



APPEARANCES:

ON BEHALF OF THE USDA:

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ANTHONY J. SOUZA, Federal Program Manager, AMS

SUZANNE DASH, Agricultural Economist, AMS

ON BEHALF OF THE PROPONENTS:

JASON RESNICK, Western Growers

CHARLES HALL, Georgia Fruit & Vegetable  
Growers Association

HENRY GICLAS, Western Growers

## I N D E X

## WITNESSES                      DIRECT   CROSS   REDIRECT   RECROSS

Charles Andrews	1886	1892 1911		
Martin Mesh	1921	1944 2001		2016
Kevin O'Dare	2024	2037  2088		

## EXHIBITS

## MARK   RECD

53				1886	1891
54				1920	1944
54A				2092	rej
55				2024	2032
56				2093	2094

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

2 (8:30 a.m.)

3 JUDGE HILLSON: We'll go on the  
4 record at 8:30 a.m., and we are in  
5 Jacksonville. It's October 1, 2009. Happy  
6 new fiscal year to all the federal government  
7 employees here. And this is the fifth day,  
8 the second site, of the leafy greens hearing.

9 And my understanding is that the  
10 people who are opposing the hearing have three  
11 witnesses that they wish to present today. So  
12 if you want to -- if the first witness wants  
13 to come up here to testify, that will be fine.

14 (Pause.)

15 JUDGE HILLSON: Have a seat, sir.  
16 Would you please raise your right hand.  
17 Whereupon,

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

22 JUDGE HILLSON: Okay. Can you

1 please state your name and spell it for the  
2 record.

3 MR. ANDREWS: My name is Charles  
4 Andrews.

5 JUDGE HILLSON: Could you spell  
6 your last name, sir.

7 MR. ANDREWS: A-N-D-R-E-W-S.

8 JUDGE HILLSON: Okay. And you  
9 have a statement you wish to read. Is that  
10 correct?

11 MR. ANDREWS: Yes, I do.

12 JUDGE HILLSON: Okay. I'm going  
13 to mark Mr. Andrews' written statement as  
14 Exhibit 53.

15 (The document referred to was  
16 marked for identification as  
17 Exhibit Number 53.)

18 JUDGE HILLSON: And you may  
19 proceed.

20 DIRECT TESTIMONY

21 MR. ANDREWS: Good morning. I  
22 appreciate the opportunity to speak my piece

1 as a small family farmer.

2 I have farmed a small acreage farm  
3 of 14 acres here in North Central Florida  
4 since 1985, and my farm, Hammock Hollow Herb  
5 Farm, has been certified organic since 1989.  
6 I'm not a Johnny-come-lately to the  
7 sustainable farming community.

8 At present, we have eight  
9 employees that live locally, and I would  
10 venture to say that some meet someone's  
11 standards of living at or very near the  
12 poverty level. The farm's supplemental income  
13 helps, plus our workers' rights to vegetables  
14 helps act as an economic crutch for these low-  
15 income citizens.

16 Approximately 95 percent of my  
17 annual income is derived from our farm. We  
18 sell direct from our farm to customers which  
19 are restaurants, resorts sales and wholesale  
20 brokers here in Florida. Being a certified  
21 farm, we are required to keep documentation on  
22 every input right down to mowing grass and

1 cover crops. Another layer of documentation  
2 in the name of food safety would be a  
3 formidable burden, perhaps doing documentation  
4 to the exclusion of farming.

5           In almost a quarter of a century,  
6 we have never had one food safety issue. I  
7 believe that most small farmers realize that  
8 it would only take one to put them out of  
9 business. The organic sustainable farms here  
10 in our country are the growth engines of  
11 agriculture as evidenced by the percentage  
12 gain in certified organic sales data that I  
13 think few can argue. I believe this to be a  
14 much recently focused interest for the large  
15 corporate food entities here in the United  
16 States.

17           The USDA has been very helpful to  
18 small farmers in support of the farmers'  
19 market programs around the country and other  
20 small marketing efforts. I feel that this is  
21 not a positive position for USDA to put small  
22 farms toes to toes with the larger corporate

1 agriculture and assume a marketing food safety  
2 profile to support these corporate entities.  
3 This is a move away from the buy-local, fresh,  
4 organic when possible that has been propounded  
5 by the USDA for the last several years to the  
6 benefit of small family farms.

7           To present marketing concessions  
8 to large food corporations in the name of food  
9 safety issue to undo a lot of good the USDA  
10 has done in recognition of the growing number  
11 of small family farms that serve their local  
12 communities with fresh, nutritious, healthy  
13 vegetables and herbs.

14           I believe that this proposed  
15 agreement will create unfair marketing  
16 disadvantages for small farmers throughout our  
17 country and will help stifle the effort to  
18 promote healthy, local and fresh vegetables  
19 available for our citizens. I've always felt  
20 the USDA had a mission of democratically  
21 helping all farmers here in the U.S., small  
22 and large, to promote their endeavors to bring



1 wholesome food to our people. The LGMA  
2 proposal is very much in question.

