not be any compliance
4 effects/issues with the proposal to change the size of
5 the Committee, the Committee's quorum and voting
6 requirements, the quantity -- quality fruit
7 clarification, and the Marketing Policy factors.

8 MS. CHILUKURI: Okay. Thank you, Ms. Powell. I
9 have no further questions.

10 Oh, I'm sorry, I think some other USDA people
11 have questions.

12 CROSS-EXAMINATION

13 BY MR. BROADBENT:

14 Q. Barry Broadbent, USDA.

15 Ms. Powell -- I love referring to you as
16 Ms. Powell, as you've always been Debbie to me -- but,
17 Ms. Powell, did the limitation of volume regulation
18 affect attendance at Committee meetings?

19 A. I believe so.

20 Q. Back in the days when they were establishing
21 volume regulation at these meetings, could you give
22 some, maybe not exact in specifics, but any kind of
23 anecdotes about this room being full of individuals,
24 both members and alternates?

25 A. Yes. Well, I know staff wasn't making phone

1 calls and sending texts to get people in here. We had
2 so many reserve pool programs that everything affected
3 either a producer or a packer so they -- they made it in
4 here.

5 Q. For -- for -- because of the impacts of their
6 opinions and their -- the way that their vote on actual
7 volume regulations and the economic repercussions from
8 that, correct?

9 A. That's correct.

10 Q. Okay. Also in your testimony, you referred to
11 CDFA. I don't know if -- I hadn't caught the definition
12 of that on the record before, but CDFA is?

13 A. California Department of Food and Ag.

14 Q. And why were they important in the section
15 change where -- for contributions and patent and
16 trademark authority?

17 A. Oh. Because CDFA owns the trademarks
18 currently for the raisin industry on behalf of the
19 producers.

20 Q. Can you explain just quickly how it came to be
21 that CDFA had ownership of that and how -- how and why
22 it's being transferred?

23 A. There was a state marketing board, the
24 California Raisin Marketing Board, that was kind of like
25 the RACs under the USDA, the CRMB was under CDFA, and

1 when those trademarks were created with the California
2 Raisin Marketing Board, the State had oversight on that.
3 That's why they're the, I guess gatekeeper, the trustee
4 for them.

5 Q. So they -- they still maintain ownership, and
6 then the RAC gets to use that proprietary trademarked
7 product but under an agreement with CDFA?

8 A. Trademark agreement, that's correct.

9 Q. Okay. And then lastly, your Exhibit --
10 Exhibit 14, at the end, Attachment D, you didn't
11 understand what that was. Could that have been
12 associated with the designation or the -- the
13 recommendation for the unaffiliated producer in part of
14 your -- your recommendations?

15 A. Yeah. I'm looking at my minutes right now,
16 which showed an example of how independent producers
17 could be seated. D. Powell noted the intent of the body
18 was that the non-affiliated producers received at least
19 one member seat. In the event no unaffiliated producers
20 are nominated, to prevent an empty seat the following
21 language added as proposed for section 989.26, in the
22 event there are no qualified candidates for specifically
23 designated producer member or alternate producer member
24 position, such position may be filled by any producer
25 candidate not otherwise slated for that position.

1 So that's on page 4, right in the middle of
2 the page of the minutes.

3 Q. Okay. And then -- so that Attachment D is an
4 example of how that would play out --

5 A. That's correct.

6 Q. -- in actuality when you're actually doing
7 nominations; is that correct?

8 A. Yes, that's correct.

9 MR. BROADBENT: All right. Thank you. No more
10 questions.

11 JUDGE STROTHER: Any other questions?

12 Anything you'd like to add?

13 Okay. Let's -- let's go ahead and admit the
14 exhibits. Anyone have any objections to admitting
15 Exhibits 12 through 19?

16 Seeing none, those exhibits are admitted into
17 the record.

18 (Whereupon, Exhibit 12 through
19 Exhibit 19 were admitted into the
20 record.)

21 JUDGE STROTHER: Next witness. Mr. Kister.

22 Raise your right hand.

23 STEVE KISTER,
24 having been first duly sworn, testified and was
25 examined, as follows:

1 THE WITNESS: I do.

2 JUDGE STROTHER: Okay.

3 TESTIMONY OF STEVE KISTER

4 MR. KISTER: My name is Steve Kister. I'm a small
5 raisin producer farming 200 acres on overhead trellis,
6 which is dried on the vine and mechanically harvested.
7 I also farm 310 acres of almonds. I have served
8 continuously on the RAC since first selected by the RBA
9 in 1994 through 2002 and then selected by Sun-Maid
10 Growers from 2002 to the present. I've served as
11 Director and past President of the RBA. In 2004, was
12 elected to the Board of Directors of Sun-Maid Growers of
13 California and served as Chairman of the Board for the
14 last five years.

15 I support the proposed downsizing of the RAC
16 from 47 to 21. It's a change in the raisin industry
17 long overdue. More than 20 years, we were a much
18 different industry. When we last amended the order in
19 2016, downsizing was proposed, but we only removed the
20 reserve language as a result of the Supreme Court
21 decision in 2015.

22 Today, the California Raisin Marketing Order
23 is the largest in the U.S. with the 47 members. It's
24 difficult to get a quorum at meetings. In the last 20
25 years, the industry has downsized in terms of acreage

1 and production. 20 years ago, there were approximately
2 3500 growers, and today, fewer than 1500.

3 The decision to reduce the order to 12 growers
4 and eight handler seats recognizes that it will continue
5 to be a grower order. Today, virtually all handlers are
6 growers. The majority of the RAC budget is dictated to
7 export programs. Because these programs cover several
8 countries and different markets, it's necessary to have
9 broad handler representation.

10 The provision to eliminate districts is to
11 ensure that we will be able to fill independent grower
12 seats. Because the industry is located in the small
13 geographic area, fair representation is not a concern.
14 The elimination of the special seat needs to be seen in
15 its history being all context.

16 The RBA was formed in 1966 to collectively
17 bargain for raisins. The industry had to respond by
18 making significant changes to the California Raisin
19 Marketing order in 1967.

20 The reserve system was amended so that every
21 year, a desirable free tonnage would be established.
22 Volume controls were changed to permit producers to more
23 fully benefit in arriving at field prices from the newly
24 formed bargaining association. Free tonnage would be --
25 would be priced according to the RBA's agreement, and

1 the reserve would be utilized for export and other
2 channels. Successful pricing agreements required
3 confidentiality by the RBA Manager, so in 1967, they
4 changed from 45 to 46 members to accommodate the RBA
5 manager. For the last five years, the RBA has bargained
6 for a uniform price, but its attempts are completely
7 independent of any RAC actions. With the elimination of
8 volume control provisions, a special seat is no longer
9 warranted.

10 Today, the Raisin Administrative Committee
11 operates in a far more similar position to other ag
12 committees that have federal marketing orders.

13 Thank you.

14 JUDGE STROTHER: Okay. We'll mark your statement
15 Exhibit 20, by the way.

16 (Whereupon, Exhibit 20 was marked
17 for identification.)

18 JUDGE STROTHER: And that's the only exhibit you
19 had, right, just your statement?

20 MR. KISTER: I could -- yeah, I could add to that.

21 JUDGE STROTHER: You've got the -- you're not
22 represented. You can give yourself further direct
23 testimony if you want.

24 MR. KISTER: Excuse me.

25 JUDGE STROTHER: I'm sorry. What were you going to

1 add to this? I thought you had something to say in
2 addition.

3 MR. KISTER: Oh. No, I mean there's been a lot of
4 discussion here today about attendance at the RAC, but
5 what I mentioned in my testimony was that the industry
6 really came to a reckoning in -- in the year 2000 with
7 the industry price collapse and everything, but it
8 really fundamentally changed with that Supreme Court
9 decision in 2015.

10 Before that, going way back to 1949, the
11 industry had a lot of different varied interests. The
12 attendance at these meetings -- sometimes we had
13 hundreds and hundreds of people would attend because
14 there was a lot of contention in the industry. Once you
15 got away from a reserve system, there's really no --
16 there's really no contention in the industry. Not only
17 have we shrunk and had a hard time getting attendance,
18 but the fact is that there's not a lot of motivation for
19 coming to these meetings because now the -- the
20 inventory is actually held by the handlers. There is no
21 reserve system for the growers to -- to discuss.

22 JUDGE STROTHER: I don't know if it will help the
23 record, it might help me. What -- what Supreme Court
24 decision was that? What -- and what did they say's?

25 MR. KISTER: The Supreme Court decision in 2015

1 was -- was ruled that -- that our reserve system was
2 actually a taking, and so as a result, growers weren't
3 fully compensated for their reserve system. But I --
4 but the process really started much earlier than that.
5 I mean, I can remember being in Washington DC in 1998
6 with an industry delegation in which we went to the
7 Department of Agriculture, and I think there was five of
8 us in that group, and we were told pointblank you have
9 to do something about your reserve system, it's not
10 workable, and you have to -- we expect you to go back
11 and change it, because at the time, we were setting a
12 domestic price for raisins. Domestic purchasers like
13 Kellogg's weren't happy with it, and we were dumping the
14 rest in export markets at far, far cheaper costs. And
15 so that's what a lot of contention in the industry was
16 always about, how you would disclose of those reserve
17 raisins.

18 The industry never really heeded that advice,
19 we went on. And it -- and partly because -- the other
20 frustration with the Department was not only we were the
21 largest group of -- of marketing orders in the United
22 States, but we were also the mostly complex, far and
23 away. And oftentimes, we would make recommendations to
24 the -- to the USDA, and they weren't even sure how to
25 rule on it.

1 And so that's some of the historical factors
2 that -- that got us to this point. I mean, starting in
3 1949, the industry was always plagued with huge swings
4 in production, and it wasn't just because the crop years
5 would vary in weather, it also had to do with the fact
6 that there would be huge green purposes in and out, so
7 much so, low returns to growers led to the formation of
8 the RBA in 1967 into the order. In 1966 when they were
9 forming it, they had one model to go after, and that was
10 the California Canning Peach Association. And they got
11 their attorney, Lloyd McCormick at the time, and they
12 modeled the whole thing after it, because they knew that
13 to institute collective bargaining into our marketing
14 order, you had to have one special seat, and that was
15 the manager of the RBA.

16 And so from my tenure at the RBA, which I was
17 a president, nobody ever really knew which handler would
18 sign the pricing agreement and which one wouldn't, only
19 the manager was the only one that knew, because that's
20 the only way you could successfully bargain for a price.
21 If the growers in the industry knew that -- that three
22 or four handlers refused to sign the agreement and
23 others did, they would all flock to the other handlers.
24 This is -- there's not a lot of analogy in the United
25 States towards this sort of collective bargain.

1 And so -- and so even -- even when I was
2 president of the RBA, I never knew who signed and who
3 didn't. In fact, my dad, was one of the original
4 founding members of the RBA in 1966, and at the time,
5 that was understood from the beginning. My dad served
6 almost 30 years there in the RBA. He never knew which
7 handlers signed and which didn't --

8 Could I -- could I have my water there?
9 That's the one thing I forgot to bring up here.

10 And so -- so today -- so today to argue that
11 somebody should be given a special seat would be no
12 different than if the independent handlers wanted a
13 special seat, if we at Sun-Maid wanted a special seat,
14 that's what I meant in the end by it no longer being
15 warranted.

16 And so we do have real problems with
17 attendance at the RAC, and -- and so that's the main
18 thing that makes this thing imperative, to downsize the
19 committee.

20 JUDGE STROTHER: Okay.

21 Questions.

22 MS. PANKEY: Hello. Hello.

23 CROSS-EXAMINATION

24 BY MS. PANKEY:

25 Q. Thank you, Mr. Kister, for your testimony and

1 that additional information that you provided.

2 I'm going to begin asking some general
3 questions. My first question is to what extent were you
4 involved in the discussions and deliberation on the
5 proposed amendments?

6 A. I was part of the formal rulemaking committee,
7 which -- which took quite some time, I think probably
8 more than a year.

9 Q. Okay. The formal rulemaking committee, is
10 that the -- I've heard of the Rulemaking Workgroup and
11 the administrative issues.

12 A. Right.

13 Q. It's the same? Okay.

14 Do you believe the amendments proposed have
15 the broadest of industry support?

16 A. I do.

17 Q. To your knowledge, did all industry groups,
18 including those representing small businesses, have an
19 opportunity to provide input on the proposed amendments?

20 A. Yes.

21 Q. Based on your understanding, would any group
22 in industry have an unfair advantage as a result of
23 these amendments?

24 A. No. And it's -- and it's just fair
25 representation, because over time, any one group

1 could -- could grow in size or shrink in size. It's --
2 you know, but it -- it's made -- the thing is made to
3 adjust so everyone going forward is always fairly
4 represented.

5 Q. Thank you.

6 And do you support the amendments as proposed?

7 A. Yes, I do.

8 Q. So to clarify, you stated that you were a
9 member of RBA and -- but you are now a member of
10 Sun-Maid?

11 A. I'm currently chairman of the board of
12 Sun-Maid Growers.

13 Q. Okay. And when you were a member of RBA, were
14 you just a member, a grower member, or did you serve in
15 any capacity?

16 A. I was -- I was a member starting, I think
17 in -- in 1992, and then served until 2002 on the RBA
18 board. And leading up to the arbitration of 2000, the
19 year 2000, when the industry really started to
20 fundamentally change, I was president of the RBA for the
21 three-year term.

22 Q. Okay. And based on that answer, would you say
23 that you have considerable experience in the RBA
24 operations and are knowledgeable about RBA's history?

25 A. I would say, yes, going back to the age of 12.

1 Q. Could you please explain why downsizing was
2 previously discussed in 2016 but was not recommended at
3 that time?

4 A. Right. And that's the challenge when you have
5 a 47-member committee, and if -- if you don't have some
6 sort of consensus within the group at the time, it's
7 hard to move forward. I mean, I think the Committee
8 had -- had gone for so long operating in a certain
9 manner, it was -- it was hard for people to accept.

10 Q. Okay. In your opinion, what has contributed
11 to the decline in raisin producers and acreage in the
12 industry over the past 20 years?

13 A. Yeah. I'm glad the economist looked at the
14 snapshot of 20 -- 2000 -- the last 20 years, because it
15 does really show the decline. But the groundwork for
16 that was being laid for more than a decade earlier, and
17 it's because if you go back to the 1980s and the 1990s,
18 the California Raisin Industry had real pricing power in
19 the world. We were producing over half the world's
20 raisins. And so what the California raisin industry
21 did, the rest of the world pretty much followed along.

22 But in the 1990s, in my tenure at the RBA,
23 what we started to watch was the rest of the world was
24 catching up with us. Turkey was -- was growing from a
25 small raisin producer to a large one. It was evident

1 that in time, they were going to pass us. And so all
2 that decade, what -- what we did in the industry was --
3 was that we kept prices relatively stable, around \$1200
4 a ton that entire period, even years where sales were
5 falling, which kind of defies some sort of conventional
6 economic thinking, but we managed to muddle through
7 that.

8 But when 2000 came, large crops were
9 relentless over a four-year period, and we no longer had
10 pricing power in the world, and we had tremendous
11 surplus, and -- and the economic carnage from that was
12 evident from the chart there. Today, we're just not
13 that competitive in the world. We just have higher
14 production costs, and because we only produce about
15 15 percent of the world's supply, our prices are
16 dictated by -- by the rest of the world now.

17 And so the industry right now, I'd
18 characterize it as like we're on an icy slope, and we're
19 just trying to drive a pick into the ice to stop the
20 slide, but our production -- our production costs are a
21 very real thing.

22 Q. All right. Thank you.

23 You stated in your testimony that the order
24 will continue to be a grower order, with the proposed
25 reduction. Can you explain this further?

1 A. Oh, yes. I -- yeah, that's a good question.
2 What I meant to say by that was that early on in our
3 discussions about downsizing -- if you look at the
4 raisin industry today, there is no reserve system, the
5 handlers pay the fee, \$22 per ton, and really the
6 bulk -- the bulk of the work of -- of the raisin
7 industry is to somehow guide these export programs so we
8 can still compete in the rest of the world. You could
9 make the case that we could -- could have this a
10 handler-only order, but, in fact, growers -- growers
11 provide valuable input because what we really need is
12 grower research -- I think Steve Spate will address that
13 later on, but it's been a grower order from -- from the
14 very beginning in 1949, and it still is important today.

15 Q. Okay. And you're also -- and also the
16 Committee representation, right, the 21 members, it's
17 mostly represented by growers --

18 A. Right.

19 Q. -- is that correct?

20 A. Right.

21 Q. What is the current composition of the
22 Committee? And how does this differ from the proposal?

23 A. Well, I think the real mechanics of it,
24 Debbie -- Debbie Powell can answer that a lot better,
25 better than I can, the actual numbers, and --

1 Q. Okay. When you said you were involved in the
2 rulemaking subcommittee, the formal rulemaking
3 subcommittee, could you provide some additional insight
4 into why 21 members was considered appropriate?

5 A. Yeah. I think it -- it came down to a
6 compromise. There were some people that favored smaller
7 numbers, just because of studies that have shown that
8 smaller boards are more deliberative and more efficient,
9 and then on the other side, there was people that still
10 were clamoring for more representation, so I think -- I
11 think it kind of came to a happy medium in the middle.

12 Q. And would you say the current composition of
13 the Committee is in balance with the industry or
14 representative of the industry?

15 A. Yeah, because you have handlers, and you
16 have -- you have growers, and I would say it's fair.

17 Q. And in regards to the size, is it in balance
18 with the industry as well?

19 A. Oh, yeah. In fact -- in fact, it's -- it's
20 far more representation than we've had historically. If
21 you go back to 1949, I think there was more than 5,000,
22 maybe six or seven growers at one time, and so really
23 with the size of the Committee we're talking about, we
24 have better representation today than we did 20 years
25 ago.

1 Q. Can you provide insight on how the RAC
2 determined the appropriate number of members to serve in
3 each category?

4 A. We did -- we did do a study of -- of other
5 marketing orders, and at one time the CRMB negotiations,
6 but a lot of us in the valley here are familiar with
7 other marketing orders and how they're composed, and I
8 think it's a -- it's an addition of all those factors.

9 Q. In your opinion, does the reduced size of 21
10 members and alternates provide equitable representation
11 of all groups within industry?

12 A. Yes.

13 Q. In your opinion, does the reduction in
14 Committee size allow for an unfair advantage or
15 disadvantage of any industry group?

16 A. No. It's fair for all groups.

17 Q. How does the reduction affect producer power
18 on the Committee?

19 A. How does it affect producer power?

20 Q. Yes. So --

21 A. I would say it's the same as it's always been.

22 Q. In what ways does -- in what ways does the
23 proposed reduced Committee affect the percentage of
24 votes?

25 A. Does it affect the percentage of votes? I --

1 I would defer that to Debbie as well. I --

2 Q. Does the limitation of the bargaining
3 association seat affect the percentage of votes on the
4 Committee?

5 A. Well, I think -- it would affect their
6 percentage. But as I stated earlier, you can't make a
7 case for anybody having a special seat, because the
8 smaller the Committee gets, the more it would tweak the
9 percentage.

10 Q. In your testimony, you also discussed the
11 removal of producer districts. In your opinion, what
12 changes occurred in industry that has contributed to
13 producer districts no longer being needed?

14 A. Excuse me, I do have to apologize. Even with
15 my hearing aids, my hearing is terrible.

16 Q. Oh. Do you need me to repeat the question?

17 A. Yes, please.

18 Q. I'm sorry.

19 In your testimony, you also discussed the
20 removal of producer districts. In your opinion, what
21 changes occurred in industry that has contributed to the
22 producer districts being no longer needed?

23 A. Oh, because I think as you downsize, you
24 really hamper your ability to get representation from
25 the independents. For example, if in a single district

1 you didn't have anyone really wanted -- wanted to run,
2 it -- it would be unworkable.

3 Q. Okay. Okay. I'm going to start asking you
4 questions more closely related to the elimination of the
5 bargaining association seat. For clarification, can you
6 tell me what is the function of the -- of the
7 cooperative bargaining association? What is their
8 primary function?

9 A. What's their primary function?

10 Q. Yes.

11 A. Well, it's -- it's changed quite dramatically
12 over time. And I'm no longer in the cooperative
13 bargaining association, so maybe it's not appropriated,
14 but I can tell you what happened was, was that when we
15 went to arbitration in the year 2000, we would operate
16 under a master contract with all the handlers, and that
17 master contract included the very arbitration that we
18 ended up -- ended up in. And -- and it was because the
19 RBA actually took -- under our master contract, we
20 actually took title to our grower's tonnage, and so even
21 when we delivered it, until a field price was
22 established, that was owned by the RBA. And so that --
23 that allowed you to go to arbitration.

24 Well, it -- it's pretty much common knowledge
25 amongst bargaining cooperatives that -- it's often

1 repeated that, boy, if you go to arbitration once,
2 you'll never go again, and so the industry started to
3 change rapidly after that point.

4 We -- we arbitrated a price of \$880 a ton, and
5 we've locked it in -- because it was already getting
6 late in the season, getting close to -- for the 2000
7 crop, because it was getting close to the 2001 crop
8 coming in, we locked another \$880 price in. But after
9 that, the wheels started to come off in terms of even
10 having a master contract. I'm not aware -- I think that
11 was the last master -- I know that was the last master
12 contract we ever operated under. After that, it became
13 MOUs, and whether or not the RBA even takes title to
14 raisins today, I don't think they do because they've
15 made the comments that they're bargaining for a minimum
16 price, and growers were free to -- to arrive at their
17 own -- own price.

18 But -- so the ability to bargain for a price
19 was really -- then finally really greatly diminished by
20 the Supreme Court decision, because when we used to come
21 to these RAC meetings, and you would make decisions
22 based upon the desirable carryout, and otherwise known
23 as -- and the trade demand formulas, the RBA was
24 instrumental in negotiating with the handlers those
25 types of agreements as well, but with -- without a

1 reserve system, none of that's possible.

2 So it's -- so the raisin industry today is --
3 is completely different than even 20 years ago.

4 Q. Okay. So the designated bargaining
5 association position, as you stated, was added to the
6 Committee after the development or the establishment of
7 the RBA back in 1967, correct?

8 A. It had to be, otherwise the system wouldn't
9 have worked.

10 Q. Can you explain that further as far as why --

11 A. Okay.

12 Q. -- it had to be --

13 A. Okay.

14 Q. -- and what that position --

15 A. So they added one seat, because before --
16 before 1966, or up through 1966, there were -- there
17 were 46 members, and so they had to add the 47th because
18 all of a sudden now in 1966, as they started to form
19 this organization, at their very first meeting, they
20 actually signed up a hundred thousand tons, they had to
21 have critical mass to do it. But to get collective
22 bargaining and to have one uniform price for the entire
23 industry, you had to have everybody get it, every --
24 every single grower had to have the same price.