3 Another concern is the cost to  
4 smaller operations for the implementation of  
5 the LGMA. In the last six years, our cost of  
6 seed has increased approximately 800 percent,  
7 fertilizer 150 to 200 percent, while our labor  
8 cost has only been about 15 percent. I give  
9 Christmas bonuses and an end-of-season bonus  
10 according to crop success to my workers.

11 My point is that my producer costs  
12 have risen much faster than the price we  
13 receive for our produce. We as Americans pay  
14 less of a percentage of our income on food  
15 than anyone else on the planet, but few of us  
16 are looking to pay more, the farmer's dilemma.

17 In conclusion, I would like to  
18 quote a revered friend of mine, a poet,  
19 philosopher and farmer from a writing of  
20 nearly 30 years ago of his. "This sort of  
21 thing is always justified as consumer  
22 protection. We need to ask a few questions

1 about that. How are consumers protected by a  
2 system that puts more and more miles,  
3 middlemen, agencies, and inspectors between  
4 them and the producers? How, over all the  
5 obstacles can consumers make producers aware  
6 of their tastes and needs? How are consumers  
7 protected by a system that apparently cannot  
8 improve except by eliminating the small  
9 producer, increasing the cost of production,  
10 and increasing the retail price of the  
11 product?" That's Wendell Berry in his book,  
12 The Gift of Good Land.

13 I thank you, and I truly hope that  
14 the futures of our small farmers are not  
15 adversely affected by this attempt of the  
16 corporate food industry, listed as proponents  
17 of the LGMA.

18 JUDGE HILLSON: Thank you, Mr.  
19 Andrews. I'm going to receive your written  
20 statement into evidence as Exhibit 53.

21 (The document referred to, having  
22 been previously marked for

1 identification as Exhibit Number  
2 53, was received in evidence.)

3 JUDGE HILLSON: And I'm now going  
4 to give the USDA panel an opportunity to ask  
5 you some questions. So does the panel have  
6 any questions of Mr. Andrews? Ms. Schmaedick?

7 CROSS-EXAMINATION

8 BY MS. SCHMAEDICK:

9 Q Good morning. Melissa Schmaedick,  
10 USDA.

11 A Good morning.

12 Q Thank you for your testimony.  
13 Appreciate your coming here today. So my  
14 first question for you is: You mention on the  
15 first page, second paragraph of your  
16 testimony, that the proposed agreement will  
17 create unfair marketing disadvantages.

18 A Yes.

19 Q Can you explain why you think  
20 they're unfair marketing advantages?

21 A Well, I, through the years, have  
22 performed my marketing target basically at

1 resorts here in Florida, such JW Marriott. We  
2 work with Disney or a Disney property, and I'm  
3 quite sure that these larger entities -- you  
4 know, they can afford whatever it might take  
5 in the name of food safety to do whatever  
6 needs to be done or hire someone to do it for  
7 them.

8           If they comply -- it is my  
9 understanding if they comply with this  
10 agreement, then I, as a supplier to them,  
11 would most likely have to comply or not do  
12 business with them. If I don't do business  
13 with them, I don't think that's very helpful  
14 for me as a small farmer.

15           Q       Do Disney or Marriott have their  
16 own standards as customers, their own quality  
17 specifications?

18           A       Yes. Yes, they do.

19           Q       Can you describe what those are?

20           A       I'm not real familiar with their  
21 food safety program. I know that they have,  
22 on occasion, sent samples of our lettuces to

1 labs for, you know, just occasional, random  
2 sampling to check it for E. coli or some kind  
3 of microorganisms.

4 Q So when you sell your product to  
5 them, is it on a -- is it by a contract basis?

6 A No.

7 Q It's just kind of an on-the-spot  
8 sale basis.

9 A Right. Yes. We have like  
10 standing orders more or less, but we work  
11 directly with -- mostly with the chefs.

12 Q Okay. And under the -- you  
13 mentioned that you're a certified organic  
14 producer.

15 A Yes, ma'am.

16 Q And under that system, is there  
17 documentation required?

18 A Quite a bit of documentation.  
19 Yes.

20 Q You mentioned that you sell to --  
21 in direct sales to restaurants and then to  
22 resorts and wholesalers. Do you have -- can

1 you give me an idea of what portion of your  
2 product goes where?

3 A We basically use wholesalers as a  
4 secondary market. If we overproduce for the  
5 restaurants, then we are fortunate enough to  
6 have a kind of safety net, a secondary market,  
7 because we have received the wholesale price  
8 rather than the retail price. Probably 30  
9 percent, 25 to 30 percent goes to wholesale,  
10 and then the remainder is to the retail  
11 market, to the resorts and restaurants.

12 Q Okay. And do the wholesalers also  
13 have any specific requirements on quality of  
14 product?

15 A The particular wholesaler that we  
16 use, he handles strictly certified organic  
17 products, so therefore the requirement -- the  
18 answer is, yes, that you have to be a  
19 certified organic farmer with a current  
20 standing or certificate.

21 Q Are you aware of any particular  
22 practices that would be distinctly different

1 under the proposed program as opposed to what  
2 you're currently doing now, other than the  
3 documentation issue?