25 Well, the guy -- the bargaining association

1 itself, we would take a small committee, and we would
2 meet and hear ideas from handlers on the entire
3 industry, things that went on at these RAC meetings, but
4 we would propose a price to them. But when -- when the
5 price offer was -- was -- was given to the handlers,
6 there was only one guy in the room that knew whether
7 that handler would sign or not, and it wasn't any one of
8 the growers, it was our manager. And that's the only
9 way the thing would work. And I think in the -- in the
10 course of all those years going back to 1967, that was
11 only challenged one time in court that I know of, and I
12 think that was Vaughn Koligian earlier on in his tenure,
13 and the Court found out that the pricing agreement had
14 been reached. Now, that was done by a formula, and I --
15 as I remember, the formula went something like you had
16 to have two of the top -- of the six largest handlers
17 sign, and you had to have 40 percent of the industry's
18 tonnage. That was roughly the formula throughout the
19 entire history of the RBA. And so that guy knew whether
20 he had the thing or not. He would come back to the RBA
21 board and explain to us, we signed it, we signed it.
22 Most years it was signed. Some years it wasn't. We
23 would go back, and we -- we would make a counteroffer,
24 but all those things were -- were written into the
25 marketing order, because we would have to propose a

1 price on or before October 5th, and that's one of the
2 things that -- that was easier to do back in the days
3 when the industry was producing half the world's
4 raisins, because we weren't really going to be affected
5 by what production was in Uzbekistan or Turkey or any
6 other of the foreign raisin producers.

7 What happened in 2000 was, was that we came to
8 the pricing agreement, we went way up, at the same time
9 Turkey was coming in with a large group, we were coming
10 in with record crops, we have total collapse.

11 And so those things -- the RBA had to actually
12 be written into the marketing order at the time.
13 That -- that old marketing order doesn't exist. We've
14 deleted the parts on -- on desirable carryouts and free
15 tonnages and all that stuff. We no longer operate that
16 way.

17 Q. Okay. So the RBA -- the RBA -- the designated
18 bargaining position was formally filled by this RBA
19 manager, right? Correct?

20 A. Right.

21 Q. This RBA manager was the only person that
22 understood or had this confidential information in
23 regards to whether or not the handlers agreed or did not
24 agree to the RBA price, correct?

25 A. He's -- he's the only one that had that

1 information; is that what your --

2 Q. Yes.

3 A. Yes. But we would go to this RAC meeting on,
4 I forget which date it was, and -- and Debbie Powell or
5 someone in her position would ask RBA, do you have a
6 price. We would say, yes, we do, because of all our
7 export programs would work off that price. How much you
8 would pay subsidized tonnages that would go into export.
9 It was that system that was really contentious over --
10 over decades and decades because there were competing
11 interests on it.

12 Q. So from what I understand, the RAC needed that
13 information -- needed that RBA manager to sit on the
14 Committee so that they could get that information in
15 regards of what --

16 A. Well --

17 Q. -- the RBA --

18 A. -- it was public -- it would be public
19 knowledge. Once we had a price agreement, we would go
20 out with a press -- press release, and back in the day,
21 Fresno Bee would carry a price, the price of raisins.
22 But -- but it still -- everything at the RAC worked off
23 of that price when it came to export programs.

24 Q. Right. So --

25 A. And see -- and see, the Committee would make

1 decisions also on the free tonnage, and if the --
2 that's -- that would be the percentage that handlers
3 would acquire at that price and that price only. The
4 rest of the reserve was grower-held, and that's why it
5 was imperative that the whole thing really was a grower
6 order -- order, because the -- the reserve was still
7 held by growers at the time. That's no longer true.
8 And so really we're talking about two completely
9 different industries today as -- as to the way we
10 operated them.

11 Q. Okay. So when the RAC was determining whether
12 or not to impose volume regulations and determining free
13 tonnage and reserve pool, they needed to get -- they
14 needed that information from the RBA manager in regards
15 to what the RBA price would be, right? That's what they
16 were contributing to the committee?

17 Well, the -- the -- the free tonnage was --
18 was determined by formula as well, but that -- but that
19 was -- like I said, it was a very complex order, and it
20 had -- it had do with -- with sales in the previous
21 year, existing inventories, very complex formula that
22 we -- that we all worked off of. But -- but because we
23 were a large body at the RAC, and -- and -- and we did
24 the negotiating for that one price, we were -- we were
25 pivotal to the entire industry.

1 But the only guy -- the only person who could
2 really stand up at that RAC meeting and say, yes, we
3 have a price was -- was -- the only one that could
4 actually testify to that was the general manager.

5 MS. POWELL: With the percentage.

6 MR. KISTER: Yeah.

7 BY MS. PANKEY:

8 Q. Right. So when volume regulation was removed
9 from the order, there really wasn't a need for this --

10 A. Well, and I think even before that. Once the
11 master contract went away -- I mean, you'll have to ask
12 somebody else about how they -- they work today, if --
13 if the RBA wants to offer up the -- those answers, but
14 what -- what they do is -- is not -- is not any -- in
15 any way related to the operating of the RAC. They --
16 they're a growers group that has a voice, and that why I
17 said earlier, it's important to have growers have a
18 voice at -- at the RAC and be represented.

19 Q. Yeah. But what they're doing now doesn't
20 relate to anything in --

21 A. No.

22 Q. -- in regard to that --

23 A. No.

24 Q. -- that's what you're saying, correct?

25 A. No.

1 Q. Once volume regulation --

2 A. Yeah.

3 Q. -- was removed from the order?

4 A. Yeah.

5 Q. Okay. What discussions were had about the
6 removal of the RBA-designated position?

7 A. Excuse me?

8 Q. In -- in your subcommittee meetings, what
9 discussions were had?

10 A. The discussions were -- were mostly about size
11 of -- of the Committee. I mean, all the issues -- all
12 the issues that -- that we're presenting here today were
13 discussed. I think they were all -- because the
14 negotiations were so long, I think they were all
15 pretty -- all the discussion was pretty well exhausted
16 when it came to all the issues.

17 Q. Okay. And were there discussions outside of
18 RAC meetings that may have contributed to this
19 amendment?

20 A. No. I would -- I mean, if you're talking
21 about outside, when I would go back to my -- we have
22 a -- we have a 12-man board of directors of Sun-Maid,
23 I'd report on where we were talking about size of the
24 committee, potential revenue from the Dancing Raisins,
25 how it could benefit -- how it could really benefit us,

1 because -- well, I'll speak to that a little bit later,
2 but -- yeah.

3 Q. Okay. So if the RBA designated position is
4 removed, what -- in what other capacity do RBA
5 members -- are RBA members able to serve?

6 A. In what capacity?

7 Q. Yes.

8 A. They -- on the RAC, they would serve on the
9 same capacity as anybody else there.

10 Q. And then that would be in producer -- RBA
11 producer member seats, correct? So they --

12 A. Yes.

13 Q. -- would still have representation?

14 A. Yes.

15 Q. The RBA --

16 A. Right.

17 Q. -- would still have --

18 A. Right.

19 Q. The grower members would still have
20 representation?

21 A. Exactly.

22 MS. PANKEY: Okay.

23 Okay. Thank you. I have no further
24 questions.

25 MR. KISTER: Thank you.

1 CROSS-EXAMINATION

2 BY MR. McFETRIDGE:

3 Q. Marc McFetridge, USDA.

4 Mr. Kister, thank you for your time today.
5 I've got a few questions for you.6 In your testimony, you said you are a raisin
7 producer farming 200 acres, correct?

8 A. Yes.

9 Q. Based on the Small Business Administration
10 definition as a small agricultural producer defined as
11 having annual receipts of less than \$4 million, how
12 would you be able to classify yourself, as a small or
13 large producer?

14 A. I'd be a small producer.

15 Q. Thank you.

16 I wanted to see for -- for the Raisin
17 Bargaining Association, and I apologize if you've kind
18 of answered this question before, but what's -- what's
19 the primary purpose for the Raisin Bargaining
20 Association, would you say?21 A. Well, I mean, to collectively bargain for a
22 single price is -- is -- is typically what bargaining
23 associations do.

24 Q. So it's to -- to get a price, correct?

25 A. Right.

1 Q. So under the regulations for the federal
2 marketing order, do they allow for any of the members of
3 the Raisin Administrative Committee to discuss pricing?

4 A. No, we don't discuss price.

5 Q. You do not. You're not able to discuss any
6 pricing --

7 A. No.

8 Q. -- information at any --

9 A. No.

10 Q. -- Committee meetings, correct?

11 A. Yeah. The RAC is completely independent of
12 pricing.

13 Q. All right. Thank you.

14 So from early discussions today, I'm getting a
15 nice picture of the raisin industry, and it sounds like
16 it's -- you have three main legs of the stool, so you
17 have your independents, you have growers that go in the
18 Raisin Bargaining Association, and then you also have
19 Sun-Maid Growers; is that agreeable?

20 A. I would describe the industry as a little more
21 complex than that just because what's changed over time,
22 too, is we have -- we have vertically integrated
23 handlers that are large producers, and they -- they pack
24 as well, much in the way you could look at Sun-Maid.
25 Sun-Maid is grower-owned, growers own Sun-Maid, and

1 we -- we're vertically integrated as well. We have
2 independent growers, and we have RBA growers, and -- and
3 then other handlers that -- that carve out certain
4 markets as opposed to others. They all -- they all find
5 a niche in this thing, so it's hard to characterize and
6 put people into three groups.

7 Q. All right. Well, I was trying to -- to kind
8 of ascertain, so -- so we have -- the marketing order
9 has a special seat for the RBA, correct?

10 A. What's that?

11 Q. There's a special seat for the Raisin
12 Bargaining Association, correct, right now?

13 A. Yes. Today there still is, yeah.

14 Q. But there isn't a special seat for Sun-Maid,
15 is there?

16 A. That's correct.

17 Q. So -- okay. Thank you.

18 Let's see here.

19 You discussed earlier about cost production
20 was going up, correct?

21 A. That's right.

22 Q. Could you kind of list off some of the driving
23 forces that you're seeing in cost production going up?

24 A. Again, I'd -- I'd really like to, and --
25 and -- and there's been some noticeable collapses, even

1 going back to the early 1980s. Pool bulk order is much
2 discussed today, correct? Interest rates went -- went
3 through the roof, but the dollar soared at that time.
4 And the raisin industry collapsed then as well, because
5 the dollar was soaring, high interest rates were
6 making -- liquidity was scarce, but we had been
7 exporting raisins at a cheap price, and we had a high
8 domestic price. All of a sudden when the dollar soared,
9 we couldn't sell raisins in foreign markets, so we had
10 complete complex -- you know, industry growers went
11 broke, a really collapse. We recovered from that.

12 2000, very similar thing. We had been going
13 along, keeping domestic prices high, selling at export.
14 The dollar -- the dollar scored again in 2000, and we
15 had collapse at a time when we were producing a lot of
16 raisins. And there was other industry programs that --
17 that really aided in that. We had a diversion program
18 which really padded the production numbers.

19 But now if you look at just -- just doing
20 business in California in the last five years, we faced
21 more than double-digit wage inflation mandated by the
22 State of California. Environmental regulations.
23 Taxation. We pay taxes on things that the average
24 person doesn't see. All of our water costs are -- are
25 being driven up, not so much by the fact that -- that

1 we're -- we're not getting any more water, we're being
2 taxed by -- by Sacramento. The other thing is energy
3 costs, double-digit inflation in energy costs. All of
4 our main inputs, those things drive -- chemicals. All
5 of our inputs in California agricultural, we're -- the
6 raisin industry, which is labor intensive, is very
7 similar to a lot of other ag commodities. We just can't
8 compete anymore. Production is shifting to other
9 countries.

10 MR. McFETRIDGE: All right.

11 Thank you very much. I think that's all my
12 questions.

13 CROSS-EXAMINATION

14 BY MS. DORSEY:

15 Q. This is Samantha Dorsey with USDA. Good
16 afternoon, Mr. Kister. I have two clarifying questions
17 from your written statement.

18 So, first, you -- page one, you referred to
19 the Supreme Court decision, 2015, so just to clarify on
20 the record, are you referencing the Horne case from
21 2015?

22 A. Representing foreign case?

23 Q. The Horne case, the Supreme Court case from
24 2015.

25 MS. POWELL: Horne.

1 MR. KISTER: Oh. Yeah, the Horne case. Yeah.
2 Yeah.

3 BY MS. DORSEY:

4 Q. Wonderful. Thank you for clarifying that.

5 And on page two of your written testimony, you
6 have stated, "It is necessary to have broad handler
7 representation." So from that statement, are you
8 talking generally it is necessary to have broad handler
9 representation on the committee, or are you referencing
10 specifically the proposed eight handler seats --

11 A. Well --

12 Q. -- in the new regulations?

13 A. By that I meant because -- because they're so
14 varied, and so, you know, to some degree they might have
15 different -- they would carry valuable different
16 opinions. Not only are they -- not only are most of
17 them growers, but they have different markets. So if
18 the main emphasis of the Committee is going to be export
19 programs, they all have different export customers. I'd
20 like to have their input in -- in the room when we're
21 discussing those export programs.

22 Q. And in your opinion, would you find the
23 proposed eight handler seats to meet that representation
24 in an adequate sense?

25 A. Yeah. And the fact that they have alternates

1 as well, yeah, I think that covers -- covers the handler
2 side of the industry very well.

3 MS. DORSEY: Okay. Thank you, Mr. Kister. I have
4 no further questions.

5 CROSS-EXAMINATION

6 BY MS. CHILUKURI:

7 Q. Rupa Chilukuri for USDA.

8 Ms. Kister, I have a few questions for you.

9 In your testimony, you reference that you farm
10 310 earnings of almonds. I was curious if you have
11 any -- if you do anything on the -- as it relates to the
12 almonds marketing order, and you can talk about that
13 experience there, the committee size.

14 A. No, no, I don't. But I'd be interested in --
15 in doing it, but -- just because the almond industry has
16 so many struggles right now.

17 Q. Okay. Thank you.

18 I see in your testimony you mention you know
19 that the decision to reduce -- right at the bottom, it
20 says, "The decision to reduce the order to 12 grower and
21 eight handler seats recognizes that it will continue to
22 be a grower order." So I was looking at the numbers,
23 and it seems like currently it's 35 growers out of 47
24 members, and now you're proposing 12 growers out of 21
25 members; is that right?

1 A. That's right.

2 Q. And with -- doesn't that create a dilution of
3 producer power to some extent, because if my math is
4 right, it's like 70 something percent to 57 percent?

5 A. Yeah, mathematically it does, but I think
6 it's -- it's skewed by the idea a little bit that
7 most -- virtually all of the handlers are growers
8 themselves, and as I mentioned earlier, the main body
9 work that the RAC does now is address export programs.

10 Q. So with that next statement, today virtually
11 all handlers are growers, with that population, it's
12 still possible to get an unaffiliated producer; is
13 that --

14 A. Right.

15 Q. -- correct?

16 A. Right.

17 Q. And you had mentioned just -- you had been
18 talking about the history of the RAC, the RBA or things
19 like that. So the RBA was formed in 1966, so prior to
20 that there was no representation for the RBA?

21 A. No. And that's why back in those days, in the
22 early days of the order, as I understand it, you know,
23 they would -- they had a reserve system, but it wasn't
24 exactly -- it was just unsold raisins, and they would go
25 to the government and, I don't know, somebody who's

1 older than me can speak to that, I guess.

2 MR. CHOOLJIAN: Why you looking at me?

3 MR. KISTER: Couldn't find anybody else older.

4 MR. CHOOLJIAN: Thanks.

5 BY MS. CHILUKURI:

6 Q. Well, getting back to the industry, we'll see
7 if you can answer, I notice people have been talking
8 about dehydrators and other segments of the industry.
9 Were they -- what -- what is their role on the industry,
10 or what has their role in the past been in terms of
11 membership on the Committee?

12 A. Oh, yeah. Good question. Because -- because
13 the industry does have -- did -- did regulate volume
14 control over other types of raisins, such as Zante
15 Currants over time. There would always be a lot of
16 controversy about when dipped seedless were actually
17 pretty much produced in large quantities -- I think I
18 could mention Dole because they're no longer in the
19 industry, but they had great incentive to -- to get a
20 hundred percent for their product. It was slightly
21 costlier to make, and they were putting it on -- on --
22 on their label the time, and -- and so dehydrators
23 making Goldens, the commit -- the Committee at one time
24 actually looked at all those as separate -- separate
25 groups with the potential to have -- to have a pool, to

1 have -- to have a free tonnage established for them.

2 We don't do -- we don't do any of that
3 anymore. And that's what I -- that's what I mean,
4 historically there was a lot of competing interests in
5 it, or just interest alone in -- in how the -- the
6 raisin industry was conducted.

7 Q. And would you say that today, interests are a
8 little bit more aligned?

9 A. Oh, yeah. I would say there's virtually --
10 there's virtually no reason for contention other than to
11 work together for the best industry of the California
12 raisin producer, and I think we all -- we're all aligned
13 on that -- that interest now.

14 Q. Okay. Thank you.

15 So we've been using a lot of terminology that
16 I just want to make sure it's correct for the record.
17 So independent producer, cooperative bargaining
18 association, cooperative marketing association, so I was
19 hoping I could get you to read some of these definitions
20 into the record. So I have a -- I have the marketing
21 order right here, and I was going to ask if you'd read
22 some of this stuff into the record.

23 MS. CHILUKURI: So, Jeremy, do you mind giving, I
24 guess three copies to the judge and to the court
25 reporter and Mr. Keister.

1 MR. KISTER: You know, while he's passing those
2 out, I would like to add, too, that -- that the
3 president of Sun-Maid, Steve Loftus, wasn't able to be
4 here today. He's at the National Council for Farmer
5 Cooperatives in Florida, so I will just submit his
6 testimony, but I -- when I finish up with this, I'd like
7 to comment on that as well.

8 Now, this is --

9 JUDGE STROTHER: Are we going to mark this as an
10 exhibit or are we -- like, I don't --

11 MS. CHILUKURI: Your Honor, I was going to ask you
12 about that. We can take official notice, or if you'd
13 recommend that we mark that as an exhibit.

14 JUDGE STROTHER: I don't know. I assume if we look
15 up 7 CFR, Part 989, this would be there?

16 MS. CHILUKURI: Right. That's why we printed it
17 out, to show you.

18 JUDGE STROTHER: Yeah. I think we can -- I think
19 we can treat this as an item by reference.

20 MS. CHILUKURI: Great.

21 BY MS. CHILUKURI:

22 Q. Okay. So, Ms. Kister, do you know the
23 references offhand for an independent producer, for
24 instance?

25 A. Well, it would be any grower that's -- that is

1 not in the bargaining association or Sun-Maid.

2 Q. Okay. So why don't we -- just for clarity and
3 for the record, why don't we go to 989.111, 111, which
4 is entitled, "Independent producer and small cooperative
5 producer."

6 A. You said .111?

7 Q. Right. I think it's on page 30 of 63.

8 A. What page?

9 Q. 30.

10 A. I don't have a -- oh, yeah, I do. Page 30.

11 Q. Uh-huh. Jeremy.

12 A. Okay. Found it.

13 Q. Okay. Thank you, Mr. Keister.

14 Could you read that into the record just so
15 we're all clear as to --

16 A. Okay. "Independent producer means any
17 producer who is not a member of a cooperative bargaining
18 association or a cooperative marketing association, nor
19 has sold for cash to a cooperative marketing
20 association.

21 "Small cooperative producer means any producer
22 who is a member of cooperating marketing association
23 which acquired less than 10 percent of total raisin
24 acquisitions during the crop year preceding the year in
25 which nominations are held."

1 And what -- and what -- would you like an
2 explanation?

3 Q. Sure.

4 A. Yeah. I mean, there was a time I know when
5 Sun-Maid would acquire cash purchases outside of the
6 co-op, and I -- and they would not qualify as an
7 independent producer, as I remember it.

8 Q. Is there any other comment that you might want
9 to make --

10 A. No.

11 Q. -- as it relates to 989.111?

12 If not, if you could read 115.

13 A. The next one down?

14 Q. Yes.

15 A. Oh. "Independent handler means any handler
16 who is not a cooperative marketing association of
17 producers."

18 Q. And then continuing onto the next page for
19 major cooperative marketing association handler and
20 following paragraph.

21 A. "Major cooperative marketing association means
22 any handler who is a cooperative marketing association
23 of producers which acquired not less than 10 percent of
24 the total raisin acquisitions during the crop year
25 proceeding nominations.

1 "Small cooperative marketing association
2 handler means any handler who is a cooperative marketing
3 association of producers which acquired less than
4 10 percent of the total raisin acquisitions during the
5 crop year."

6 Q. So with -- and is this your understanding
7 these two definitions that we just cited to, 989.111 and
8 989.115, when the regulations refer to independent
9 producer, small cooperative producer, independent
10 handler, major cooperative marketing association
11 handler, and small cooperative marketing association
12 handler, they're referring to these definitions here?

13 A. That's right. And -- and the raisin industry
14 has actually had that, I think that there was a -- there
15 was a small co-op in the past. They have since gone out
16 of business. Now Sun-Maid is the only cooperative left
17 in the raisin industry.

18 Q. Okay. So, for instance, when there's a
19 reference to cooperative marketing association, some of
20 the witnesses are saying Sun-Maid, it could be someone
21 else if someone else existed?

22 A. Yes. Someone can form a co-op under
23 Capper-Volstead in the United States. It's doable.

24 Q. And the same thing with RBA? People are
25 referring to RBA, but there's a reference to cooperative

1 bargaining association, and that's -- there could be
2 another bargaining --

3 A. Yeah. They don't market, but -- the RBA has
4 never marketed their own raisins, so that's why they
5 would be a bargaining cooperative.

6 Q. Okay. So why don't we get that onto the
7 record, too.

8 A. Yeah.

9 Q. Cooperative bargaining association is at
10 989.12a. And that's page -- I think page 6 of 63.

11 MS. WILLIAMS: 6. 6 of 63.

12 MR. KISTER: Oh, page 63?

13 MS. WILLIAMS: 6.

14 MR. KISTER: I can't hear.

15 MS. POWELL: You're okay.

16 MR. KISTER: Okay. Cooperative bargaining
17 association. Cooperative bargaining association means a
18 nonprofit cooperative association of raisin producers
19 engaged within the area in bargaining with handlers as
20 to price and otherwise arranging for the sale of natural
21 condition raisin of its members.

22 BY MS. CHILUKURI:

23 Q. Okay. Thank you.

24 So cooperative bargaining association,
25 practically speaking, this would be RBA, because they

1 are the cooperative bargaining association for raisins,
2 but theoretically could be someone else if someone else
3 entered that arena; is that fair to say?

4 A. Yeah.

5 MS. CHILUKURI: Okay. Thank you. I have no
6 further questions.

7 CROSS-EXAMINATION

8 BY MR. BROADBENT:

9 Q. We're all in agreement, I'll make this quick.
10 This is Barry Broadbent.

11 Mr. Kister, are there other uses for grapes
12 that -- other than raisins? Are there raisin grapes?
13 Are there, you know, fresh grapes? Are there wine
14 grapes?

15 A. There -- there are other uses. Canning
16 grapes, as you see in fruit cocktail, very small market.
17 Historically Thompsons would be crushed in large amounts
18 in some years going back to the 1950s and '60s, in which
19 it was used largely for wine. And that was another
20 reason why we -- we need -- we needed the marketing
21 order because we would have huge swings in production,
22 because some years if Gallo or other large winemakers
23 would purchase Thompsons, it would affect the production
24 of raisins in the Valley.

25 Over time, once you got up to around the year

1 2000, grape concentrate became an important factor. But
2 currently today, there -- there -- grape uses are
3 largely dedicated now as we get down to about -- I think
4 Monte used the term 98,000 acres, they're largely
5 dedicated to producing raisins. There are better grapes
6 for concentrate, and -- and there's virtually no demand
7 on the wine side. Once in a while, something will
8 happen in markets, like wine coolers or something, but
9 once they go away, it's gone again.

10 We don't -- going forward, we really don't
11 foresee much other use for the Thompson grape or the
12 raisin-type grape for anything other than raisins or
13 goldens.

14 JUDGE STROTHER: How about table grapes?

15 MR. KISTER: What's that?

16 JUDGE STROTHER: How about as table grapes?

17 MR. KISTER: Oh. Actually, yeah, Thompsons were --
18 good point -- were one of the original table grapes,
19 because it was really the first grape introduced in
20 California. Over time, same thing has happened there.
21 Brand new varieties. Table grape industry has been very
22 good at developing new varieties. Virtually --
23 virtually no sales for table grapes anymore.

24 BY MR. BROADBENT:

25 Q. All right. Thank you. I just wanted to

1 clarify --

2 A. No. Exactly.

3 Q. -- back in the day there used to be lots of
4 uses for grapes, and now it's consolidated down to grape
5 acreage and just largely used for raisins, so --

6 JUDGE STROTHER: Any further questions from USDA?

7 Any questions from anyone else in the room?

8 Okay. Any objection to the admission of
9 exhibit -- this witness's statement, Exhibit 20, into
10 the record?

11 Seeing none, admitted.

12 (Whereupon, Exhibit 20 was admitted
13 into the record.)

14 JUDGE STROTHER: With that, you're excused,
15 Mr. Kister.

16 You had something else?

17 MR. KISTER: I had one --

18 JUDGE STROTHER: Okay. Further redirect by the
19 witness.

20 MR. KISTER: Yeah.

21 Steve Loftus was supposed to be here. He's --
22 he's the president of Sun-Maid Growers, he couldn't
23 attend. So he has submitted his testimony, and I -- I
24 read over his testimony, and there's just one thing I'd
25 like to add is that really today, if you look at our

1 industry, and we've shrunk -- we've shrunk by more than
2 one-half in average production, it becomes hard for the
3 industry to generate revenue. Currently, we operate on
4 a \$22-a-ton assessment, and as your tonnage shrinks when
5 it has, so does our revenue. Plus, in fact, the fact
6 that there's economic hardship amongst the grower
7 community, it's almost impossible to add a greater
8 burden on them to run the Committee. So if -- so if we
9 could generate extra revenue, for example, from the --
10 from the Dancing Raisin, it -- it's revenue that's well
11 needed, and it's revenue that we would really like to
12 use.

13 MS. CHILUKURI: So, Your Honor, I just wanted to
14 interject that not -- because the exhibit hasn't been
15 passed out, so I wasn't sure if there was an exhibit at
16 issue, but also if Mr. Kister is intending to submit
17 Mr. Loftus's testimony, I think he needs to revise that
18 to reflect that its own his testimony. I mean, that's
19 part of the hearing, that people should be here to
20 testify on their own behalf, and that it be reported
21 verbatim by the court reporter, and that we have the
22 opportunity to cross-examine.

23 Now, if Mr. Kister wants to make some notes
24 and say this is his testimony on behalf of Sun-Maid, or
25 however he wants to frame that, that's fine. We can't

1 cross-examination Mr. Loftus.

2 JUDGE STROTHER: Well, I should clarify it. What I
3 heard Mr. Kister say, and correct me if I'm wrong, that
4 he looked over the testimony from someone that wasn't
5 here, it reminded him of something additional he wanted
6 to say.

7 MS. CHILUKURI: Okay.

8 JUDGE STROTHER: That he wasn't saying that this is
9 from an -- somebody from outside the hearing, but he can
10 correct me.

11 You're not adopting the other -- the witness
12 that couldn't be here's testimony, are you?

13 MS. POWELL: No.

14 MR. KISTER: No.

15 JUDGE STROTHER: Am I right that what you testified
16 to is your testimony, doesn't have any -- there's no
17 necessity of having it -- you're not speaking --

18 MS. WILLIAMS: It's hard for him to hear.

19 JUDGE STROTHER: I'm sorry.

20 That was your testimony, and not the
21 testimony --

22 MR. KISTER: Right.

23 JUDGE STROTHER: You referred to some statement
24 that you read and said it occurred to you there was
25 something else you wanted to add to your own testimony;

1 is that right?

2 MR. KISTER: Yes, I'm adding to my own testimony.

3 JUDGE STROTHER: Is that sufficient?

4 MS. CHILUKURI: Yes. Yes, Your Honor.

5 So there is no -- no exhibit associated with
6 that?

7 MS. WILLIAMS: No. Steve Loftus's --

8 MS. CHILUKURI: Okay.

9 MS. WILLIAMS: -- testimony was never submitted.

10 MS. CHILUKURI: Okay.

11 JUDGE STROTHER: Very well.

12 MS. CHILUKURI: Thank you for clarifying.

13 JUDGE STROTHER: Thank you. I think that was a
14 good thing to clarify.

15 All right. And we admitted Exhibit 20 into
16 evidence.

17 So with that, any further anything before we
18 go to lunch?

19 You're excused. Thank you for being here.

20 And let's come back at 1:50.

21 (Whereupon, a lunch break was
22 taken.)

23 * * * * *

24 TUESDAY, FEBRUARY 13, 2024, 1:51 P.M.

25 JUDGE STROTHER: On the record.

1 TESTIMONY OF GERALD CHOOLJIAN

2 JUDGE STROTHER: Please raise your right hand.

3 GERALD CHOOLJIAN,

4 having been first duly sworn, testified and was
5 examined, as follows:

6 MR. CHOOLJIAN: I do.

7 JUDGE STROTHER: All right. You're representing
8 yourself today.

9 MR. CHOOLJIAN: I am representing myself.

10 JUDGE STROTHER: On that case, state your name --

11 MR. CHOOLJIAN: Spell it.

12 JUDGE STROTHER: -- position, spell it, occupation,
13 and provide an address if it's not a home address.

14 MR. CHOOLJIAN: Okay. My name is Gerald Chooljian.
15 G-e-r-a-l-d C-h-o-o-l-j-i-a-n.

16 I'm a small grower and handler of raisins.
17 Our company -- packing company --

18 Now it went off. Can you hear me okay?

19 JUDGE STROTHER: Yes.

20 MR. CHOOLJIAN: Okay. Our packing company is Del
21 Rey Packing Company. The -- do you want the mailing
22 address or the physical address?

23 JUDGE STROTHER: Give us both, I guess.

24 MR. CHOOLJIAN: Okay. The mailing address is P.O.
25 Box 160, Del Rey, California, 93616. Physical is 5287

1 South Del Rey Avenue, Del Rey, California, 93616.

2 So, again, our packing company is Del Rey
3 Packing Company, and my family has been packing
4 California raisins since the late 1920s. I am Chairman
5 of the Marketing Subcommittee of the Raisin
6 Administrative Committee and have held this position
7 since 2002. My elected position on the Committee is as
8 an independent handler.

9 I support all four proposed amendments; 1,
10 committee size reduction and restructure; 2, removing
11 the nomination process that currently allows a person
12 the option to choose member or alternate position; 3,
13 quality standards for reconditioned raisins; and 4,
14 updating the content requirements for the Marketing
15 Policy. However, I am here to testify specifically for
16 the reduction and restructure of the Committee.

17 Currently, the Committee consists of 47
18 members and 47 alternates. The raisin industry has
19 severely regressed over the years with our crop size and
20 number of growers. This has created some difficulty in
21 filling the member and alternate positions. In fact, if
22 you go on the Committee website (raisins.org), you will
23 see that the Committee currently has 18 vacancies, two
24 in member positions and 16 alternate positions. This
25 high-vacancy rate has been consistent for many terms of

1 office, which supports the need to reduce the Committee
2 size.

3 Our current quorum requirement is 25 members
4 or alternates who are in a voting position, which is
5 53 percent of the voting membership. We've had many
6 meetings over the past several years where quorum was
7 barely reached, and one meeting (January 2020) where
8 quorum was not reached. Reducing the Committee size
9 automatically reduces the quorum requirement. The
10 proposed quorum of 14 will require a slightly higher
11 percentage of participation, 67 percent of the voting
12 membership.

13 Eliminating independent producer districts is
14 appropriate with this overall Committee size reduction,
15 especially independent pressures who will only get
16 approximately five seats, depending on tonnage.
17 Districts 1 and 2 have a small grower base in comparison
18 to District 3. Representation should be based on a fair
19 vote for all nominees in a single District.

20 When the industry had volume regulation
21 (reserve pool) a lot of the programs were driven by the
22 "field prices/base price," so it's -- I'll start over on
23 that line.

24 When the industry had volume regulation
25 (reserve pool), a lot of programs were driven by the

1 "field prices/base price" established by a Raisin
2 Bargaining Association. Example: The RAC had an Export
3 Replacement Offer Program, also known as Raisin-Back or
4 Cash-Back program. The RBA field price for raisins was
5 used as the "Base Price" to calculate the pricing in the
6 export markets.

7 And that's what I -- I presented that -- an
8 exhibit for that on the -- on the ERO program.

9 JUDGE STROTHER: This exhibit was handed out on RAC
10 letterhead dated January 30th, 2006?

11 MR. CHOOLJIAN: Yes, sir.

12 JUDGE STROTHER: Okay. Let's mark -- let's mark
13 your statement that was handed out Exhibit 21 for
14 identification, and we'll mark this January 30th, 2006,
15 document, it's kind of in a memorandum form, as
16 Exhibit 22 for identification.

17 (Whereupon, Exhibit 21 and Exhibit
18 22 were marked for identification.)

19 JUDGE STROTHER: Thank you. Please continue.

20 MR. CHOOLJIAN: The Committee established the
21 pricing for the export markets to be competitive with
22 other origins (Europe-Bulk, Europe-Consumer,
23 Taiwan-Bulk, Taiwan-Consumer, Korea, Japan, Asean,
24 et cetera). It was probably important at that time that
25 the RBA had a designated position on the Committee.

1 Since the industry has no volume controls and does not
2 establish any pricing in the export market, I do not
3 feel it is a position that should be mandated. The RBA
4 will still maintain producer recommendation based on
5 their tonnage.

6 Personally, I am in agreement for the changes
7 even though it would make it more difficult for me to
8 continue as a Committee member and chairman of the
9 Marketing Subcommittee. I am willing to sacrifice this
10 for what I consider to be a more efficient committee.

11 JUDGE STROTHER: Off the record.

12 (Whereupon, off the record.)

13 JUDGE STROTHER: On the record.

14 Please continue.

15 MR. CHOOLJIAN: I'm -- I'm finished.

16 JUDGE STROTHER: Oh, you're done. Okay.

17 MR. CHOOLJIAN: I'm finished.

18 JUDGE STROTHER: Very well.

19 MR. CHOOLJIAN: Probably not finished, but I'm
20 finished.

21 JUDGE STROTHER: I'm guessing you're not completely
22 finished.

23 USDA, do you-all have any questions?

24 MS. PANKEY: Sure.

25 JUDGE STROTHER: Ms. Pankey.

1 MS. PANKEY: Thank you. Hello. Hello.

2 CROSS-EXAMINATION

3 BY MS. PANKEY:

4 Q. Thank you, Mr. Chooljian.

5 A. Chooljian.

6 Q. Chooljian.

7 A. That's close enough.

8 Q. Thank you.

9 A. It's been a lot worse than that.

10 Q. Thank you for your testimony. Some
11 preliminary questions here.

12 Just a clarifying question. You said that
13 you're a small grower and a handler, but you currently
14 serve on the Committee as an independent handler; is
15 that correct?

16 A. That is correct.

17 Q. Okay. As an independent handler, can you
18 explain your involvement in the discussions and
19 deliberations over the RAC's proposals?

20 A. Well, over all my, quote, unquote, experience,
21 they like to have me on these committees, Debbie always
22 calls me or Monte always calls me, so I participate in a
23 lot of the programs on the RAC, so, yes, I was highly
24 involved in this -- in this function.

25 Q. Okay. Thank you.

1 And do you believe the amendments have the --
2 do you believe the amendments proposed have the broadest
3 of the industry support?

4 A. I believe it does.

5 Q. To your knowledge --

6 A. It took a long time to come to the -- an
7 agreement.

8 Q. Okay. To your knowledge, did all industry
9 groups, including those representing small businesses,
10 have an opportunity to provide input on the proposed
11 amendments?

12 A. Yes.

13 Q. Based on your understanding, would any groups
14 in the industry have an unfair advantage as a result of
15 these amendments?

16 A. In my opinion, no.

17 Q. And as you stated in your testimony, you
18 support all four proposed amendments, correct?

19 A. That is correct.

20 Q. I'm going to ask you some questions that
21 make -- similar questions that I've asked other
22 witnesses, but to get your viewpoint and your
23 perspective on the -- on the -- on all the changes in
24 industry as a small independent grower. Okay?

25 In your opinion, what factors have contributed

1 to the decline in producers and acreage over the past 20
2 years?

3 A. Well, as has been stated, I mean, doing
4 business in California costs a lot more than in other
5 places in the world. Economically, it's been a -- it's
6 been a struggle. We've had up-and-down pricing on our
7 commodity, on raisins over the -- over the many years.
8 Some years we're in long supply, other years we're in
9 short supply. It's a -- it's -- you start looking at --
10 growers start looking at other commodities that have a
11 better return, a better dollars-per-acre, maybe less
12 labor intensive commodities so they convert over. You
13 know, almonds are a lot more automated, you need a lot
14 less labor. So those are -- those are factors that I
15 think have contributed to it.

16 Q. Okay. Thank you.

17 As a small independent grower, does this
18 reduction in industry -- has this reduction in industry
19 had an effect on the RAC membership and nominations?

20 A. I think it's had a very large effect. We
21 can't get enough members.

22 Q. Okay. Can you describe any methods that at
23 the time RAC used over the years to try and boost
24 membership?

25 A. Boost membership. I don't -- I don't know

1 of --

2 Q. Any methods of outreach.

3 A. Well, I think the -- between the -- the
4 magazines, the American Vineyard and different
5 publications out there that -- they're always
6 interviewing people in the industry, the RAC, even the
7 RBA, Sun-Maid, so there -- there is an outreach, so if
8 people wanted to participate, they could. They should
9 be able to find out where.

10 Q. And also would you say the amendments to
11 separate nomination procedures was also a method or a
12 tactic to kind of recruit membership on the Committee?

13 A. I don't understand that. Say that again.

14 Q. So the separation of nomination procedures
15 when they allow independent producers to either select
16 if they want to be an alternate or a full member on the
17 Committee, was that the attempt of the Committee to try
18 to increase --

19 A. Well --

20 Q. -- membership by providing flexibility?

21 A. -- I -- I believe -- I believe so, yeah.
22 That's what it was -- hopefully does.

23 Q. And to your knowledge, have there been any
24 other discussions within the committee on other methods
25 or tactics to kind of increase membership or increase

1 participation in committee meetings?

2 A. I don't -- I don't know of any, but that
3 doesn't mean it hasn't happened.

4 Q. Other than the date that you provided in your
5 testimony -- I think January 29th?

6 A. Well, I just said January of 2020.

7 Q. Okay.

8 A. I didn't put the exact date.

9 Q. All right. Other than -- other than that date
10 mentioned, January 2020, can you recall any other time
11 when quorum was not met?

12 A. Well, I don't know about it not being met, but
13 there were many times I'd be sitting in this room,
14 especially like I -- I'm chairman of the marketing
15 subcommittee, and we'd be waiting trying to get quorum,
16 and it just might take 15 minutes, 20 minutes, half
17 hour, staff would be on the phone. We -- a lot of us
18 members would call other people to try to get them on
19 the phone. So it may be that we met quorum, but it
20 would be very difficult.

21 Q. Okay. In your opinion, would the proposed
22 amendments that would reduce Committee size and lower
23 quorum requirements solve the issue with participation
24 on the Committee and membership?

25 A. Yes.

1 Q. In your testimony, you discussed how the
2 proposed quorum 14 would be a higher participation
3 percentage than the current requirement. How was this
4 quorum number determined to be the appropriate number of
5 members necessary to meet quorum? Please provide any
6 alternatives that were discussed as well.

7 A. Well, I think the alternative discussed would
8 be just the normal quorum, which would be 50 percent
9 plus one, but some of us felt that it would be better
10 with the Committee being smaller and the breakdown of
11 the Committee that to make sure that not one -- not one
12 group in the -- on the Committee could have control.

13 Q. Right. So 50 percent plus one would have been
14 11, correct?

15 A. Yes.

16 Q. And so if you only had a quorum of 11, then
17 that would -- how would that put another group in
18 control?

19 A. Well, I mean, if you look at the -- I don't
20 have the breakdown in front of me, but if you look at
21 it, you could have -- it wouldn't take too many, let's
22 just say if you had eight members of one group, they
23 would only need three to get something through.

24 Q. Okay.

25 A. Just feels -- I just felt -- personally I feel

1 it's a lot better representation for the total industry.

2 Q. Okay. In your testimony, you discussed
3 removal of producer districts. In your opinion, please
4 explain how the removal of producer districts provides
5 for a fair nomination process.

6 A. Well, if you're only having -- if it's five --
7 or I guess four independent producers -- four
8 independent producers, and all of a sudden one is from
9 the northern district and one is from the southern
10 district, that only leaves two for the largest district
11 on the way it is now. So correct me -- I mean, the
12 staff would know this better than me, but when they've
13 had the meetings in the northern and southern district,
14 there might only be one, two or three people that
15 participate in those.

16 Debbie -- the staff is saying one.

17 So, I mean, this way it's -- it's all the
18 independent handlers are together.

19 Q. Right. So the elimination of districts allow
20 for more -- more independent producers to be nominated
21 and serve on the committee versus because in both
22 Districts 1 and 2, it was only one member being
23 nominated, correct?

24 A. That's -- it's not the total being different,
25 but representation would -- would be equal. I don't

1 know how to -- you had a large -- you would have a large
2 district -- the largest district in the industry would
3 only have the participation of two people, and then the
4 small district where maybe one or two people go to the
5 meetings, all of a sudden they have full -- they get a
6 full representative.

7 Q. Right. So it provides opportunity for those
8 independent producers in the larger district --

9 A. Yes.

10 Q. -- to serve? Thank you.

11 In your opinion, would -- will equitable
12 representation of producers be maintained with the
13 removal of districts?

14 A. That's the goal.

15 Q. Does the removal of districts provide for a
16 greater representation of industry?

17 A. Yes, I would think so.

18 Q. In your opinion, does the removal of districts
19 allow for an unfair advantage or disadvantage for any --
20 any industry group?

21 A. No.

22 Q. Okay. Could you please explain how the
23 designated bargaining position contributed to export
24 programs described in your testimony?

25 A. Okay. Well, as I stated, if you look at that

1 exhibit, you will see a -- at the bottom -- let me see.
2 Go to the back page, it says, "Exhibit A-1," at the top.
3 And if you look on there, go down to the bottom, and
4 you'll see where there's a 1 in parentheses. It says,
5 "The base price will be adjusted to the final
6 established RBA 2005 field price on or about
7 February 15th of '06."

8 So the base -- the base price, if you look at
9 those examples of the different countries, the base
10 price was \$1210. That was the established RBA price,
11 and that we would only be able to know that if the
12 manager or the general manager at the time sat in this
13 room and stated that we have an announced field price.
14 So our export programs were based on what the field
15 price was, or the formulas were all based on what the
16 field was.

17 MS. POWELL: Reserve pool. Reserve pool ERO.

18 MR. CHOOLJIAN: Well, it was the reserve pool ERO,
19 but your base price -- yeah.

20 MS. POWELL: I'm saying this was years ago, this
21 doesn't happen today.

22 MR. CHOOLJIAN: Oh, yeah. This doesn't happen
23 today.

24 BY MS. PANKEY:

25 Q. The ERO program?

1 A. Yeah.

2 JUDGE STROTHER: I take it there's no objection to
3 that help.

4 MS. POWELL: Sorry.

5 MR. CHOOLJIAN: This was 2006.

6 MS. CHILUKURI: No, Your Honor.

7 MR. CHOOLJIAN: This was -- was this our last one?

8 MS. CHILUKURI: To the extent that people could
9 refrain from that, just so the record is clear, we'd
10 appreciate that.

11 JUDGE STROTHER: Probably better if we don't.

12 THE WITNESS: Okay. What do you want me to do?

13 JUDGE STROTHER: Ear muffs.

14 MR. CHOOLJIAN: Okay.

15 JUDGE STROTHER: No, no, that's fine. We'll --
16 we'll just be slightly more formal, but you may go
17 ahead.

18 MR. CHOOLJIAN: I don't want you --

19 JUDGE STROTHER: You're here --

20 MR. CHOOLJIAN: I don't want you to confuse a
21 reserve program for the ERO. I mean, they're two
22 different --

23 BY MS. PANKEY:

24 Q. Right. So you're saying that the designated
25 bargaining position was warranted as a part of the

1 Committee when the ERO program was in existence and you
2 were using the RBA pricing to negotiate the field price,
3 correct?

4 A. That is.

5 Q. Export pricing?

6 A. Well, that -- yes, we would establish the --
7 yes, we would have to establish export pricing in the
8 different markets, yes.

9 Q. And since that program is no longer in
10 existence anymore or the RBA doesn't need that --
11 require that information because that program no longer
12 exists, then the RBA designated -- the designated
13 bargaining position is no longer warranted on the
14 Committee; is that your opinion?

15 A. That's my opinion. We don't -- we don't have
16 any programs now on the RAC where we discuss the field
17 price.

18 Q. Okay. Why were the RBA prices used as a base
19 price for these programs?

20 A. Well, let's -- let's -- let's just take --
21 pick one, okay, let's just take you're consumer. So if
22 you looked at that, we would establish a price that we
23 would sell at -- our costs as a processor would be \$650.
24 Basically the RAC would sit here, and we would -- we
25 would establish a price on what we felt we could sell it

1 in the international market at that level, so you -- you
2 would need to know the base -- because the packer was
3 paying for all the raisins up front, you would need to
4 know the established price so you knew how much to
5 reimburse the processor, either in a raisin-back or the
6 cash-back program to blend the cost down for -- to make
7 the sale.

8 Q. So would you say that that information
9 provided by the RBA was vital to these programs when
10 they were in existence?

11 A. You couldn't have done it without it.

12 Q. Okay. And how do these programs help the
13 industry to remain competitive?

14 A. Well, as I think Mr. Kister said, you --
15 you -- other markets were taking our business, let's
16 just say, like in Turkey they were producing more
17 raisins at lower cost, and we were -- we were losing --
18 we were producing oversupply of raisins, so now we can't
19 sell them based on what -- what the field price was for
20 the domestic market under what we call free tonnage or
21 under the trade demand formulas, so to be competitive
22 and give us an avenue to sell our raisins on a world
23 competitive price, this is -- this is what the industry
24 did with the reserve tonnage.

25 Q. Okay. So why were these programs terminated?

1 A. Well, they were terminated because we had the
2 Supreme Court action with Marvin Horne on the volume
3 controls.

4 Q. So when volume control regulation was removed
5 from the order, you also terminated this ERO program?

6 A. We had no way to fund it. These programs were
7 all funded out of the volume controls.

8 Q. In what capacity are RBA members able to serve
9 on the Committee?

10 A. As -- as growers, producers.

11 Q. Thank you.

12 In your opinion, does the number of seats that
13 would be allocated to the bargaining association on the
14 reduced Committee provide the RBA with adequate
15 opportunity to express its views at Committee meetings
16 and the appropriate amount of influence in Committee
17 business?

18 A. Well, the formula for all the -- all the
19 positions is based on -- on the tonnage, right? I mean,
20 that's our formula. It's not -- it's not a different
21 formula for the RBA as it is for independent handlers.

22 Q. So in your opinion, the formula that's used
23 to -- to determine how many -- how many seats the RBA
24 gets -- how many seats the RBA growers would get on the
25 Committee would be fair, and they would have fair

1 representation, as it would be for any other industry
2 group that's serving on the Committee?

3 A. Well, it's equal, right? It's a formula. It
4 doesn't matter what your affiliation on the formula.

5 Q. Okay. So the removal of this bargain
6 association would not -- in your opinion, would that
7 give the -- put the RBA at a disadvantage?

8 A. No.

9 Oh, you're talking -- wait, let me get this
10 straight. You're asking about the mandatory, with a
11 mandatory position, or the position based on producer?

12 Q. So perhaps you can explain that to us for --
13 to put it on the record. What's the difference between
14 the designated bargaining association seat and then the
15 other positions on the committee that RBA growers are
16 sitting?

17 A. Well, I'm just going to tell you, I'll give
18 you my opinion as an independent handler. I don't have
19 a designated position, so I don't understand why
20 somebody else should have a designated position. That's
21 my opinion.

22 Q. Okay. Right. And as you said, that position
23 was on the Committee because there was a need for that
24 information when you were -- when they were considering
25 volume regulations and other --

1 A. Yes.

2 Q. -- export information but --

3 A. Yes.

4 Q. -- so since that position --

5 Okay. I'm just --

6 A. Yeah.

7 Q. -- trying to get that clear on the record.

8 Thank you.

9 In your opinion, does the reduced Committee as
10 proposed more align with the current representation of
11 industry?

12 A. Yes.

13 Q. Can you provide what benefit the RBA manager
14 had by occupying the designated seat on the RAC?

15 A. I don't know what you mean by that.

16 Q. What benefit did the RBA manager or the RBA
17 acquire from having this position on the RAC?

18 A. It's a smaller committee, it's a vote. I
19 don't know. I can't answer that question.

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

22 CROSS-EXAMINATION

23 BY MR. McFETRIDGE:

24 Q. Marc McFetridge, USDA.

25 Just a quick question. I know you specified

1 in your testimony that you are a small grower and small
2 handler. Let me just read the Small Business
3 Administration's definition one more time, defines a
4 small agricultural firm as having annual receipts of
5 less than 34 million and a small agricultural producer
6 is defined as having annual receipts of less than
7 4 million. Would you still be classified under the SBA
8 definition as small for both being a producer and
9 handler?

10 A. Unfortunately, yes.

11 MR. McFETRIDGE: Thank you. That's all I have.

12 CROSS-EXAMINATION

13 BY MS. CHILUKURI:

14 Q. Rupa Chilukuri for the USDA.

15 Mr. Chooljian, you mentioned you're a small
16 grower and small handler of raisins, and that your
17 elected position is one as an independent handler. I'm
18 just trying to figure out, since the industry is
19 vertically integrated based on testimony we've heard,
20 how do people make those decisions about who gets on as
21 the grower, who gets on as a handler? Can you sort of
22 talk through how that worked out for you in terms of
23 doing both and you have a membership as a handler?

24 A. Well, I believe the handlers, they're -- the
25 way the marketing order is now, it's categorized by the

1 size of the handler. So you got -- the handlers have so
2 many positions, let's say large handler, medium handler,
3 small handler, I don't know the exact breakdown, but
4 whatever position our company was in, then that group,
5 we vote -- we vote within that group to decide who's
6 going to be a member and who's going to be an alternate.

7 Q. Okay. So based on your having a packing
8 company, maybe you thought my interests are more aligned
9 with handlers or it makes more sense for me to want to
10 be on the committee as a handler; is that fair?

11 A. It's fair.

12 Q. Okay. And you also indicated that your family
13 has been packing California raisins since the late
14 1920s. Just with that long history, do you -- do you
15 know of changes that the Committee has undergone over
16 time in terms of do you recall whether there was a time
17 where the structure was different, the size was
18 different, maybe the composition was different?

19 A. I don't know about the comp -- it's been a
20 long committee since I can remember, you know, going
21 back into the -- I've been on the committee probably
22 since, I don't know, 1980 or something, probably
23 somewhere in that area. It's always been a very large
24 committee, and the makeup of it has always been adjusted
25 accordingly based on the tonnage that's independent

1 producer, RBA producer, or Sun-Maid producer. The -- it
2 would change, but we -- we as Committee members, we
3 never knew what that breakout was, it was only the
4 staff -- staff knew that.

5 Q. And that breakdown was based on the
6 proportionate share --

7 A. Yes.

8 Q. -- of the acquisitions? Okay.

9 So you mentioned here on your last page or
10 paragraph of your testimony that you are in agreement
11 with the changes, it would make it more difficult for me
12 to continue as a Committee member, and you're willing to
13 sacrifice for what you consider to be a more efficient
14 Committee. Can you talk a little bit more about what
15 that means?

16 A. Well, by shrinking the amount of handlers that
17 are going to be on the committee, it may be more
18 difficult for me, let's just say, to get elected. And
19 I -- and I may not get elected, and that's all I was
20 saying. And I think the -- the -- I look at it as we
21 need to improve the California raisin industry. We need
22 it to move forward. We're in a shrinking, shrinking,
23 shrinking industry, and -- and it's becoming to me a lot
24 more difficult as a Committee to try to get things
25 through when you have such a large Committee. When you

1 have a smaller Committee, you have a better chance
2 hopefully of bringing the ideas together and
3 implementing them and getting them through instead of us
4 always having to take, well, we're going to -- because
5 there's -- the Committee can't decide on something so we
6 have to form a working group, then we form another
7 group, and -- and we become like -- like the Congress, I
8 mean, they're trying to get something through, and it's
9 taking -- you know, it takes years. And that's what's
10 happening to, I feel like, us in the industry, and maybe
11 as a -- as a smaller Committee and getting -- we can --
12 we can -- we need to work fast if we want to save this
13 industry. We don't have a lot of time.

14 Q. And would you say -- had you participated in
15 meetings -- you mentioned in the 1980s, would you have
16 participated as a member or -- in the 1980s?

17 A. I've been participating in these meetings
18 since -- I can't remember how long ago it was, it's been
19 so long, but I've been participating in these -- I can
20 remember these meetings, we used to have to hold them in
21 the hotel ballrooms because they were so large, and
22 there was a lot of interest, and now we can't even fill
23 this room. So a lot of changes in my lifetime.

24 MS. CHILUKURI: Okay. Thank you very much, sir. I
25 have no further questions.

1 JUDGE STROTHER: Anyone else for USDA?

2 Seeing no one, anyone else have any questions
3 for this witness?

4 Have anything further --

5 MR. CHOOLJIAN: I'm good.

6 JUDGE STROTHER: -- you would like to say, direct,
7 redirect?

8 All right. Anyone have any objection to
9 Exhibit 21 and Exhibit 22 being admitted into the
10 record? They are admitted.

11 (Whereupon, Exhibit 21 and Exhibit
12 22 were admitted into the record.)

13 TESTIMONY OF JEFF MILINOVICH

14 JUDGE STROTHER: Raise your right hand.

15 JEFF MILINOVICH,
16 having been first duly sworn, testified and was
17 examined, as follows:

18 MR. MILINOVICH: I do.

19 Should I spell out my name?

20 JUDGE STROTHER: Yeah, go ahead. Give us your
21 name, spell it out, and --

22 MR. MILINOVICH: My name is --

23 JUDGE STROTHER: -- tell us who you work for.
24 Yeah.

25 MR. MILINOVICH: My name is Jeff Milinovich,

1 J-e-f-f M-i-l-i-n-o-v-i-c-h. I work with Mariani
2 Packing and Central California Raisin Packing Company.

3 Do I need to do the address and that?

4 JUDGE STROTHER: Yes. I mean, if I've got a
5 non- --

6 MR. MILINOVICH: P.O. Box 220, Del Rey, California
7 93616.

8 JUDGE STROTHER: Okay. Do you have an exhibit
9 today?

10 MR. MILINOVICH: Just my testimony.

11 JUDGE STROTHER: All right. Let's mark that. Had
12 anyone -- here it is. I'm sorry.

13 Let's mark this witness's statement dated
14 today's date, USDA Testimony today's date, let's mark
15 that Exhibit 23.

16 (Whereupon, Exhibit 23 was marked
17 for identification.)

18 MR. MILINOVICH: All right. My name is Jeff
19 Milinovich. I work with Mariani Packing and Central
20 California Raisin Packing in Del Rey, California, a
21 family-owned raisin processing plant that has been in
22 operation for the past 70 years. I have been in this
23 line of work for the past 12 years. I have served on
24 the RAC board for nine and am currently serving on the
25 packer seat. Prior to working with the raisin industry,

1 I worked two years with the USDA in the Marketing Orders
2 Administrative Branch, currently named the Marketing
3 Order Administration Division.

4 The raisin industry has its roots in the
5 Central Valley for over 100 years. The Raisin
6 Administrative Committee is a federal marketing order
7 led by 47 growers, packers, and a public member. The
8 RAC is directly overseen by the United States Department
9 of Agriculture and was created in 1949 as a result of
10 the Agricultural Marketing Agreement Act of 1937. It is
11 comprised of 17 packers and over 1500 -- 1500 growers.
12 The industry has one major cooperative in Sun-Maid
13 Growers of California, and one cooperative -- and one
14 grower cooperative in Raisin Bargaining Association,
15 along with 15 independent processors. The grower farms
16 range from a thousand -- from upwards of a thousand
17 acres -- a thousand acre growers to small family farms
18 of a few acres. Many of these growers are diversified
19 with other permanent crops of various nuts and fruits.
20 The industry also has some farmers that specialize
21 solely in raisin production.

22 Raisin growers of California grow the majority
23 of their crop from the south valley in Bakersfield up to
24 Madera. All growers produce grapes and then dry them in
25 the field or in a dehydrator in the months of August to

1 October. Once the raisins are made, they are delivered
2 to processors. These processors receive the raisins in
3 field bins and have them inspected by the USDA
4 inspectors to mark the grade and quality to make the
5 raisins pass inspection. If the raisins do not pass,
6 the fruit will be disposed of or reconditioned based on
7 the failing nature. Once reconditioned, they will be
8 brought back after passing USDA inspection. From here,
9 processors will store the raisins, process products to
10 customer specification -- specifications, then ship in
11 bulk or consumer pack to buyers.

12 The industry has shrunk significantly over the
13 last ten years due to higher crop -- higher-value crops
14 in the valley taking over much of farmland in the grower
15 region. Growers and shippers have also been faced with
16 a myriad of challenges from increased labor costs,
17 inflation of inputs, and challenges to the shipping
18 industry. These issues have caused many growers to push
19 their vineyards out or sell their land because returns
20 do not cover their costs of doing business. This has
21 put even more emphasis on the RAC to help the industry
22 come together and work with the USDA in creating a
23 strategy to maximize the return to the grower. This
24 will create a healthy and robust raisin industry in the
25 Central Valley to provide a livelihood for many of its

1 members for years to come.

2 As our industry has shrunk, we are proposing
3 to shrink the board. The farmland growing raisins has
4 been drastically reduced in the past 15 years and even
5 further the amount of growers farming raisins has shrunk
6 due to consolidation. Over the years, the RAC has
7 struggled more and more to find 47 board members along
8 with 47 alternates. As the number of growers and
9 shippers has shrunk over the years, the board size has
10 not followed suit. This has caused many issues in our
11 ability to effectively organize meetings and to keep
12 meetings on track due to the large number of people.
13 When the organization was created, the industry was much
14 larger, along with many more willing and active
15 participants. Today, there is not competition for the
16 seats, but the opposite, a struggle to fill positions
17 with people willing to participate at the most basic
18 level.

19 The elimination of districts to run for the
20 board will also produce more competition for positions.
21 When we had many growers, this type of system helped
22 with the representation in areas with far less growers
23 and individuals that seemed to be put at a disadvantage
24 in the process. These districts seem to be a relic from
25 an old system that once served a purpose but today

1 seems -- seems to have the effect -- seems to not have
2 the effect it once did. The districts have created
3 boundaries that have made less competition for seats and
4 caused vacancies. For this reason, I see it important
5 to create an open election without boundaries to allow
6 for more people to run for open seats.

7 In support of proposal number 2, we will
8 eliminate language that allows members to run for only
9 an alternate seat. This was implemented as a solution
10 when we had problems getting people to run for seats.
11 It was assumed by allowing people to have an alternate
12 position, they would have less responsibility as a full
13 member and possibly run. Whatever the reason, we see
14 60 percent of attendance much of the time with members
15 often struggling to find a quorum. Even more alarming,
16 we see roughly 25 percent attendance for alternates.
17 These numbers show many people are not putting the time
18 in to be an effective board member. In a recent article
19 by the Harvard Business Review, "What Makes Great Boards
20 Great," Jeffrey Sonnenfield states, "Regular meeting is
21 considered a hallmark of the conscientious director."
22 Our record for attendance shows we are failing in one of
23 the most important elements of a successful board.

24 The composition recommended to the Committee
25 today was discussed at length in numerous Committee

1 meetings. I consider this new composition a fair
2 representation of the industry today. I also do not
3 think this will at a point affect people's ability to
4 make their voice heard in our industry. The RAC
5 meetings are open meetings, and it is of my belief that
6 anyone who would like to speak their opinion or be heard
7 will have every opportunity to do so, whether a sitting
8 member, or alternate, or any person in the raisin
9 industry not sitting on the board. This new size will
10 help move the board forward in dedicating more time to
11 pressing issues that will help our industry succeed in
12 the future.

13 Thank you.

14 JUDGE STROTHER: Thank you.

15 Questions from the USDA.

16 CROSS-EXAMINATION

17 BY MS. PANKEY:

18 Q. Thank you. Milinovich?

19 A. Milinovich.

20 Q. Milinovich. Thank you.

21 A. Thanks.

22 Q. In your testimony, you stated that you are a
23 packer; is that correct?

24 A. Yes.

25 Q. And that is also -- you also would be

1 classified as a handler; is that correct?

2 A. Yes.

3 Q. Can you please explain your involvement in the
4 discussions and deliberations over RAC's proposals?

5 A. I was present at, I'm pretty sure almost every
6 meeting.

7 Q. Okay. Were you involved in any subcommittee
8 meetings as well?

9 A. Oh, yeah, all of the subcommittee and -- and
10 full board meetings.

11 Q. Okay. Do you believe the amendments proposed
12 have the broadest of industry support?

13 A. Yes.

14 Q. To your knowledge, did all industry groups,
15 including those representing small businesses, have an
16 opportunity to provide input on the proposed amendments?

17 A. Yes.

18 Q. Based on your understanding, would there be
19 any groups in industry that would have an unfair
20 advantage as a result of these amendments?

21 A. I don't believe so.

22 Q. Okay. Sorry?

23 A. I don't believe so.

24 Q. Okay. And do you support all the -- do you
25 support the amendments being proposed today --

1 A. Yes.

2 Q. -- all four?

3 Can you provide, in your opinion, why the RBA
4 designated seat is no longer warranted on the Committee?

5 A. I honestly have been doing this for about nine
6 years, I know all the history, but I wasn't present at
7 why there was a board seat, designated board seat. I
8 don't really have a dog in the fight per se, because I
9 am an independent processor, and I actually have RBA
10 members. But when I look at the negotiation to come to
11 what we had, I looked at it as if it weren't a legacy
12 item, would it be even a discussion, and I don't think
13 it would be.

14 Q. And in your testimony, you stated that the RAC
15 is working -- coming to work together with the USDA in
16 creating a strategy of maximize return to the industry.
17 Could you elaborate more on what is the future focus of
18 the RAC in regards to improving grower returns?

19 A. I believe it's utilizing MIP and -- MAP and
20 MIP funds, Market Access Program, Market Incentive
21 Program. I think those help return grower benefits by
22 creating more demand overseas for our product where we
23 would differentiate ourselves as much as we can to
24 hopefully get a better price in those markets.

25 And then if we do intellectual property ideas

1 that we've discussed further in this -- on some of
2 the -- on some of the amendments, hopefully we can
3 create more awareness through some of those IP, and they
4 can help boost sales. Pretty much anything to increase
5 the demand for raisins.

6 Q. Okay. So you're speaking in regards to
7 proposal number 4, voluntary contributions and trademark
8 ability, correct?

9 A. Yes.

10 Q. So you're stating that the -- providing the
11 authority in the order would grant the RAC to collect
12 funds or other funds like contributions in regards to
13 promote and -- promote California raisins; is that --

14 A. Yes.

15 Q. Can you kind of elaborate on that?

16 A. Yeah. Hopefully if we can get the IP,
17 somebody to use it and create some revenue through that
18 IP, we could help fund some of the activities we do here
19 at USDA -- or, sorry, at RAC.

20 Q. Okay. Could you provide, in your view, how
21 would the reduction of the Committee size and changes to
22 the composition improve Committee operations and make
23 them more efficient and would be a benefit to the
24 industry -- and also a benefit to the industry?

25 A. I think it would reduce the cost, as we talked

1 about, from mileage. I think it would also reduce the
2 amount of time that we spend trying to get other members
3 to attend meetings to fill quorum. I think a lot of
4 valuable time is spent on tasks that don't have any real
5 value to the raisin industry, getting people to
6 meetings.

7 Q. Okay. Do you have an opinion or -- on why the
8 separate nomination procedures did not improve member
9 participation in the committee?

10 A. I think I laid it out there. I think it -- it
11 was us trying to come up with something to get people to
12 fill seats. I talked with other individuals about it,
13 and I think the idea was some people didn't want to
14 commit as much time to be a full member, and so maybe
15 they would be a -- an alternate, and I think it had, as
16 I said, the reverse effect. If you look at the numbers,
17 I think we have very few alternates show up, and I think
18 the problem in that is people -- if an alternate does
19 fill somebody's seat, and now there's nobody behind it,
20 it kind of fueled vacancy -- or fueled absenteeism from
21 meetings, I think, even more so. And in that, people
22 aren't caught up -- I mean, I think everybody who's on
23 the Committee should make every meeting whether you're
24 an alternate or a sitting member.

25 Q. Okay. And with the reduction of members and

1 alternates to 21, do you believe that the committee will
2 continue to experience these difficulties in filling
3 vacancies?

4 A. I hope not. That's -- that's my hope. But
5 I -- I don't know, once it's put into practice, if we
6 can get 42 people to show up to the meeting every time.
7 I would hope we could.

8 Q. And in your opinion, why are producer
9 districts no longer necessary?

10 A. I think they were necessary when you had such
11 a strong driver in one region, and we wanted to get
12 participation from other regions, it helped create that
13 separated area, but at the moment with sort of just a
14 diminishing number of growers, and, you know, there --
15 there used to be 5,000 growers versus 1500, I think that
16 we need anybody who's actively willing to participate
17 and want to make this board better, give them the
18 opportunity to come and show up.

19 MS. PANKEY: Okay. Thank you. I have -- I have no
20 further questions.

21 CROSS-EXAMINATION

22 BY MR. McFETRIDGE:

23 Q. Marc McFetridge, USDA.

24 Quick question. Small Business Administration
25 defines a small agricultural service firm, which

1 includes handlers, as being those having annual receipts
2 of less than \$34 million. You represent in your
3 testimony that you are a packer, slash, handler. Would
4 you be classified under the Small Business
5 Administration definition of small or large?

6 A. I would be a small. My partner company,
7 Mariani, would be a large.

8 MR. McFETRIDGE: Thank you. That's all I have.

9 CROSS-EXAMINATION

10 BY MS. DORSEY:

11 Q. Samantha Dorsey with USDA.

12 Mr. Milinovich?

13 A. Milinovich.

14 Q. Okay. I apologize.

15 A. It is okay. Don't worry about it.

16 Q. So during your testimony, you had mentioned
17 that the industry has shrunk significantly over the past
18 ten years due to higher-valued crops in the Valley
19 taking over much of the farmland, so I don't believe
20 that that's been brought up today, so can you talk a
21 little about that phenomenon and how the industry has
22 been reacting to that.

23 A. I mean, the industry is trying to react any
24 way we can to produce a better return to the grower, but
25 a lot of it -- and it also has been talked about that

1 some of these other crops are less -- they have less
2 manual labor in them, things of that nature, but the --
3 the kind of growth of the almond industry and the
4 pistachio industry over the last 15 years has
5 transformed the landscape of this entire valley. I
6 mean, I grew up here, and there weren't that many almond
7 trees in this area, and now it's nothing but almond
8 trees. And so with that, a lot of growers have been
9 seeing it as a better option to raisins, and they've
10 pushed them out.

11 There's only so much we can do to keep people
12 in an industry, and if they think their best option is
13 to go to a different commodity, then there's not much
14 you can do, so...

15 Q. Okay. Thank you.

16 And actually in the same paragraph there, you
17 had noted growers and shippers are facing some
18 challenges. I'm just wondering how shippers play into
19 this, and --

20 A. Well, I think what has been talked about
21 greatly is that we're -- we used to own 50 percent of
22 the market in the world, and I just went to a meeting
23 with world handlers, and I think we are somewhere, like,
24 seven or eight percent now, so a real small fraction of
25 the world market.

1 And while we were in Turkey, we visited some
2 of the facilities and different things, and coming from
3 the packer's side, the cost of doing business there, the
4 cost of infrastructure, and the support that they're
5 getting from their government is quite a bit greater --
6 not to say that we're not support -- you know, the USDA
7 or something, but they're -- they're being pushed a lot
8 harder into competition. And so with that, it's just --
9 it's hard to compete at that level.

10 I think we all have done it from the
11 standpoint of reducing your -- your input costs any way
12 we can, mechanizing as much as we can, whether it's in
13 our facility in the field, any of those things are being
14 done, but at a certain point it gets tapped out. So I
15 think that we're sort of in a -- in a point where
16 we're -- I don't see us lowering the costs of operating
17 much more on a per-unit basis, whether it's in a
18 facility or in the field.

19 Q. Okay. And just to clarify, "shippers" being
20 used in this context, it's not used interchangeably with
21 handler?

22 A. No, that was interchangeably with handler,
23 handlers.

24 Q. Wonderful. I just wanted to clarify that.

25 MS. DORSEY: Okay. I don't have any additional

1 questions. Thank you very much.

2 MR. MILINOVICH: Thank you.

3 CROSS-EXAMINATION

4 BY MS. CHILUKURI:

5 Q. Okay. Rupa Chilukuri for the USDA.

6 So, Mr. Milinovich, I just have a few
7 clarifying questions similar to what Ms. Dorsey had.

8 So you reference that you're serving in a
9 packer's seat. So is packer here -- that would be
10 interchangeable with handler?

11 A. Yes.

12 Q. Is that correct?

13 Okay. And I also see references to -- I think
14 in the second paragraph you say that the industry has
15 one major cooperative, Sun-Maid, one grower cooperative,
16 RBA, and then 15 independent processors. So when you're
17 referring to processors, that's --

18 A. Handler.

19 Q. -- also interchangeable with handlers?

20 A. Yes.

21 Q. So my understanding, packers and processors
22 and dehydrators, they -- and shippers --

23 A. Yes.

24 Q. -- they would be --

25 A. Dehydrators wouldn't be -- I don't think -- I

1 don't know, I don't think dehydrators would be
2 considered shippers or handlers. They recondition
3 fruit, but I don't think they ship any fruit.

4 Q. But based on -- okay. We can take a look, but
5 based on your testimony, your understanding, a packer
6 and a processor, they are like a subset or type of --

7 A. Yeah.

8 Q. -- handler?

9 A. Yeah.

10 Q. And they could be used interchangeably?

11 A. Yes.

12 Q. Okay. You said in your testimony on the
13 second page the limitation of districts, to run for the
14 board will also produce more competition for positions.
15 Can you elaborate on what that means in the sense that
16 do you want more competition for positions? Not sure
17 I'm understanding what that means.

18 A. I think I -- you want as many people running
19 for board seats as you possibly can. I mean, I would --
20 I'm -- I'm looking at it as historically in certain
21 districts, you don't have an alternate coming in because
22 there's only one person or something like that, there's
23 no competition for any of the board seats there, there's
24 nobody running but that one person, and then there's a
25 vacant seat. I believe we should want as many people as

1 possible to show up and participate in our industry
2 because I think it will produce the best board you
3 possibly can -- can have.

4 Q. Okay. Thank you. Thank you for clarifying
5 that. I appreciate that.

6 MS. CHILUKURI: I have no further questions.

7 JUDGE STROTHER: Anything else from USDA?

8 MS. PANKEY: I do.

9 JUDGE STROTHER: Please.

10 CROSS-EXAMINATION

11 BY MS. PANKEY:

12 Q. I just have a couple of additional questions
13 in regards to reconditioned fruit --

14 A. Oh, okay.

15 Q. -- that -- you discussed that in your
16 testimony. Could you provide -- what is reconditioned
17 fruit?

18 A. Reconditioned fruit is basically fruit in the
19 field that isn't meeting standard, whether it's B&B,
20 which was talked about earlier, sugar content in the
21 raisin, substandard which is kind of skins of the --
22 when a -- when a berry doesn't -- I don't know how to
23 say it.

24 JUDGE STROTHER: Mature.

25 MR. MILINOVICH: Mature into anything and it's

1 just -- the water content just comes out so it's
2 literally just a skin, if the -- if the percentage is
3 too high, then it can fail. If the mold content is too
4 high, if there's insect damage from the field, say in a
5 year like this year there was potentially bunch rot in
6 the field, that would create mold in the field, that
7 could create insect damage, things of that nature. It
8 would be received by a processor, and if it doesn't meet
9 incoming spec, then it has to go out to a reconditioning
10 facility in some respect to bring that level of, call it
11 mold or insect damage down, and they do that through a
12 cleaning process or potentially vacuums, or all sorts of
13 different processes.

14 BY MS. PANKEY:

15 Q. Okay. So to clarify, it sounds like
16 reconditioned fruit is raisins that have failed an
17 inspection --

18 A. Yes.

19 Q. -- correct?

20 A. It's -- they've failed an inspection, and then
21 they've been reconditioned to meet the inspection, so
22 they meet the standards afterwards.

23 Q. And reconditioning is them separating --

24 A. It's just like a -- it's a cleaning process.

25 Q. Okay.

1 A. So, yes.

2 Q. And you said that's done by a dehydrator?

3 A. A lot of dehydrators do it, or I -- pretty
4 much all the dehydrators I think recondition at this
5 point.

6 Q. And in your opinion -- and this is in regards
7 to proposal number 3 -- I'm sorry. Yeah, proposal
8 number 3, which is to clarify and add language in
9 regards to reconditioning of raisins. In your opinion,
10 why was this proposal recommended, and how would this
11 solve the issue?

12 A. I think it was recommended because people
13 started getting the idea that the raisin that was
14 reconditioned was a sub -- a inferior product. And it
15 meets all the same criteria as a regular raisin that
16 passed on first inspection, it's just you go through
17 this process of cleaning, which almost every raisin goes
18 through the process of cleaning through what we do as
19 packers when we go through vacuums, and go through
20 recleaners, and do basically the processing.

21 Q. And as a packer of raisins, is this something
22 that you have experienced firsthand in regards to maybe
23 some other packers not accepting fruit or --

24 A. It's not packers, it's -- we have experienced
25 it firsthand with -- and it -- it kind of correlated

1 with the language that USDA used, and USDA helped with
2 changing the language, I think, with the reconditioning.
3 But some of -- some customers started looking at it as
4 a -- a negative connotation towards raisins, but it was
5 because they didn't understand the process. They
6 thought it was just failing fruit, and then when you
7 explained it to them that it was actually just cleaned
8 prior to coming in and there were no problems with the
9 fruit, then it sort of became easier to -- to move
10 forward, but it -- it did create a problem on the
11 processing side -- or on the selling side.

12 Q. And what benefits do you expect the industry
13 to receive with -- if the -- if this language is added
14 to the order?

15 A. Well, in a year like this year where there was
16 so much rain -- I mean, there's nothing growers can do,
17 it's not like they're purposefully delivering fruit that
18 potentially fails, but when there's a lot of rain and
19 moisture, there's nothing we can do about mold or
20 anything in the field, and so it makes it easier to --
21 it doesn't make us to have to play kind of defense on
22 saying, well, yeah, this product is reconditioned,
23 because I'd say a huge chunk of the product this year is
24 being reconditioned, and there's no problem with it
25 whatsoever because it got cleaned up.

1 Q. Okay. Thank you. I have no further
2 questions.

3 JUDGE STROTHER: Anything else? Any other
4 questions?

5 Offer Exhibit 23, admission into the record.
6 Seeing no objections, Exhibit 23 is admitted.

7 (Whereupon, Exhibit 23 was admitted
8 into the record.)

9 TESTIMONY OF STEVEN SPATE

10 JUDGE STROTHER: And raise your -- I swore you in
11 before, right?

12 MR. CROWE: I did.

13 JUDGE STROTHER: You have been duly sworn.

14 THE WITNESS: Okay.

15 JUDGE STROTHER: You're offering one exhibit,
16 basically, which is --

17 MR. SPADE: Testimony.

18 JUDGE STROTHER: -- Steven Spate testimony. Let's
19 go ahead and mark that Exhibit 24.

20 (Whereupon, Exhibit 24 was marked
21 for identification.)

22 JUDGE STROTHER: Go ahead and introduce yourself,
23 name, spelling, position.

24 MR. SPADE: Steven Spate. S-t-e-v-e-n S-p-a-t-e.

25 I'm an independent grower and current member

1 of the RAC. I have served on various committees and
2 boards in the agricultural industry, and specifically in
3 the raisin industry. I'm a third-generation raisin
4 grower and currently farm in the Fresno area, raisins
5 and almonds. By USDA standards, I'm considered a small
6 grower.

7 The purpose of this testimony is to declare my
8 support for these proposals and explain some of my
9 opinions as to why I think it's necessary.

10 Proposal Number 1: Restructure of the
11 Committee, in regards to reducing the size, specifically
12 on adding a non-affiliated producer seat.

13 Most handlers are vertically integrated in
14 that they are also producers. When you look at the
15 makeup of the Committee, it is easy to recognize that
16 many independent producer seats are filled with
17 handler-affiliated producers. Allowing one seat for a
18 non-affiliated producer ensures there won't be an unfair
19 balance favoring handler representation on the
20 Committee.

21 Removing the District Representation.

22 Reasons to eliminate districts. One of the
23 two cooperatives -- or once the two cooperatives,
24 Sun-Maid and RBA, receive their proportionate share
25 based on their tonnage using the 2020/2021 crop years,

1 there may only be about five independent producer seats
2 remaining. District 1, north of Fresno, and District 2
3 south of Fresno, are much smaller growing area regions
4 than District 3, Fresno. This would give an unfair
5 advantage to those much smaller regions by providing
6 automatic seats.

7 The past ten years, Districts 1 and 2 have
8 been represented by mostly the same people who are not
9 only producers in their specific region, but are also
10 handlers, or employees of handlers. This provides an
11 unfair advantage for those handlers and unbalanced
12 representation.

13 Removing districts provides for fair
14 representation through the voting process.

15 Proposal Number 2. Remove language in the
16 nomination process that allows nominees the option to
17 choose their preference to serve specifically as a
18 member or an alternate member to the RAC.

19 The current system of allowing people to
20 choose member or alternate positions was added when the
21 order was last amended through formal rulemaking in
22 2016. Based on the large number of vacancies in the
23 last couple of terms, I believe that this system of
24 allowing people to choose the position of member or
25 alternate has actually discouraged participation. By

1 nature, an alternate may believe that they have no vote
2 at meetings, which is true if their member is in
3 attendance, but in reality, alternates should attend all
4 meetings so they are well informed on issues that may
5 come up for a vote in the future when they are in fact
6 needed as part of the voting process at each meeting.

7 Reducing the Committee size and structure
8 should create a more competitive process for the
9 available seats. I think that by going back to the
10 original voting process of establishing members and
11 alternates based completely on number of votes is fair
12 and will streamline the process.

13 I also want to express my support for these
14 proposals, as well as all the other current amendment
15 proposals that are being considered at this time.

16 JUDGE STROTHER: Questions for this witness?

17 CROSS-EXAMINATION

18 BY MS. PANKEY:

19 Q. Thank you, Mr. Spate.

20 You are an independent small grower; is that
21 correct?

22 A. Yes.

23 Q. As an independent small grower please explain
24 your involvement in the discussions and deliberations
25 over the RAC's proposal.

1 A. In fact, I had been on the RAC at various
2 times since the early 1990s, but in fact when these
3 proposals were put forward was the time period where I
4 was not on the RAC from about 2018 until the last term,
5 '22, so you won't find my name in the minutes when these
6 proposals were put forward.

7 Q. Okay. Do you believe the amendments proposed
8 have the broadest of industry support?

9 A. Yes, I do.

10 Q. To your knowledge, did all industry groups,
11 including those representing small businesses, have an
12 opportunity to provide input on the proposed amendments?

13 A. I believe so.

14 Q. Based on your understanding, would any groups
15 of industry have an unfair advantage as a result of
16 these amendments?

17 A. No.

18 Q. And as you stated in your testimony, you do
19 support all the amendments that are being proposed
20 today?

21 A. Yes.

22 Q. Okay. For clarification, is an
23 unaffiliated -- nonaffiliated. Is a nonaffiliated
24 member/producer also considered an independent producer?

25 A. Yes.

1 Q. Is a nonaffiliated member -- if a
2 nonaffiliated member changes their status during the
3 course of a term, would they be required to relinquish
4 their seat?

5 A. I would think that would be something we'd
6 have to look at in the rulemaking process, that -- I
7 guess that's a possibility that could come up after
8 someone was elected as a nonaffiliate, that maybe they
9 became employed by a handler in some regard, and -- as a
10 fieldman or something, so then it would change your
11 status. So I'm not quite sure. That would be something
12 that would have to be put in the rules on how that would
13 take place.

14 Q. Okay. And I -- that process, it would be
15 something -- is that something that is also true for
16 other member positions on the Committee?

17 A. Yeah, it would be.

18 Q. Okay. What percentage of small producers do
19 you -- are not handlers?

20 A. What percentage of small producers are not
21 handlers?

22 Q. Yes.

23 A. I don't have that information.

24 Q. Okay. Can you give a -- a rough estimate? Or
25 you said -- you said virtually all are vertically

1 integrated, correct?

2 A. If you look at the list of who's traditionally
3 been representing independent growers, you can find in a
4 lot of cases where they're either family members of
5 handlers, or in some cases employees of handlers in the
6 past, under the -- when we had 47 members and 47
7 alternates. Changing this system to this I think is
8 going to be -- drive more competitive process.

9 Q. Okay. So because that majority of -- or you
10 didn't say majority, but many -- most handlers are also
11 vertically integrated, they're also producers, do you
12 feel that this nonaffiliated producer is somewhat
13 underrepresented on the committee?

14 A. I think it could happen, yes. That's why I
15 think it's important to have a totally unaffiliated
16 member. When we reduce the independents, or in this
17 case by the numbers that have been talked about, five
18 positions, we want at least to hold one to a totally
19 nonaffiliate to any handler position.

20 Q. Right. Okay.

21 How does the additional designated seat for a
22 nonaffiliated producer ensure that this population is
23 represented on the committee?

24 A. It ensures a position for a nonaffiliated
25 member.

1 Q. Can you explain how the addition of this
2 position would be a benefit to industry?

3 A. To get the perspective of a true grower in
4 that case and not just a grower that's affiliated with a
5 handler.

6 Q. In your opinion, what factors have contributed
7 to producer districts being no longer needed?

8 A. The factor would be when we reduce the size of
9 the board, it would be unfair to have the north and the
10 south having two of the five seats. It would be more
11 fair to have voting at large.

12 Q. Okay. Thank you.

13 So for clarification, what positions on the
14 Committee does the RAC currently have difficulty
15 filling?

16 A. Alternate positions traditionally. There may
17 be a couple of vacancies on the member side, but it's
18 mostly alternate positions.

19 Q. And that would be because there's a limited
20 number of nominations?

21 A. Because there's compliancy out in the
22 industry. When we talk about years ago when we had five
23 to 6,000 growers, you had -- you could come up with 47
24 members and 47 alternates that had an interest. Today
25 we're down to 1500 or less, and by nature, there's

1 people out there in the industry that have no desire to
2 come to this room and try and make decisions for the
3 industry, so trying to find that many people interested
4 in having a voice is very difficult. So reducing the
5 size of the board should help that process be more
6 competitive and streamlined.

7 Q. Okay. In regards to proposal number 2, the
8 removal of separate nomination procedures, would this
9 proposal affect nomination procedures for all interested
10 persons, all interested producers?

11 A. Would it affect all?

12 Q. Yes.

13 A. Equally, yes.

14 Q. So to remove -- it's going to remove separate
15 nominee -- and I'm sorry if that was a confusing
16 question, but to remove separate nomination procedures
17 for independent and small cooperatives, that this --
18 this amendment would technically only affect
19 independents and small cooperative producers; is that
20 correct?

21 A. That's true, yeah.

22 Q. Okay. Would you be able to provide how
23 independent and small cooperative producers are
24 currently nominated?

25 A. At the nomination meetings that are held.

1 Q. And can you -- would there have -- have there
2 been more or less alternates attending meetings since
3 this amendment was adopted in 2015?

4 A. There's been -- there's less alternates
5 available to attend so the -- and then based on the
6 previous testimony, a lot of the alternates aren't
7 attending.

8 Q. What types of outreach is conducted for
9 nominations?

10 A. I think that's been spoken of already about
11 publications and Malcomb Media and different things like
12 that. That's something for the RAC.

13 Q. And in your opinion, is this outreach
14 sufficient?

15 A. I believe so.

16 Q. In your opinion, does the removal of separate
17 nominations make it more or less likely that alternate
18 positions would be filled?

19 A. I think it will be more likely with
20 streamlining the amount of seats available.

21 Q. In the event that member vacancies might still
22 occur, how will the Committee attempt to fill those
23 positions?

24 A. I don't know. That's not -- it's going to
25 be -- have to be in policy of some kind if there's a way

1 to go back out for another nomination process to fill at
2 a later time or without the decisions of under a new
3 21-person board at that point.

4 Q. And in your opinion, how would the reduced
5 Committee and amended nomination procedures limit or
6 reduce the number of vacancies on the RAC?

7 A. It's going to be more competitive, so it
8 should -- it should fill the spots easier. People are
9 going to want to serve.

10 MS. PANKEY: Okay. I have no further questions.

11 CROSS-EXAMINATION

12 BY MR. McFETRIDGE:

13 Q. Marc McFetridge, USDA.

14 Thank you for your testimony, Mr. Spate.

15 I just had a few quick questions for you. You
16 did reference in your testimony that you'd be considered
17 a small grower, and is that based on the Small Business
18 Administration definition of having less than \$4 million
19 in receipts annually?

20 A. Yes, it is.

21 Q. Thank you.

22 I just wanted to see, would you be able to
23 give us just a quick definition for virtually --
24 vertically integrated just so that we have it on the
25 testimony?

1 A. Yeah. So, like, in regards to my testimony,
2 it was about the processors have their own farming
3 companies as well, so they're involved in the farming
4 side and the handling, and in some cases have employees,
5 so they're -- they're -- they have people sitting in
6 seats in this Committee. That's how I -- that's what I
7 mean by that.

8 Q. Okay. Thank you.

9 I wanted to see if you might be able to
10 help -- help me with -- so for districts 1 and 2, we've
11 heard many people testify that they're considered small.
12 Are there any numbers that we could kind of put with
13 that "small" designation? Would it be acreage, or is it
14 the number of growers?

15 A. It would be by tonnage. And the staff could
16 do that, I don't have those numbers.

17 Q. All right. Thank you.

18 MR. McFETRIDGE: That's all I have. Thank you.

19 CROSS-EXAMINATION

20 BY MS. DORSEY:

21 Q. Samantha Dorsey with the USDA.

22 Mr. Spate, regarding proposal number 1 and the
23 addition of the nonaffiliated producer seat, are you
24 aware of how many nonaffiliate producers exist in the
25 raisin industry today?

1 A. Out of all 1500 growers? Or out of the ones
2 that are independent? I do not have any knowledge of
3 the exact number.

4 MS. DORSEY: Okay. Well, with that, I have no
5 further questions.

6 CROSS-EXAMINATION

7 BY MS. CHILUKURI:

8 Q. Rupa Chilukuri with the USDA.

9 Just following up as it relates to what a
10 nonaffiliate producer is. Can you go into a little bit
11 more detail on -- on the meaning or definition of what
12 that means, to not be affiliated?

13 A. It means you have no ownership interest in a
14 packinghouse. You farm and own the packinghouse, you're
15 affiliated. If you're a fieldman for a packinghouse
16 that's out commissioning -- or paid to go out and seek
17 tonnage for your packinghouse, that's an employee of the
18 packinghouse, in past has been able to serve in that
19 position. That's an affiliate. That's my definition of
20 an affiliate.

21 Q. And would that conform with what's in the
22 notice of ERA -- or the proposed amendment?

23 A. Right.

24 Q. So I think the reference to nonaffiliate
25 producers is in 989.126(a)(1). So it says, "Pursuant to

1 989.26(a)(3), and commencing with the term of office
2 beginning May 1st, 2026, apportionment of independent
3 and small cooperative producers shall be," and then
4 number (1) is, "One producer member, selected from and
5 representing all producers, who is unaffiliated with any
6 handler including, but not limited to" -- parentheses,
7 "including, but not limited to, ownership, employment,
8 or agent of any handler, and whose family members are
9 similarly unaffiliated with any handler," close parens.

10 Do you think what I've read contemplates or
11 includes enough as to what "nonaffiliated" or
12 "unaffiliated" means?

13 A. Yes.

14 Q. Okay. Thank you.

15 MS. CHILUKURI: Okay. Thank you. I don't have any
16 additional questions.

17 JUDGE STROTHER: Nothing else from USDA.

18 MR. SPADE: I would like to add something. So I
19 thought I would come up, because it's come up every
20 other person you've had up here, but you didn't ask me.

21 JUDGE STROTHER: Let's see if there are any -- I'd
22 say there are no questions from anyone else in the room.

23 Okay. You're on your own on redirect.

24 MR. SPADE: All right. So in regards to reduction
25 by -- of the bargaining seat, when we go to five spots

1 for independent growers, two spots for RBA, based on
2 tonnage currently, these are estimates, and having -- if
3 you still had the bargaining spot, that would give three
4 positions to RBA, which is not based on tonnage. So
5 that, to me, would be an unfair advantage when the RBA
6 has the ability to go out and seek any independent
7 grower to new membership, and they can gain their seats
8 there.

9 So I just think -- because you've asked all
10 the others, I just wanted to reiterate that it's not
11 necessarily a bargaining spot anymore, it's based on
12 tonnage, and it's fair based on tonnage on their
13 representation.

14 MS. CHILUKURI: Thank you.

15 JUDGE STROTHER: Okay. Nothing further after that
16 redirect?

17 Okay. Any objection to Exhibit 24 being
18 admitted to the record?

19 It is admitted.

20 (Whereupon, Exhibit 24 was admitted
21 into the record.)

22 JUDGE STROTHER: You're excused. Thank you,
23 Mr. Spate.

24 Let's take a 15-minute break, come back at
25 3:25.

1 (Whereupon, a break was taken.)

2 JUDGE STROTHER: Let's go back on the record.

3 We had a brief discussion off the record about
4 scheduling the case, and we will go into tomorrow,
5 because we have a witness that's coming back at 9:00
6 tomorrow, for one thing. And we're going to put
7 Mr. Cardoza up now because he will not be able to be
8 here tomorrow. He's a new witness that signed up.

9 TESTIMONY OF DWAYNE CARDOZA

10 JUDGE STROTHER: Raise your right hand.

11 DWAYNE CARDOZA,
12 having been first duly sworn, testified and was
13 examined, as follows:

14 MR. CARDOZA: I do.

15 JUDGE STROTHER: You have an exhibit? Is this
16 yours?

17 MR. CARDOZA: Yes.

18 JUDGE STROTHER: Raisin Bargaining Association
19 Topics of Discussion and Concern RE: RBA Seat Removal on
20 RAC.

21 MR. CARDOZA: Correct.

22 JUDGE STROTHER: Let's label that for
23 identification Exhibit 25.

24 (Whereupon, Exhibit 25 was marked
25 for identification.)

1 JUDGE STROTHER: You may give your statement.

2 MR. CARDOZA: Okay. Thank you, Your Honor.

3 I appreciate the Committee allowing us to
4 speak here today.

5 My name is Dwayne Cardoza. D-w-a-y-n-e
6 C-a-r-d-o-z-a. My office is at 1258 West Manning
7 Avenue, Fresno, California 93706.

8 I've been -- I've been farming raisin, raisin
9 grapes for 44 years, so I've been around here for a
10 couple of days anyway. My family farms about eight --
11 385 acres of raisin grapes. I've been the past chairman
12 of the Raisin Bargaining Association, and I'm currently
13 vice chairman of the Raisin Bargaining Association.

14 Now I will read my -- our statement here.

15 Raisin Bargaining Association Statement.

16 Okay.

17 Topic One: Who does the RBA represent?

18 And that -- my statement will answer a lot of
19 questions that were asked today, so...

20 The Raisin Bargaining Association was founded
21 in 1967 because small family farmers were being
22 harassed, targeted, and treated unfairly in the
23 industry. As a result, a group of small farmers founded
24 the Raisin Bargaining Association so they could come
25 together with other disadvantaged farmers and unit as

1 one. Uniting meant that their voices would be heard
2 clearly. It meant that there was a place for the
3 average farmer to go to and raise concerns. It was a
4 way for the "widowed and orphaned" (small,
5 disadvantaged, under-represented) farmers to band
6 together -- and that's one of our major -- one of the
7 RBA's major concern -- and make a real difference, not
8 only for their own families, but for the industry as a
9 whole. The majority of the RBA members to this day are
10 still small 20 to 40-acre growers who would lack a voice
11 if not for the RBA.

12 Topic Two: Who does the government lobby --
13 who does the government lobbying?

14 When the raisin industry needs to put out
15 product due to low sales or overproduction in any given
16 year, the government wants to hear directly from the
17 farmers, not from the RAC, not from the packinghouses,
18 not from the other governmental agencies. The RBA and
19 Sun-Maid are the two farmer co-ops that are asked to
20 lobby on the industry's behalf for the government buys.
21 This is because the US government wants to directly
22 assist the farmers, not the middleman, not the
23 distributors, but the actual growers of raisins trying
24 to make a living out on their farms.

25 Who fights for the fair market price for the

1 industry?

2 The RBA has made it one of their top missions
3 over the last 57 years to negotiate a fair price for all
4 raisin growers. The industry cannot survive if the
5 average farmer cannot afford to stay in business. The
6 industry has no checks and balances when it comes to
7 setting a fair return each season, except for the RBA
8 negotiating with packers to set a floor price. We
9 learned in 2021 that when the packers are not willing to
10 negotiate with the RBA, the wheels fall off the bus. It
11 was disastrous for the raisin growers and only further
12 accelerated pull-outs. If the RBA doesn't have a voice
13 on the RAC, it diminishes ability for the RBA to
14 negotiate with packers. Weakening the RBA just weakens
15 growers' voices and growers' returns.

16 Shrinking Industry.

17 Recently neither the RAC nor the USDA has
18 stepped in to assist the RBA in validating packer
19 acquisitions and holding packers responsible for
20 honestly reporting RBA tonnage. We all know that the
21 industry is shrinking, there is no denying that, but you
22 also can't deny that it is peculiar how the RBA official
23 tonnage has shrunk much faster, which determines how
24 many seats the RBA receives on the RAC, than Sun-Maid or
25 independent tonnage. In the past, both the RAC and USDA

1 were cooperative when the RBA would need verification of
2 delivery records on a member, but as of late, it seems
3 not only hostile, but coerced. One can only wonder if
4 the whole point of the hostility is to allow the RBA to
5 shrink more rapidly, and in turn lose all representation
6 on the RAC.

7 Conclusion.

8 For the above-mentioned topics, it is our
9 conclusion that the removal of the RBA seat on the RAC
10 will only put the RBA at further -- at a further
11 disadvantage. It amounts to "taxation without
12 representation." If the RAC removes the RBA seat, then
13 RBA members should not have to pay the RAC an assessment
14 fee. The RBA is already the most underrepresented group
15 on the RAC. Targeting the removal of an RBA seat that
16 has been on the RAC for decades only discriminates
17 against the RBA, small family farms, and their
18 cooperative association.

19 JUDGE STROTHER: Does USDA have any questions?

20 MS. PANKEY: Yes. Hello. Yes. Thank you.

21 Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. PANKEY:

24 Q. Thank you, Mr. Cardoza, for your testimony
25 today.

1 Okay. Clarifying question here. You said
2 that you are currently the chairman or the vice chairman
3 of the Raisin Bargaining Association?

4 A. That is correct.

5 Q. And how long have you been in that position?

6 A. I've been in that position one year now in the
7 vice chairmanship, and I was chairman for five years.

8 Q. Okay.

9 A. And I also -- and I also acted -- was acting
10 CEO at that time.

11 Q. Okay. And are you a producer?

12 A. Yes. Fruit, yes.

13 Q. And would you consider -- are you -- would you
14 consider yourself according to SBA standards as a small
15 producer?

16 A. We're a small farmer, yes.

17 Q. Okay. Mr. Cardoza, have you had an
18 opportunity to review the proposed amendments that we
19 are discussing today?

20 A. Yes, we have. The association has, yes.

21 Q. And do you believe you have a fairly well
22 understanding of the amendments that are being proposed?

23 A. Yes, I do.

24 Q. Okay. And so to clarify, you're here today in
25 opposition of proposal number one?

1 A. Uh-huh. It's -- I don't know what proposal.
2 It's the removing -- proposal number one is removing the
3 RBA seat, yeah. Yes.

4 Q. Proposal -- I'm referring to proposal number
5 one as listed in the notice of hearing. And that would
6 be to amend committee membership size, composition,
7 lower quorum requirement, and remove producer district
8 representation.

9 A. Correct. Correct.

10 Q. Would you say that -- are you -- as a member
11 of the RBA, are you in support of the other proposals
12 that are being recommended?

13 A. Yes. We've -- we've reviewed the proposals at
14 the RBA, and we can support a smaller -- smaller group,
15 we just don't want to lose any more representation that
16 we have.

17 Q. Okay. So your opposition -- your opposition
18 is specifically in regards to the limitation of the
19 designated bargaining association seat?

20 A. That is correct.

21 Q. In your testimony, you mention that raisin
22 farmers were being harassed, targeted, and treated
23 unfairly. Could you provide more information on what
24 you mean by being harassed and targeted?

25 A. Okay. The raisin industry has about 1500

1 growers. Right now RBA just -- we purged our records
2 about three years ago, we have 740 growers, all small
3 growers, for the most part. Sun-Maid, they're probably
4 pretty comparable to what we are, give or take, so the
5 rest are independents or packinghouse-owned entities.

6 Q. Okay. And how -- and how are small family
7 farmers being harassed, targeted, and treated unfairly?

8 A. Okay. The situation that we're having here
9 right now is that our growers -- our RBA grower base is
10 being encouraged, because the processors, they --
11 they're the ones that sign our paychecks, so they're --
12 they're encouraging these growers to either drop out of
13 the RBA or deliver -- deliver product under a different
14 family member's name or something to that effect. And,
15 you know, our growers are just small family people that
16 don't -- you know, that have -- a lot of them have
17 limited educations and stuff like that. And -- and it
18 makes it really bad for them because they just -- they
19 just want to get paid, they just want to make a raisin
20 and get paid, but, you know, they're getting -- a lot of
21 them are getting pressured to drop out of the RBA or
22 to -- to put their ranch in a different -- some other --
23 somebody else's name when they deliver the raisins.

24 Q. Okay. And what other factors may have
25 contributed to the RBA losing members over the years?

1 A. We've -- we've had some up and downs, but the
2 big -- one of the biggest factors is there's been a lot
3 of pull-outs in the last probably seven to ten years,
4 and -- because the -- the returns are just not
5 sufficient to keep our little small family farms,
6 farmers, you know, feeding their families, so most -- a
7 lot of them have gone out and got jobs out, you know,
8 away from the farm, and they still farm, but they still
9 have two or three jobs, they come home at night and
10 drive tractor and stuff like that.

11 Q. Okay. And in your opinion, what has
12 contributed to low grower returns?

13 A. Low grower returns, well, we know that the
14 marketplace is very volatile, and, you know, it's --
15 the -- the RBA is really pushing on the RAC to try to --
16 try to move towards focusing on our domestic market and
17 sell within the United States. The -- the overseas
18 market -- the growers, you know, and, you know, we're
19 just little farm boys, but we see what's going on. You
20 know, it's hard to compete overseas, you know, in the
21 marketplace over there because you have countries like
22 Turkey and -- and Afghanistan and some of those
23 countries that are producing, and they're not paying
24 fair wages or anything like that, and we're having to go
25 in there into Europe and stuff and try to compete. And

1 our packers are -- and in defense of our packers, you
2 know, they're trying to do the best job they can, but,
3 you know, it's hard to go up against something -- a
4 market that's probably 20 to 30 percent below what our
5 production costs are.

6 Q. Okay. So due to high production costs and
7 lower grower returns, is it safe -- which has
8 contributed to an overall reduction in the California
9 raisin industry, is it safe to say that that reduction
10 has affected the RBA in regard to its losing members
11 over the years?

12 A. It has been one of the factors, yes.

13 Q. Okay. And I'm assuming, when you say one of
14 the factors, the other factor being that some of these
15 members have been targeted you said before?

16 A. Yes. And our grower base is -- our grower
17 base is very determined to try to, you know, they --
18 they know that it's hard to -- for us to negotiate a
19 price, and they know that for us to go and negotiate a
20 price, the more members we have and tonnage we have, the
21 better off we are, but in -- in -- in -- like the
22 Sun-Maid cooperative, you know, they have, you know, the
23 largest delivered tonnage, but, you know, they're
24 probably 80 -- or 70 to 80 percent of -- of their major
25 tonnage is five growers, so, you know, it makes it very

1 tough for us to have more seats. If -- if it was grower
2 represented, then we'd have a lot more seats, but us
3 trying to track our growers, and all these little
4 shenanigans that are going on, you know, behind our
5 backs, it's making it very tough -- tough situation for
6 the RBA to -- to maintain.

7 Q. Okay. And how has the representation of the
8 RBA on the RAC changed over the years?

9 A. The representation, one thing about the RBA,
10 we attend our meetings, we attended all the -- you know,
11 we attend, you know, I mean, you can ask Debbie, and --
12 we have -- our RBA members are at the meetings. I mean,
13 if you look at the records, you can go back through all
14 the records, our RA group -- RBA group, we attend our
15 meetings, and we have -- we have as much of a voice as
16 we possibly can, because we know we're in the fight all
17 the -- every time, we're in a fight.

18 Q. On that note, do RBA members typically dissent
19 or oppose recommendations or discussions for change
20 during Committee --

21 A. We --

22 Q. -- meetings?

23 A. Yeah, we have a pretty good outreach. We send
24 out a newsletter, and we have district meetings and
25 stuff with our grower base, and we explain to them

1 what's going on, and we get feedback from our grower
2 base before we take it to our board and make a decision
3 about how we're going to proceed at the next RAC, with
4 specific -- with specific things that are going on at
5 that time.

6 Q. Okay. So you said you've lost members over
7 the years for more than one reason. How has that -- I'm
8 trying to phrase this.

9 How has that changed your -- the percentage of
10 industry that you represent total? Like maybe if it's
11 based -- if RBA growers are based on acquisition totals,
12 you know, how has that changed?

13 A. It has changed because, you know, our
14 acquisition totals have gone down, and not only -- we
15 still have growers. In fact, we're in the process right
16 now of re-going through -- going through our files, and
17 each one of our grower member contracts have addresses
18 on them, and an APN, which is assessor's parcel numbers
19 of where the vineyard is at, so we're going to -- we're
20 in the process right now, we're going back through to
21 trace exactly where every ranch is that are -- that we
22 have an RBA contract on, and then we're going to try to
23 find out where that fruit -- where it went if we don't
24 have a record of it.

25 Q. Okay. So you said your acquisition totals

1 have gone down?

2 A. Correct.

3 Q. So can you provide me with a percentage or a
4 figure that can tell me, like, for instance, you might
5 have represented X percent of the industry at some point
6 but now you represent --

7 A. At one time, we represented probably 35 to
8 40 percent, maybe, something like that.

9 Debbie?

10 At one time, the RBA I would say represented
11 35 or 40 percent. We're probably down to 12 percent,
12 something like that. And -- and we don't even -- if we
13 had an ability to -- if we had the ability to audit our
14 grower records or -- with help from the USDA, you know,
15 the inspection service or something to that effect, then
16 we might be able to -- you know, we -- we've -- we've
17 gone through, and we have audited our -- you know, in
18 the past, and Debbie -- Debbie's helped us out on a
19 couple of things on -- on -- on some of that, but we
20 need -- you know, without us being able to really track
21 everything and verifying it, you know, it's -- it's a --
22 it's a daunting task with 740 growers. We don't have
23 the staff.

24 Q. Okay. So could you tell me why the designated
25 bargaining position should not be removed from the

1 committee?

2 A. The reason why, you know, representation is
3 very important, and if you look at the makeup of -- of
4 what the proposals are, you know, it's of some concern
5 that there's -- it's too overladen with -- with packer
6 representatives. Even though they're independent, those
7 packers' seats have some type of a connection. It's --
8 it's like a -- it's like a snake that goes out there,
9 and it -- you could -- it reaches out tentacles, it --
10 they have tentacles that reach out to either a family
11 member, or just like Mr. Spate has said, family members
12 or employees or, you know, sisters of employees.
13 There's all kinds of -- there's all kinds of little
14 nuances of over -- you know -- and -- and we have -- we
15 have -- under this new program, we would only end up
16 with two seats, and -- if they eliminate our third seat,
17 so we'd end up with two seats. You know, the co-op,
18 they're going to have eight seats. They'll be almost
19 half of the voting, and that's just not right. But,
20 like I said, they got all the tonnage, and it's
21 predicated on tonnage, so it makes it a very difficult
22 situation for the RBA.

23 Q. Okay. But -- sorry, not but.

24 So the way the current Committee structure is
25 being proposed is based off of a proportionate share of

1 each segment of industry, correct?

2 A. Correct.

3 Q. And if -- if your -- if the RBA were to
4 acquire more or increase their acquisition total, they
5 would have a greater representation on the Committee; is
6 that correct?

7 A. That is correct.

8 Q. The designated bargaining association seat is
9 not based off of acquisition totals; is that correct?

10 A. That is correct.

11 Q. Could you provide me with the -- your reason
12 and rationale for why the designated bargain -- sorry,
13 designated bargain association seat was added to the
14 Committee in the first place?

15 A. From my understanding, it -- it was brought up
16 here today, that it was a seat that was used to kind of
17 solidify the actual price that the packers were willing
18 to pay in -- in each specific year. So when you had
19 that position, which it really -- it hasn't changed that
20 much, so this is what had -- you know, draws our concern
21 is because we still bargain for a price. We bargained
22 for a price this year. We -- we have our -- most of our
23 processors on -- under an MOU at the -- at the present
24 time now. So we still -- we still need to be able to
25 have the voice for the raisin growers, whether they're

1 independent, Sun-Maid, or our growers, to let them know
2 what the -- what the actual price, minimum price is
3 being paid out there in the field so that everybody has
4 kind of a measurement.

5 Q. Okay. But -- oh, sorry, not to say "but."

6 A. It's a long day.

7 Q. You're stating -- thank you.

8 You're stating that the RBA still negotiates a
9 price, and that that information is still necessary for
10 the Committee, but the Committee -- we've had testimony
11 earlier that they said that position was in regards to
12 volume regulation, they were using the RBA price for
13 volume regulation and export pricing, and they no longer
14 participate in that program, the export pricing program
15 and the volume regulation, so how would the Committee --
16 in your perspective, how would the committee still need
17 or utilize this information from the RBA designated --
18 from the designated bargaining association seat?

19 A. Well, price is what moves everything, and in
20 this industry -- in this industry, you have to work
21 together, and -- and we're very -- we're very
22 cooperative with our -- with our processor, our
23 packer/handler, however you went to call them, and
24 working together on the RAC and being involved in some
25 of the different program and some of the things that are

1 wanted and us putting our opinions and where the grower
2 base -- where they feel that we need to put -- we need
3 to put our money at, where we need to market, where we
4 need to reach out to the government to ask for buys, and
5 some of those things, you know, we have to forecast, we
6 have to see where we're going to be at next year, or,
7 you know, where the price, where the market, and, you
8 know, we stay real close with our processors. So being
9 on the -- you know, having our group on the RAC helps
10 determine going forward the whole movement of the raisin
11 industry.

12 Q. I'm not sure that I followed everything that
13 you just said. With negotiating prices and bargaining
14 the price of the small producer, how -- how does that --
15 how does that help the RAC in regards to the authorities
16 that they currently have under the marketing order,
17 which is promotion and research and grade and quality
18 and inspection?

19 A. During -- in -- in our negotiations, we build
20 in the \$22 or \$24 -- \$22 right now into our negotiated
21 price, you know, so when we negotiate this price, it has
22 that \$22 RAC assessment in it. So our growers are
23 assessed on every ton that they produce to run the
24 association and try to move things forward. We don't
25 have a problem paying the assessment at all, we just

1 want to make sure we have representation, and our -- and
2 with -- with the grower base needs and wants. And
3 the -- the thing about -- the thing about why the RBA
4 was -- was formulated to start with is because open
5 prices were rampant back then, and processors would pay
6 whatever they wanted to pay, and if they wanted to go
7 overseas and give raisins away from \$50 a ton, they gave
8 them away from \$50 a ton. Who got hurt in the end?
9 It's always the grower. The grower always suffers the
10 consequences.

11 You know, the business of processing is
12 very -- very expensive. We understand the dynamics of
13 the processors. We understand the costs are up just
14 like our costs are up. We understand all those things.
15 But we need to also pass on that -- the number that we
16 negotiate for or what we see for next year's pricing,
17 we're going to hold steady for it because we can't go
18 down. And if we don't -- if we don't work together to
19 get this negotiated price, then how do we continue to
20 go -- be able to fund our portion of the MAPs, MIPs, and
21 some of those programs, and, you know, if we're in
22 oversupply, how do we go to the government and ask them
23 to buy some raisins? You know, we're the ones that
24 know. We're the ones that grow this stuff. We're the
25 ones that are responsible in the end. We're either

1 going to -- we're either going to make it or not, that's
2 just the way it is. But we have to be a part.

3 Q. So could the growers -- so could the RBA
4 growers that would be sitting on the Committee not work
5 in that capacity with the RAC in regards to assessment
6 rate changes?

7 A. Yes, we -- we have our -- we have a vote. We
8 have a vote. But the majority -- and the change -- the
9 change is going to make it worse for us because it's
10 going to be even more latent with handler -- you know,
11 like I said, you have Sun-Maid, which is -- they have
12 three handler seats and five grower seats. And then you
13 have the independents, which Steve Spate had eluded to,
14 that have a bunch of their people on those seats which
15 will also vote as a handler, in the interests of a
16 handler. And then there's just us out there by
17 ourselves, we're -- we're the independent -- we're the
18 actually independent farmers if you really want --
19 there's still -- there is independent farmers, but a lot
20 of them are connected to the processing side.

21 Q. And in your opinion, do you believe that
22 growers would be better able to discuss how changes in
23 assessment rate or other types of regulations under the
24 marketing order might affect them versus the RBA
25 manager?

1 A. If we don't have the voice to go into the RAC
2 and argue that we can't afford another \$2 assessment,
3 that -- that flows right back down to our growers and
4 their income and their pocketbooks, so the more of a
5 voice we have on the RAC -- we make a lot of noise, but
6 we try to work and we try to understand the -- the
7 complexities. You know, this is a very complex
8 business, I guess you would say, and it's a very, very
9 difficult business, both on the growing side and on the
10 processing side. We're very aware of that.

11 Q. Okay.

12 MS. PANKEY: Okay. I think I'm -- I don't have any
13 further questions at this time.

14 CROSS-EXAMINATION

15 BY MR. McFETRIDGE:

16 Q. Marc McFetridge, USDA.

17 Mr. Cardoza, I wanted to see if you might be
18 able to elaborate a little bit more. In your
19 discussion, you were discussing how -- or why handlers
20 would be asking for your growers to deliver under a
21 family member's name. Why would they be asking the --
22 the growers to do that?

23 A. Well, there's a \$15 assessment that they have
24 to pay per ton. Okay. So -- and, you know, I'm -- I'm
25 not saying all of our growers are perfect, but \$15 to

1 them is \$15 to some of them, you know, and -- and if the
2 processor wants to give them the \$15, then they'll sign
3 off on a family member's name or something to that
4 effect. And, you know, there's -- there's always little
5 incentives here and there back and forth with -- with
6 that situation.

7 Q. And that would definitely affect what was
8 reported for the tonnage that possibly that could be for
9 RBA growers, correct?

10 A. Absolutely.

11 Q. Thank you.

12 I know when -- if your discussion, you said
13 MOU. I just wanted to make sure we had that defined on
14 the record. What does MOU stand for?

15 A. Memorandum of Understanding. We have a -- we
16 have a -- we had a master contract in place, and we
17 still -- we still write contract -- memorandum of
18 understanding based on that contract. So the
19 processors, each one of them sign individual MOUs now,
20 and there might be a verbiage, word change, or some
21 other little detail in -- as far as payment schedules
22 and some of those kinds of things in their specific
23 MOUs, but every -- everything -- every MOU reflects back
24 to the original master contract.

25 And a question was asked about we do still

1 take title to the raisins, so every raisin that's
2 delivered at every packinghouse is -- it belongs to the
3 RBA. Once that -- once that raisin is made, it belongs
4 to the RBA. And, you know, that's -- that's what people
5 don't understand, and -- but if you look at your report,
6 there's memorandum of understanding, memo -- excuse me,
7 memo of storage, that's what your memo of storage is.
8 That's the stuff that's -- belongs to the RBA, that's --
9 the packagers are putting in memo storage, they're
10 holding it until they sign a contract with us.

11 Q. All right. So let me make sure I understand.
12 So MOU is the memorandum of --

13 A. Understanding.

14 Q. -- of understanding?

15 A. That's the contract agreement.

16 Q. For pricing, right?

17 A. For pricing, correct.

18 Q. And then the memorandum of storage?

19 A. Memorandum of storage is -- is a -- is the
20 storage contract until we get to that MOU, into that
21 memorandum of understanding. They hold the fruit at
22 their facilities until we make a deal.

23 Q. All right. Thank you. Thank you for the
24 clarification.

25 One last question I had, so in your

1 conclusion, you state that, "removal of the RBA seat on
2 the RAC will only put the RBA at further disadvantage."
3 I want to see if you can maybe elaborate on what other
4 disadvantages that would be.

5 A. When we don't -- when we don't have a voice in
6 the -- in -- where it concerns our raisins, and we're
7 subject to whoever is in charge and -- or who has the
8 majority, whether it's the independent processors or
9 Sun-Maid, for instance -- I mean, with eight seats,
10 that's pretty -- that's a pretty substantial block vote.
11 Okay. So all's we can do is we're like the tail that
12 wags the dog. You know, sometimes we make a deal with
13 Sun-Maid, sometimes we make a deal with independent
14 packers. In fact, you know, it's -- it's all
15 negotiations. It's all negotiations. Everything we do
16 is negotiations. That's what the bargaining association
17 is for, for the betterment of the growers.

18 MR. McFETRIDGE: All right. Thank you. That's all
19 I have.

20 CROSS-EXAMINATION

21 BY MS. DORSEY:

22 Q. Samantha Dorsey with USDA.

23 Mr. Cardoza, so today we've acknowledged that
24 the volume control provisions have been eliminated from
25 the order. In your perspective, were volume control

1 matters the primarily -- or have they been, excuse me,
2 have volume control matters been one of the primary
3 roles of the designated bargaining association seat?

4 A. I -- I don't know that -- it was a piece of --
5 it was a piece of the equation, but the -- the seat --
6 the person -- especially the person that was sitting in
7 either seat did most of the talking for the RBA, did --
8 you know, they did most of the -- when they reached out,
9 we had -- we had several people, Vaughn Koligian, Kalem
10 Barserian, Barry Kriebel. These names are -- if you've
11 been around the industry for a long time, those are like
12 the Godfathers. Those guys have all been our
13 representatives, and, you know, they -- they make sure
14 that the RBA is focused and moving in the right
15 direction, working with our processors and with the RAC
16 trying to get a better return for the growers.

17 Q. Okay. So it's your position that even with
18 the elimination of the volume control provisions in the
19 order, there still should be a special designated seat
20 for Raisin Bargaining Association?

21 A. Yeah, we want to -- we want to maintain that
22 seat, yes.

23 Q. Okay. And I did want to just go back to the
24 first page of your written statement as it relates --
25 it's under topic three, and you've referenced a

1 situation that occurred in 2021 related to packers and
2 their failure to negotiate, if you would just elaborate
3 on that a little bit.

4 A. When -- when we were negotiating -- when we
5 were negotiating, we negotiated a price in -- we
6 negotiated a price in 2019, in 2020, which the market
7 doesn't react until, like, '21, we -- our -- our CEO at
8 the time released all of our growers to negotiate with
9 the processors at that time, which was -- I was chairman
10 at the time, and I was not happy about it, and neither
11 was our board, but he did that -- he made -- he did that
12 independent of what the board feelings were, and it
13 caused chaos in the industry, really chaos in the
14 industry.

15 So that's kind of what the reflection of the
16 final '21 numbers -- that it -- it kind of -- it flows,
17 it flows, you know, when you make a decision this year,
18 you probably don't feel the -- the repercussions of it
19 until next year or -- or 18 months later.

20 MS. DORSEY: Okay. I do not have any -- thank you.
21 I do not have any further questions at this time.

22 CROSS-EXAMINATION

23 BY MS. CHILUKURI:

24 Q. Hi, Mr. Cardoza. This is Rupa Chilukuri for
25 USDA, and I just wanted to follow up with a few

1 questions from your testimony.

2 So in topic two, you're talking about how the
3 RBA and Sun-Maid are two farmer co-ops to are asked to
4 lobby on the industry's behalf for government buys.
5 Isn't this separate and apart from RAC's role?

6 A. Correct.

7 Q. Okay. Then in topic three, you reference on
8 the last page -- or last sentence of the paragraph, "If
9 the RBA doesn't have a voice on the RAC, it diminishes
10 the ability for the RBA to negotiate with packers."

11 So the RBA would continue to have a voice
12 based on its proportionate share, correct?

13 A. True.

14 Q. Okay. And, you know, in your testimony in
15 responding to other questions, you were talking about
16 just different things that are affecting the RBA, and
17 decline in acreage, and supply and demand, and I hope
18 I'm characterizing the testimony correctly, but is what
19 is happening to the RBA, is it reflective or similar to
20 what's happening to other farmers in other industries or
21 other commodities, or -- just trying to figure out if
22 it's unique or different or how it works?

23 A. It's -- it's -- it's somewhat -- it's somewhat
24 unique because the growers in our industry are -- are --
25 the RAC and the raisin industry has been around for a

1 long, long time, and we -- just like our bargaining
2 association has been around for a long time. We're the
3 number one bargaining association in the country. We're
4 the largest. So, you know, other associations are --
5 are starting to feel the same situation as we are, but
6 as a whole, farmers and processors and some of those
7 things are starting to -- to go down versus losing
8 growers, we're losing packers, we're losing -- you know,
9 and so are -- and so are the other commodities. It's
10 just -- it's very tough to do business, especially in
11 California, but even nationwide, you know, without --
12 you know, without support.

13 And, you know, I want to thank the -- the USDA
14 for all the support they've given the raisin industry.
15 I don't know if you guys ever hear a thank you, but I
16 will tell you that you guys have been wonderful to work
17 with, and, you know, we really appreciate what you guys
18 do as far as buying raisins and -- and putting them into
19 the programs that you're putting them in, you know,
20 we -- we really appreciate that.

21 Q. So with -- in talking about what's happened to
22 the RBA and other bargaining associations, you just
23 mentioned that there's sort of been some impacts on
24 packers and processors as well. Can you talk about that
25 as well, they're feeling -- they're having -- they're

1 going out of business as well, they're feeling some
2 pressure?

3 A. Yes. You know, we work with -- we work with
4 all of them, we work with all of them, and you think,
5 every one of them has their own unique situations, but
6 I -- I haven't talked to one of them that are -- you
7 know, that are getting wealthy, wealthy. You know,
8 it's -- it's a struggle every day for them. We
9 understand. It's a struggle. Doing business, in
10 California especially, is a nightmare, and the burdens
11 that this -- the California government structure is
12 putting on them, and -- and us as farmers is very --
13 very detrimental to us making a profit.

14 And, you know, what's really -- what
15 bothers -- this is my personal feeling is I want to pay
16 my guys as much as I can pay them because they work --
17 they really work hard. They earn every dime out there
18 in that field. It's 110 degrees, and they're out there
19 picking grapes for me, putting them on the ground. And
20 if I could give -- if I could give them twice as much as
21 what I give them, I wouldn't -- it wouldn't bother me
22 one bit because they earn it, but we have to watch every
23 nickel and dime, and it's the same thing as the
24 processors, I mean, they would pay their guys, because
25 we appreciate our people, they would pay their guys, you

1 know, more than what they're able to pay them now but
2 the regulations prohibit a lot of that.

3 Q. So you had mentioned -- just so I'm
4 understanding, you mentioned that, you know, you're
5 cooperative with your handlers, and I think you also
6 referred to shenanigans at some point, so I'm trying to
7 figure out -- I'm trying to figure out what's happening.
8 Do you know what I mean? I don't know if I just got
9 confused or misunderstood, so can you clarify for me?
10 Is it a question of time periods or certain actors?

11 A. Look, there's -- there's some actors.

12 Q. Okay.

13 A. Grower actors, processor actors. Some of them
14 are, you know, in -- in desperation mode on both sides,
15 that are trying to get -- the processors that don't have
16 the growers, and they're trying to steal growers from
17 one of our other processors, or offering bonuses and
18 things under the table, there's no question about.
19 It's -- it's -- it's well known. And we have our -- our
20 side that goes to them and asks them for it, I'm not
21 going to give you my raisins if you don't give me \$50 or
22 \$100 extra. Well, you're an RBA guy. Well, so. You
23 know, so we have bad actors on both sides, not all of
24 them, just there's a few.

25 Q. Okay. I think you had referenced at one point

1 that with the change in member on the Committee, RBA
2 would have two seats based on your proportionate share
3 and you had referenced eight seats for --

4 A. Sun-Maid co-op.

5 Q. So I just wanted to confirm, is that your
6 belief that it would be eight seats?

7 A. Yeah. It's five grower seats and three packer
8 seats.

9 Am I right?

10 Q. We can take a look.

11 MS. POWELL: Based on the 2021.

12 MR. CARDOZA: Yeah. So there's eight seats, so
13 they're -- like I said, they're almost 50 percent of the
14 horsepower to make all the decisions.

15 BY MS. CHILUKURI:

16 Q. And is it correct to say that you're speaking
17 for RBA, for that membership today?

18 A. That is correct.

19 Q. Okay. So do -- does RBA -- do you have an
20 alternate proposal, or do you have in mind what you
21 would want in terms of, like, the notice hearing, so
22 instead of eight, it would be three, or you know, if
23 it's not predicated on tonnage, it would be predicated
24 on something else? Do you have an alternative?

25 A. Yeah. My alternative would be to predicate

1 it -- put every processor as a representative, every --
2 one representative, and a combined, not by tonnage, by
3 members, representing each co-op. And that's --
4 that's -- that's as fair as you can get.

5 Q. Is it -- so in talking about RBA's interests,
6 you know, you mentioned cooperative with producers --
7 not producers, cooperative with handlers, your handlers,
8 and also you represent obviously producers, but are
9 RBA's interests intersected with other people from --
10 that would be on the Committee? Do they intersect with
11 Sun-Maid? Do they intersect with independent growers?

12 A. Be specific about what you mean by
13 "intersect."

14 Q. Do you agree with Sun-Maid on certain
15 positions?

16 A. Absolutely.

17 Q. And do you disagree with them on certain
18 positions?

19 A. Absolutely. Absolutely. It's -- it's -- we
20 get into some pretty contentious arguments here once in
21 a while. It's been a lot -- it's flowing a lot better
22 lately, but, you know, we're all trying to survive. Now
23 it's -- now it's pretty much the survival mode, and we
24 all have to look at each other's business because we're
25 all trying to survive, whether you're in a farm business

1 or you're in a packing business, it's -- it's -- it's
2 all the same.

3 And we've got to make decisions that affect --
4 that affect everyone's income, whether -- whichever --
5 whichever entity you're in, whether you're a producer or
6 you're a processor, and you can -- you have to -- you
7 have to join together, and you have to make these
8 decisions collectively.

9 Q. And would you say the same applies to your
10 interactions or your interests -- like your voting
11 records, could you see voting the same as a processor or
12 handler?

13 A. Absolutely.

14 Q. Okay.

15 A. Absolutely. And we've had that, we've had
16 that contention in the past, where the independents and
17 us were on one side, Sun-Maid was on the other, because,
18 you know, it's -- the -- the -- eliminating volume
19 control, that's one of the big ones.

20 Q. And then for another issue it could shift, and
21 then it could be you and another group?

22 A. Yep. It depends on what the issue is for the
23 day.

24 Q. Okay.

25 A. Right, Debbie?

1 Q. So it depends on what the issue is for the
2 day, but also, I think you had mentioned being in
3 survival mode?

4 A. Correct.

5 Q. And I think there's been some testimony that
6 people are kind of all in it together because they're in
7 survival mode; is that accurate to say as well?

8 A. Pretty much. Pretty much.

9 Q. So I think on topic four, you had talked
10 about -- again, trying to understand, it's peculiar how
11 official tonnage has shrunk much faster. So, again,
12 that's related back to the shenanigans you were
13 mentioning; is that correct? Is there anything else --

14 A. Yes.

15 Q. -- you want to add on that?

16 A. No.

17 Q. And then with topic five, you're talking about
18 if the RAC removes the RBA seat, the RBA members should
19 not have to pay an RAC assessment fee. So with the
20 assessment fee, the handlers -- per the marketing order,
21 the handlers are the ones assessed, correct?

22 A. Well, it depends on how many handlers you have
23 versus how many real, true processors you have -- I mean
24 producers you have, you know. And the pendulum will
25 swing one way if -- if -- just let's -- I'll give you an

1 example. If the handlers say, well, we need \$50 a ton
2 because we want to go into -- and hit Germany and all
3 this other stuff, and -- that comes out of the grower.
4 That's going to come out of the grower -- end up coming
5 out of the grower's price. We can negotiate the price,
6 they want \$50, that comes out of the grower's pocket.
7 So that's where the pendulum will swing, and it puts
8 a -- it puts, you know, another burden on -- you know,
9 maybe they need that kind of money, but the grower can't
10 afford to pay -- we're the factory, the producers are
11 the factory, we -- we make the widgets. The raisins are
12 the widgets. You can't sell anything unless I make
13 them. So that -- we understand that, and our -- our
14 processors understand that as well, so, you know, we got
15 to -- like I said, we gotta work together to make sure
16 that -- you know, we want them to be profitable. I want
17 them to make millions and millions of dollars, because
18 if they make millions and millions of dollars, a lot of
19 them are very generous, they'll pass it on down.
20 Believe me, that's -- that's a fact.

21 Q. So, Mr. Cardoza, what -- I think you've heard
22 some of the testimony before, or you've been here to
23 hear some of the testimony, so what's your response to
24 some of your counterparts saying that the designated
25 seat would be sort of extra representation for the RBA?

1 For the manager, it doesn't reflect the tonnage.

2 A. Okay. So because seats are designated by
3 tonnage, which gives Sun-Maid eight seats, and the
4 independent guys, you know, they're going to have more
5 seats now too, probably, but you hear the independent
6 guys that they're not -- they're not happy with the
7 situation with the seats, and, you know, like I said, if
8 we could get to a situation where growers, how many
9 growers you got, how many growers you got, and every
10 processor has one seat, that's -- that's the simplest
11 formula that you could come to.

12 Q. Okay. Thank you.

13 MS. CHILUKURI: Thank you, sir. I do not have any
14 additional questions. I don't know if you're done.

15 CROSS-EXAMINATION

16 BY MR. BROADBENT:

17 Q. Barry Broadbent, USDA.

18 Mr. Cardoza, I have a couple of clarifying
19 questions.

20 When -- when you said, quote, that you -- that
21 RBA negotiates for price, that's why they exist, and
22 then you are saying that they work together with the
23 RAC, the Raisin Committee, you are not saying that you
24 work together with the Raisin Committee to negotiate for
25 prices or establish prices or to do anything to do with

1 prices because that would be outside the marketing order
2 authority --

3 A. All --

4 Q. -- is that correct?

5 A. Correct. All the people on the RAC -- or the
6 people on the RAC are the people we do business with
7 when we do negotiations. So the RAC entity has nothing
8 to do with our bargaining with each one of the members
9 of the RAC.

10 Q. Okay. I just wanted to clarify, because taken
11 in context -- at face value, it sounded like that the
12 RAC works together with the RBA to negotiate prices, and
13 I wanted to make sure that wasn't --

14 A. Yeah. I didn't --

15 Q. Okay.

16 A. I hope I didn't make that -- RAC has nothing
17 to do with us negotiating a price, period.

18 Q. Perfect.

19 A. But the people on the RAC -- the RAC people
20 are our -- they're our buyers.

21 MR. MILINOVICH: RAC members.

22 MR. CARDOZA: RAC members are our buyers.

23 BY MR. BROADBENT:

24 Q. Also in your testimony you say that in the
25 past, growers have been harassed, targeted, and treated

1 unfairly, and that you intimidated a little bit in your
2 discussion about how that unless the RBA exists, that
3 could happen again. You weren't saying that -- that --
4 that handlers are doing anything illegal, were you?

5 A. Not illegal.

6 Q. Okay.

7 A. Not illegal. And in our MOUs, once we set a
8 minimum price, they can do whatever they want after
9 that, as far as our growers are concerned.

10 Q. Okay. Then you had -- also had said in your
11 testimony that you're having a problem with some of your
12 members sidestepping and delivering product in somebody
13 else's name, and would that be a contract violation?

14 A. That is a contract violation, but you got to
15 catch them, and we don't have the auditing ability to
16 catch them, so now we have pivoted to -- we're going to
17 go and survey each one of our grower parcels that we
18 have on our contracts, and then we will see how that
19 vineyard location, and where the fruit went. We'll have
20 to -- you know, we're going to ask that grower where did
21 you deliver that fruit.

22 Because the unfortunate part of -- of what we
23 have to deal with also is green purchases, whether it's
24 for a dehydrator buys it, or a processor buys it, buys
25 the fruit, picks it, and dries it, and makes a raisin

1 out of, or if a winery comes along and buys the -- buys
2 the product from -- so they can -- you know, if they
3 didn't make raisins, they could be selling it to a
4 winery, or they could be selling it -- they could be
5 selling it to a dehydrator to make Goldens or something
6 like that, or, you know, the packers -- a lot of the
7 packers go in, and they -- they buy the fruit hanging,
8 and they put them on the ground and make raisins out of
9 them.

10 Q. But that's -- so within that contract you have
11 with your growers, all of that fruit is supposed to be
12 delivered to an RBA-negotiated handler somewhere?

13 A. That is correct. Signatory handlers, correct.

14 Q. Signatory.

15 A. Yeah.

16 Q. How -- what's the term? Are those evergreen
17 contracts for -- with your growers? Does it just roll
18 over year after year, or do you have to reassociate?

19 A. Those are evergreen contracts, and if grower
20 wants out, he has to -- he has to apply to the RBA to
21 get out on the year that the -- whether it was an odd
22 year or even year that he signed up originally. So in
23 1967, then in 2027, he could get out.

24 Q. But -- but he's under contract until that
25 time? So --

1 A. Yes.

2 Q. -- up to two years then maybe --

3 A. That is correct.

4 Q. -- or 18 months?

5 A. Yeah.

6 Q. Okay. Let me -- I just wanted to flesh out
7 some of that.

8 The -- you also said that the -- we've talked
9 about the assessments that are -- that the RAC
10 assessments are not paid by growers, but the RBA
11 assessment is paid by growers. Is that withheld from
12 handlers, or is that paid from -- do the growers write a
13 check or is it withheld from the handlers?

14 A. It's -- it's withheld at the -- at the handler
15 that holds that from the grower.

16 Q. Okay. We've also talked about how back in the
17 day, there could have been 35, 40 percent of the
18 industry under contract with the RBA, and that it's now
19 currently what percentage?

20 A. The percentage, you mean -- you're talking
21 about delivered tonnage?

22 Q. Yeah.

23 A. Delivered tonnage, probably 12 percent. I
24 don't -- you know, something like that, I haven't --

25 Q. So if that's been this trend over time,

1 diminishing from 35 to 40 percent to the current
2 12 percent, if that were to continue, at what point do
3 you estimate that the RBA would no longer be able to
4 function and would cease to exist?

5 A. Well, this is why we are very proactive in not
6 allowing that to happen. In fact, three years ago we
7 did a complete audit, and we had reported tonnage at --
8 it was reported tonnage at -- I think -- I think it was
9 25,000 tons, and we -- after we did our audit, we went
10 through records, and calling growers, and -- and doing
11 all those things that we needed to do, we ended up with
12 a delivered tonnage of 35,000. So that's how dynamic it
13 was.

14 And then we sent addendum bills to all of our
15 processors that -- that hadn't provided us with those --
16 with that information. And a lot of them -- a lot of
17 them wasn't -- some of them weren't -- wasn't the
18 processor's fault, because that grower went in there and
19 delivered them under somebody else's name.

20 Q. So that's a compliance issue that RBA has that
21 they're trying to work through?

22 A. That is correct.

23 Q. So following my other question about the
24 trend, the downward trend, if -- at the end of this
25 hearing, if the RBA seat was to be maintained, what

1 would you propose that USDA and the marketing order
2 should do if the RBA fell to a level in which they could
3 no longer exist, and there's a dedicated seat for an
4 entity that's -- that's no longer viable?

5 A. I -- I actually hope that doesn't happen. I
6 don't see it happening. There's -- we still have a lot
7 of members, and we have -- we have growers, we have
8 grower members that are -- that are invested. So this
9 is something that -- that, you know, we hear about all
10 the pullouts, and -- and those kind of things. We do
11 have growers that are invested. They are putting
12 myself, we're -- our families, we're putting in almost
13 40 acres, so we have growers that are invested. We
14 have -- we have some Punjabi growers that are putting in
15 grapes right now as we speak, so -- and they're, you
16 know, they're big rollers, and they're RBA guys.

17 So I don't anticipate that happening, because
18 nobody wants to be back before 1967. I don't care who
19 you are, as a farmer, you don't want to be on an
20 open-contract situation ever.

21 Q. Okay. Well, I just -- and I know you don't
22 want to revisit that topic because it's a -- it's a
23 future that you would prefer not to -- to look at, but
24 you realize that if you -- if the RBA seat was to be
25 maintained, and then the RBA were to no longer exist, we

1 would have to be back in a venue like this to change the
2 structure or that would be a permanently vacant seat on
3 the Committee.

4 A. I understand that. What do you propose?

5 Q. I -- I'm not. I'm here to ask questions.

6 So --

7 A. Okay.

8 Q. -- you're proposing -- you've said that you
9 support reducing the size of the Committee.

10 A. Correct.

11 Q. And that you haven't -- you haven't stated you
12 have any opposition to that number being 21?

13 A. I have opposition that -- for it being 21
14 because that eliminates our -- the one seat.

15 Q. Well, the number is separate from the
16 positions under that 21, so if 21 was an appropriate
17 number, you don't have any problem with it being 21?

18 A. No.

19 Q. Okay. And then underneath the 21, how would
20 you propose that the seats were allocated?

21 A. I would really take a hard look at the
22 independent side of the equation. If you want to put a
23 mandate that a document has to be signed by that person
24 that is an independent that sits on the RAC is not
25 related, not -- have -- not related, not have any

1 financial interest in the processing house, doesn't
2 have, you know, a family member in that -- I mean,
3 there's -- I don't know -- I don't know the remedy, the
4 total remedy of what type of affidavit you would have to
5 sign or put forth, but if you could -- in reflection of
6 what Steve Spate said, that's what you need to do. I
7 mean, that -- that would -- I think that's what -- we
8 want -- you want true producers. This is a producer and
9 handler thing. You want true producers on there. You
10 want true independent producers, not someone that's
11 going to be with the company position. And that's
12 what -- that's what Steve was frustrated about, because,
13 you know, a lot of the voting is based on -- there's
14 four votes for a processor that -- you know, should --
15 like I said, if each processor had one vote, and you
16 split the other ones, everything would be beautiful.

17 Q. Well, we would be well over 21 if every
18 processor had a vote because there's 17 handlers, so --
19 of which the RBA is actually on the list of handlers, I
20 don't know how that came to be, but --

21 A. We're not an acquiring handler.

22 Q. Okay. Well, anyhow, so that would be one of
23 the problems that people becoming handlers, and getting
24 a seat, and -- just there's a lot of things that would
25 have to be fleshed out, but --

1 So back to some specifics, should it be
2 entertained to have the RBA seat remain, would you
3 support 22 members on the committee or some other --

4 A. Yeah.

5 Q. -- alternative like that?

6 A. I'm fine with that. I'm fine with that.

7 MR. BROADBENT: Okay. And I believe, believe it or
8 not, I've exhausted all my questions. Thank you.

9 CROSS-EXAMINATION

10 BY MS. DORSEY:

11 Q. Samantha Dorsey, USDA.

12 We discussed a few different approaches that
13 you would have preferred over the proposals that are
14 included in the notice of hearing. Now, during the
15 Committee sessions where these proposals were being
16 discussed, did you or any other member of RBA provide
17 any alternative solutions to the proposals?

18 A. We -- we voiced our opinion in meetings, and I
19 was -- I -- I don't know which subcommittee meetings I
20 was on, but I was on a couple of subcommittee meetings,
21 but we were -- we were definitely -- and you can see the
22 records that we -- you know, our -- our total group
23 voted against eliminating the seat on the -- for the RBA
24 seat.

25 Q. Okay. And just to clarify, there was no

1 formal submission of any alternate approaches --

2 A. Right.

3 Q. -- to the restructuring the Committee?

4 A. No.

5 Q. Okay. Thank you. No further questions.

6 MS. CHILUKURI: Okay. No further questions for
7 you.

8 JUDGE STROTHER: Anyone else have any questions for
9 this witness?

10 Any objections to the admission of Exhibit 25
11 to the record?

12 It is admitted.

13 (Whereupon, Exhibit 25 was admitted
14 into the record.)

15 JUDGE STROTHER: Should we put Mr. Crowe on?

16 MR. CARDOZA: Thank you everyone for accommodating
17 us.

18 JUDGE STROTHER: Speaking for the entire group, I
19 say you're welcome. Thanks for coming in. Happy to
20 have you here.

21 Did I swear you in?

22 MR. CROWE: No.

23 TESTIMONY OF RICHARD CROWE

24 JUDGE STROTHER: Raise your right hand.

25 ///

1 RICHARD CROWE,
2 having been first duly sworn, testified and was
3 examined, as follows:

4 MR. CROWE: I do, Your Honor.

5 JUDGE STROTHER: You may be seated. Thank you.

6 Do you have an exhibit?

7 MR. CROWE: No, just my statement, testimony.

8 JUDGE STROTHER: Yeah. You gave me that.

9 Let me know if you need another copy. Do you
10 have an extra? I'm sorry. I've got to have it.

11 Off the record.

12 (Whereupon, off the record.)

13 JUDGE STROTHER: Let's mark Mr. Crowe's statement
14 as Exhibit 26 for identification.

15 (Whereupon, Exhibit 26 was marked
16 for identification.)

17 JUDGE STROTHER: You may proceed with your
18 statement, Mr. Crowe.

19 TESTIMONY OF RICHARD CROWE

20 MR. CROWE: Thank you.

21 Good afternoon. My name is Richard Crowe,
22 Black-Crowe Vineyards. My physical address and my
23 vineyard is the same. I'm a small certified organic
24 raisin producer in Fresno, California. And just for the
25 record, I recently paused my organic specification

1 status. I'm a California Raisin Administrative
2 Committee member, and a U.S. military veteran, owner of
3 a small certified organic independent grower vineyard.

4 I am testifying on proposal number 3, to
5 update/revise the current marketing policy factors,
6 section 989.54, subparagraph (a), factors 4 and 5 of the
7 order, specifically the removal of Factor 4 and the
8 revision of Factor 5, as well as the general support for
9 all the proposed amendments and revisions to the
10 marketing order. This proposal would delete and revise
11 factors 4 and 5 as considerations for reporting
12 raisin-market conditions to the Secretary and would
13 lessen the administrative burden version reporting on
14 world raisin supply and demand fluctuations. The
15 proportional cost and time burden of researching,
16 assembling, preparing the crop data between the
17 producers, packers, Committee, and world raisin industry
18 is significant. Reducing the time and cost burdens of
19 implementing factors four and five would benefit the
20 industry and Committee by reducing internal costs since
21 the conditions, requirements, and language the reporting
22 on these Factors 4 and 5 have changed, have been made
23 moot, or are discretionary.

24 Current situation: The Committee believes
25 that currently determining and including language of

1 Factor 4 on the marketing policy, quote, The estimated
2 desirable carryout at the end of the crop year is no
3 longer necessary since there no longer is volume control
4 authority under the order.

5 Additionally, the USDA source providing the
6 information for Factor 5 in the marketing policy,
7 USDA-NASS, Raisins: World Market and Trade Report, was
8 discontinued in 2019. That information is also not
9 needed in the absence of volume regulation authority.
10 In the past, those that trade data were available
11 through the USDA and National Agricultural Statistics
12 Services report but have not been collectively available
13 since 2019.

14 Since there is now no volume control authority
15 under the current version of the order, collecting,
16 assembling, validating, and reporting those data is now
17 moot. The reporting requirements and sources for these
18 two factors have been removed, discontinued, or obviated
19 due to changes in the current version of the marketing
20 order.

21 Solution: By implementing the proposed rule
22 changes, the reporting requirements by the Committee and
23 the industry to the Secretary, each crop here will be
24 aligned and compliant with the order. This proposal
25 will also remove the obsolete and moot clauses and

1 requirements for reporting to the Secretary set forth in
2 the order.

3 The immediate benefits to the Committee,
4 producers, handlers, industry, and consumers would be a
5 reduction in staff, necessarily, administrative
6 production, research and reporting costs on an industry
7 level. The efficient operation of the industry,
8 government, and players in the raisin stream of commerce
9 will be improved by removing the obsolete, unnecessary,
10 and moot research reports requirements set forth in the
11 two factors, 4 and 5.

12 Conclusion: I, as a small organic raisins and
13 fruit producer, strongly support the amendment to revise
14 and remove aspects of section 989.54 of the marketing
15 policy, Factors 4 and 5, as well as all other market
16 policy amendments in front you today. The
17 administrative burden for compliance with several US,
18 state, county, city, and organic certifiers and
19 authorities already has a prodigious impact on small
20 producers and packers on an ongoing basis. By aligning,
21 removing, and amending the market-order language to the
22 subject factors, the government will help to alleviate
23 the costs of administrative burden to the producers and
24 the industry.

25 In this regard, I beseech you to consider all

1 the proposed amendments to the order and approve for
2 implementation this crop year.

3 Thank you for hearing my testimony in support
4 of all proposed amendments to the marketing order.

5 I have one more statement that's not written.
6 Earlier discussions were talking about some of the
7 causes for the decline of the industry, raisin producing
8 acreage, tonnage, and I have been reading some
9 periodicals and media and talking to some folks, it may
10 be some -- it may be associated with generational likes.
11 I understand that the Gen Z, the Millennials, and the
12 Gen Y now, really don't -- apparently got it in their
13 minds that they don't like raisins.

14 They also -- I also produce pomegranates, and
15 they don't seem to like pomegranates, and persimmons
16 either. My granddaughter told me "that's old people
17 food." So they do like the avocado toast, but they're
18 not -- they're just not eating the raisins. And I --
19 I've talked to different people in my family, and
20 they've said that we just -- they just don't want it,
21 they don't want to eat. They don't eat Raisin Bran
22 anymore, they eat bougie stuff, and I just don't get it.
23 But anyway, that's some of the reasons, but I guess it's
24 akin to our generation ate liver and onion, and I think
25 this generation may put those in the same category. So.

1 That's -- that's all I have to say about that.

2 One more thing is by -- the proposal to reduce
3 the number, and I agree with several members here,
4 this -- this body needs to be more agile in the
5 marketplace, and I just retired from the federal
6 government, and it is not agile, it -- it's not agile at
7 all, but this -- this is an opportunity to provide the
8 RAC with that ability to move and react with quickness
9 and agility to impact the raisin market because we need
10 to do something. It's -- it's diminishing right in
11 front of our eyes.

12 So that's all I have to say, Your Honor.

13 JUDGE STROTHER: Questions, USDA.

14 CROSS-EXAMINATION

15 BY MS. PANKEY:

16 Q. Thank you, Mr. Crowe, for your testimony
17 today.

18 As a small raisin producer, do you believe the
19 amendments proposed have the broadest of industry
20 support?

21 A. Okay. So, I apologize, I didn't wear my
22 hearing aids today --

23 Q. Oh, okay. I'm sorry.

24 A. -- so --

25 Q. Can you hear me?

1 A. Yes.

2 Q. Can you hear me?

3 A. Yes.

4 Q. Do you believe the amendments proposed have
5 the broadest of industry support?

6 A. Yes, I do.

7 Q. To your knowledge, did all industry groups,
8 including those representing small businesses, have an
9 opportunity to provide input on the proposed amendment?

10 A. Yes, I do believe so.

11 Q. Based on your understanding, would any groups
12 and industry have an unfair advantage as a result of
13 these amendments?

14 A. Under my understanding of the proposals, no,
15 they wouldn't have.

16 Q. Could you provide -- could you explain what is
17 the marketing policy as defined in the marketing order,
18 and if you know, how many factors it comprises?

19 A. I think seven factors. Maybe -- hold on. I
20 got it right here. I think there's seven or eight, but
21 it deals with several -- several areas in the raisin
22 industry, growing, shipping, regulations, reporting. Is
23 that what you're questioning?

24 Q. Yes.

25 A. Yeah. Nine factors, excuse me. I think

1 that's -- for the most part, I've read it several times,
2 a lot of it is in legalese, but it's the policies set
3 forth for how the -- the raisin industry conducts
4 itself, and markets itself, and conducts business with
5 the growers, the industry, and purchasers, and the US
6 government.

7 Q. Okay. And could you explain what Factor
8 Number 4 of the marketing policy is?

9 A. Factor 4 is the -- the requirement to report
10 to the Secretary on an annual basis of the crop year to
11 provide an estimated desirable carryout at the end of
12 the crop year. That's one of the factors that we're
13 asking to be removed because of the -- it's moot because
14 of the volume -- the volume control that's been removed,
15 so the Secretary doesn't necessarily need this or want
16 this, apparently.

17 Q. Could you explain what Factor Number 5 of the
18 marketing policy is?

19 A. Yeah. Factor Number 5 is the estimated market
20 demand for the raisins nationally considering the -- and
21 also considering the estimated world raisin supply and
22 command situation, so it's asking for a global
23 perspective on the raisin demand, which part of my
24 comment was that it's -- it's such an administrative
25 burden to have the Committee try to come up with this

1 now that the USDA stopped producing the report in 2019,
2 who's going to come up with those global data, global
3 statistics, and global perspectives? And I'm not sure
4 we have the wherewithal for our Committee to do that, or
5 necessarily should be. That's just my opinion.

6 Q. And that was also -- that report, that world
7 market and trade report, that was also information that
8 the Committee was using when they had volume control
9 authority, correct?

10 A. As I understand, yes. Now, I didn't come on
11 the Committee until 2007 or '8, but that was a legacy
12 thing, I think.

13 Q. Okay. Would you be able to explain further
14 how the Committee used that information in regards?

15 A. Well, I guess they would -- they would look at
16 each country, production of producing countries,
17 Argentina, Afghanistan, Turkey, of course, and looked at
18 their marketing and look at their yields they're having
19 annually, and find out what the global demand is. And
20 we understand there's a lot of demand in Europe, where
21 we used to have a pretty good foothold, but now it's --
22 you know, don't have to -- they don't have to ship over
23 from Turkey and Afghanistan that far whereas we have to
24 ship across the ocean. So I guess the -- the smart
25 people would look at this type of stuff and come up with

1 some type of a global demand, and where the demands are
2 per country, and then target those by -- it used to be
3 the marketing -- the market, but that's all away now.

4 Q. Is the RAC currently utilizing Factor 4 in the
5 developing of marketing policy?

6 A. Yes. Factor 4 is still -- no, no, Factor 4
7 hasn't been reported on since the -- since 2019, as I
8 understand, because the volume control was removed from
9 the order, therefore coming up with a carryout at the
10 end of the year and the volumes and such were not -- we
11 didn't obtain those, as I understand it. So that one
12 we're requesting to remove in its entirety.

13 Q. And to clarify, you said that the information
14 for the US NASS report, that could be acquired from
15 other sources as well, but it could be too costly for
16 the Committee to do so?

17 A. Right. Now, I didn't bring them for exhibits
18 sake, but I have a few articles that I researched, and
19 there are entities out there doing this global research
20 on several different crops in areas, but -- but
21 there's -- there are commercial outlets out there that
22 are doing something akin to that, what the USDA used to
23 do. If you want the name, I can give it to you.

24 Q. Sure.

25 A. I'll submit this as a -- testimony if you want

1 it. It's the Ag Market -- Ag MRC, Agricultural
2 Marketing Resource Center. You can get it online.
3 There's -- they do commodities and products reviews,
4 vegetables, food industry, and they have a specific area
5 on raisins.

6 And there's another one called the California
7 Agriculture periodical, talks about California raisin
8 production and top raisin producing countries.

9 Q. Okay.

10 JUDGE STROTHER: Do we want to have this marked as
11 an exhibit or --

12 MS. CHILUKURI: I mean, I really would defer that
13 to the RAC and Mr. Crowe to determine if they think that
14 it would warrant being entered.

15 THE WITNESS: I can't -- you want to know if these
16 exhibits would be worthy of discussion?

17 MS. CHILUKURI: If you want to enter them into the
18 record, if you're going to continue to refer to them,
19 things like that.

20 MR. CROWE: No, it's just something that I looked
21 at to see if there are alternative approaches to getting
22 these global data that we talked about that become
23 absolute -- or obsolete from our perspective in the
24 order.

25 MS. POWELL: He's done that. The RAC has not.

1 MR. CROWE: Oh, no. This isn't -- I'm talking here
2 as a member, private member, private grower.

3 MS. CHILUKURI: I don't think it hurts. I think
4 you just need to make clear what the purpose of exhibit
5 would be, so I mean, it's really up to you to determine
6 whether or not you want to enter it.

7 MR. CROWE: Exhibits of alternative resources for
8 obtaining the global data necessary -- required in
9 the -- in the Factor 5. We don't necessarily have the
10 wherewithal, we were relying on the NASS report.

11 JUDGE STROTHER: I mean, we can -- we can put them
12 into evidence. You-all have to write the decision,
13 you-all will assign weight to it.

14 MS. CHILUKURI: Right.

15 BY MS. PANKEY:

16 Q. But as you stated in your testimony that, you
17 know, those alternative sources would be cost
18 prohibitive for the Committee?

19 A. Yeah. I looked up the cost, I was trying to
20 get the report, I think they wanted \$1200 or something
21 like that --

22 MS. CHILUKURI: So --

23 MR. CROWE: -- so I sort of begged off on that.

24 MS. CHILUKURI: Okay. Maybe to the extent that you
25 can offer them, that would be useful. We can just

1 indicate these alternative sources.

2 MR. CROWE: Okay. I offer these three.

3 MS. CHILUKURI: Just to have a full and complete
4 record as to what transpired here.

5 MS. POWELL: Well, the NASS report's free.

6 THE WITNESS: Yeah. Just the -- this is a synopsis
7 that I pulled up offline.

8 JUDGE STROTHER: Okay. So the witness will give
9 this to the USDA, and have some copies made, and mark it
10 tomorrow, I guess, or -- I mean, we can assign -- no,
11 let's just do it tomorrow. We don't -- I don't know
12 that we need a witness, I mean, he just said this --
13 there's stuff out there that provides alternatives and
14 that.

15 If I were writing the decision, I wouldn't put
16 a whole lot of weight on that, but, yeah, we probably
17 agree that there are alternatives out there, and maybe
18 they're not practical. I don't know, though. I don't
19 want to slow things up.

20 BY MS. PANKEY:

21 Q. Okay. So in your opinion, how will the
22 removal of Factor 4 affect how the RAC determines their
23 marketing policy?

24 A. I don't think it does. It's just one of those
25 things -- factors to report to the Secretary, and that's

1 no longer required, or it's moot, so I don't think it
2 affects our marketing policy.

3 Q. Because you -- you're not using that
4 information currently, correct?

5 A. Yes.

6 Q. And the same thing for Factor Number 5, how
7 would that affect the RAC if removed?

8 A. Maybe for general knowledge if we had an
9 ability to come up with a world -- world demand, just
10 for knowledge, and like several folks talked about,
11 finding out what our competition is doing. They're
12 very -- also, they're very -- you know, they're pretty
13 competitive, and I have Turkey just came out of a very
14 longstanding drought, so now they're out of the chute
15 strongly, and that's -- I think they're really eating
16 into our -- our marketing ability. So just knowledge of
17 that. Other than that, in terms of our marketing
18 policy.

19 Q. Okay. And then I just have two final
20 questions for you here. In your opinion, does the
21 reduction in Committee size allow for an unfair
22 advantage or disadvantage for any industry group?

23 A. No, I don't think so at all. I was in those
24 meetings.

25 Q. And in your opinion, does the elimination of

1 the Raisin Bargaining Association -- I'm sorry, the
2 cooperative bargaining association designated seat allow
3 for unfair advantage or disadvantage for any industry
4 group?

5 A. I personally don't think so because --
6 Mr. Spate mentioned something about it, but they -- they
7 have presence because of the tonnage factor, and now I
8 think we're just discussing about how much presence.
9 I'm just one vote. They have -- they have -- be
10 representing several producers, that may weigh in,
11 but -- they have a presence, and I'm not sure we should
12 have multiple designated spots.

13 MS. PANKEY: Okay. Thank you. I have no further
14 questions.

15 CROSS-EXAMINATION

16 BY MR. McFETRIDGE:

17 Q. Marc McFetridge, USDA. Thank you again,
18 Mr. Crowe, for your testimony.

19 MR. BROADBENT: It's not on, and he can't hear you.

20 MR. McFETRIDGE: It's on. All right.

21 BY MR. McFETRIDGE:

22 Q. Can you hear me now?

23 A. Yes, sir.

24 JUDGE STROTHER: Yes.

25 MR. CROWE: Use your command voice.

1 BY MR. McFETRIDGE:

2 Q. Will do.

3 In your testimony, you stated that you were a
4 small certified organic raisin producer. Is that small
5 definitely based on the Small Business Administration
6 definition of having less than \$4 million in receipts
7 annually?

8 A. Well, since the SBA doesn't have a microscopic
9 category, I would fall under the small business.

10 MR. McFETRIDGE: All right. Thank you. I just
11 wanted a clarification on that. Thank you very much.

12 CROSS-EXAMINATION

13 BY MS. DORSEY:

14 Q. Samantha Dorsey, USDA.

15 Mr. Crowe, just for clarification, assuming
16 that collecting this information for Factor 5 was not
17 cost prohibitive for the Committee, would you still
18 argue that it's not needed because of the removal of the
19 volume control provisions in the order?

20 A. That's -- that's a tough question. I would
21 say there -- there would be some interest in it, I
22 wouldn't exercise the industry such that it would cost
23 tens or hundreds of thousands of dollars to have a
24 world-wide global aspect using taxpayer dollars and, you
25 know, to inform the Secretary on something he may or may

1 not read, or she may or may not read. It's a global
2 knowledge and perspective of the raisin market, but what
3 are they going to do with this after they've exercised
4 the industry to come and get those data.

5 Q. Okay. So sort of balancing the cost versus
6 the benefit?

7 A. Cost/benefit analysis --

8 Q. Okay.

9 A. -- with our taxpayer money.

10 MS. DORSEY: Thank you, Mr. Crowe. That's all I
11 have for right now.

12 CROSS-EXAMINATION

13 BY MS. CHILUKURI:

14 Q. So, Mr. Crowe, I see that 989.54 is the
15 provision we're talking about; is that correct?

16 A. That's correct.

17 Q. Okay. So can you tell me if I'm reading this
18 right, 989.54(a), "Marketing Policy. Each crop year,
19 the Committee shall prepare and submit to the Secretary
20 a report setting forth its recommended marketing policy,
21 including quality regulations for the pending crop. In
22 developing the marketing policy, the Committee may give
23 consideration to the production, harvesting, processing,
24 and storage conditions of that crop, as well as the
25 following factors," and then it list --

1 A. Right.

2 Q. -- I believe nine factors; is that correct?

3 A. That's correct.

4 Q. Okay. And am I understanding you correctly in
5 saying that it's submitted to the Secretary, but is it
6 used internally by the RAC or its members in another
7 capacity?

8 A. I don't know because I'm not involved in
9 comprising those reports, but the -- the statute states
10 that it's used in an annual report of that crop year
11 reported to the Secretary.

12 Q. Okay.

13 A. And these -- these are required to report to
14 the Secretary on those different factor elements.

15 Q. And just so I can make sure that I'm
16 understanding RAC's proposal, it would be the
17 elimination of Factor 4 --

18 A. Correct.

19 Q. -- and the revision of current Factor 5?

20 A. I think specifically removal of "considering
21 the estimated world raisin supply and demand situation."

22 Q. Okay.

23 A. In the world.

24 Q. Thank you.

25 And I see that you read pages 1 and 2 of your

1 testimony, and I just wanted to confirm that pages 3 and
2 4 are just --

3 A. That's for background.

4 Q. It's for background, it's like the components
5 of the nine points, maybe, with the questions?

6 A. Well, this is the format I believe the USDA
7 recommended to be able to address, if necessary, so --
8 but I think we addressed it in my first two pages, but
9 this is for background.

10 Q. Additional background for us?

11 A. Uh-huh.

12 Q. Okay. Great. Thank you very much.

13 MS. CHILUKURI: And I don't have any additional
14 questions. Thank you.

15 JUDGE STROTHER: Does USDA --

16 Seeing none, anyone else have any questions
17 for this witness?

18 Anything you'd like to say, Mr. Crowe?

19 MR. CROWE: No. Thank you for flying and taking --
20 flying from D.C., that's a tough chore.

21 JUDGE STROTHER: Happy to do it. Thanks.

22 MR. CROWE: And you may be leaving in time for the
23 hurricanes coming. We're getting some rain again, so
24 thank you very much. We appreciate your guys'
25 assistance always, like was mentioned earlier. You're

1 our -- you're our agency that provides great assistance
2 to us farmers, and we really appreciate it.

3 JUDGE STROTHER: Thank you for the kind words.

4 Any objection to Exhibit 26 coming into
5 evidence? Exhibit 26 is admitted.

6 (Whereupon, Exhibit 26 was received
7 into evidence.)

8 JUDGE STROTHER: What do we want to do with the
9 three articles?

10 MR. CROWE: Just use it as background like my other
11 one.

12 MS. CHILUKURI: If we could see copies.

13 JUDGE STROTHER: Yeah.

14 MS. CHILUKURI: Either today or tomorrow, I don't
15 know.

16 JUDGE STROTHER: Yeah. Do you want -- do you have
17 copies, Mr. Crowe, that you can leave for the USDA?

18 MR. CROWE: I don't know how many copies you want.

19 MS. POWELL: We can make them.

20 MS. CHILUKURI: Can you?

21 MS. POWELL: Yep.

22 (Discussion off the record.)

23 JUDGE STROTHER: Will you be here tomorrow?

24 MR. CROWE: I will, sir, Your Honor.

25 JUDGE STROTHER: Okay. I doubt we'll have to call

1 you back, but we'll have copies of the other exhibits
2 tomorrow. We won't -- potential exhibits. We won't
3 mark them.

4 Okay. Let's -- two minutes after 5:00. Any
5 housekeeping before we go?

6 MR. SASSELLI: We have one more gentleman that's
7 been sitting here waiting to testify.

8 JUDGE STROTHER: Do you want to try to do one more?

9 Let's go off the record.

10 (Whereupon, the hearing adjourned
11 until Wednesday, February 14, 2024,
12 at 9:00 a.m.)

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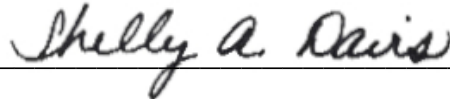
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State of California)
) ss.
County of Fresno)

I, SHELLY A. DAVIS, a Certified Shorthand Reporter in and for the State of California, holding Certificate No. 8947, do hereby certify:

That the proceedings were taken before me at the time and place herein set forth; that the proceedings were reported stenographically by me and later transcribed into typewritten form under my direction; that the foregoing is a true record of the proceedings taken at that time.

DATED: March 2, 2024



SHELLY A. DAVIS, C.S.R. 8947