4 A Well, the documentation certainly  
5 is a big -- would be a big part of it. I'll  
6 have to be honest. I left the farm at dark  
7 last night, and I've got irrigation systems  
8 put on hold right now, so I really haven't had  
9 a whole lot of time to digest the whole  
10 proposal. I don't understand very clearly.  
11 To me, it's more like reading an insurance  
12 policy and understanding it, and not having --  
13 you know, unless you're a lawyer. So the  
14 answer is I don't understand, you know, the  
15 proposal completely. No.

16 Q Have you read the proposal,  
17 though?

18 A I have, yes, read parts of it.  
19 Right.

20 Q It is my understanding in the  
21 proposal as it is currently drafted that there  
22 would be a mechanism that would allow for

1 input from different interest groups in the  
2 development of metrics or best practices. Is  
3 that your understanding?

4 A Can you tell me if you have an  
5 opinion about that process?

6 A I'm just against it totally,  
7 simply put. I think that, you know, my record  
8 as far as a farm producing clean, healthy,  
9 certified organic foods stands for itself. I  
10 feel that I shouldn't -- I just feel that I'm  
11 being pushed into a corner by that I have to  
12 comply or lose customers over someone else's  
13 suggestions or just putting in another layer  
14 of rules and regulations to conform.

15 Q You mentioned that a food safety  
16 incident would be devastating for small  
17 farmers.

18 A Sure. Yes.

19 Q Did you currently have a food  
20 safety program, or do you take measures on  
21 your farm to --

22 A I attended an advanced inspectors



1 training class in 1997, and it was food safety  
2 as a HACCP model, building HACCP models,  
3 basically for food safety issues. I have --  
4 we're very fortunate where our farm's located.  
5 We were in close proximity to the University  
6 of Florida. Their Institute for Food and  
7 Agricultural Science is a large part of the  
8 University of Florida, and they have a whole  
9 food safety almost college in their ag  
10 department, and I've conferred with certain  
11 individuals there when we have questions.

12 I do have a food safety folder. I  
13 have a publication by the WGA from California,  
14 which I had to pay \$40 for because I wasn't a  
15 member. So to answer your question, yes. We  
16 do have a food safety program.

17 Q So there are specific practices  
18 that you follow on your farm?

19 A Yes.

20 Q In your testimony, you mentioned  
21 that certain costs have increased, your cost  
22 of seed by 800 percent, fertilizer by 150

1 percent to 200 percent, while your labor costs  
2 are only increasing by 15 percent. I'm --  
3 could you explain how you think the proposed  
4 program would be associated with those  
5 increased costs.

6 A Well, it's my understanding that  
7 if these agreements were to come into effect,  
8 that there are certain costs to be shared by  
9 everyone that is involved with LGMA, so that's  
10 a cost, another layer of cost on whoever  
11 participates.

12 Q Are you aware that under the  
13 proposed program, the cost of the GAP audit  
14 would actually be paid for by the handler?

15 A And that's the only cost that  
16 would be involved for someone who  
17 participated?

18 Q Well, I can't actually answer  
19 that, because I'm not testifying. But are you  
20 aware that there's a provision within the  
21 proposed language that handlers --

22 A No. No, I'm not.

1           Q        You're not. Does that -- in your  
2 opinion, would that help alleviate some of the  
3 cost burden?

4           A        That's not the -- my point. My  
5 point is I'm sure there would be  
6 documentation. If the program was to be  
7 effective, there would be certain  
8 documentation that would be required of  
9 participants. That is a cost. I don't have  
10 the time. I'm one person. I don't have --  
11 I'm the accountant. I do everything. I make  
12 phone calls to the chef. I go out in the  
13 field. I hoe when it's necessary. I plant.  
14 I have good help, but it's just I don't have  
15 time for more documentation.

16          Q        You have a quote by Wendell Berry.  
17 Do you know Wendell Berry personally?

18          A        I met him.

19          Q        I believe that concludes my  
20 questions. Thank you.

21          A        Thank you.

22                    JUDGE HILLSON: Are there any

1 other questions from the panel? Ms. Carter?

2 MS. CARTER: Antoinette Carer with  
3 the USDA.

4 BY MS. CARTER:

5 Q Good morning, Mr. Andrews.

6 A Good morning.

7 Q I just have a couple of follow-up  
8 questions for you. You stated that your farm  
9 is an herb farm. Could you tell us  
10 specifically what products or commodities you  
11 produce?

12 A Okay. Fine. We grow a lot of  
13 vegetables, small what they call specialty  
14 vegetables for the upscale restaurants, like  
15 baby turnips, baby carrots, little small,  
16 petite-type vegetables. We grow a lot of the  
17 European-type varieties of lettuces. We grow  
18 maybe 14 to 16 different culinary herbs.

19 In November we have -- our  
20 diversity there on the farm is probably as  
21 many as 60, 65 different types, varieties of  
22 lettuces and herbs and vegetables. So we're

1 quite diverse, so we're trying not to put all  
2 our eggs in one basket.

3 Q You also, in response to Ms.  
4 Schmaedick's, one of her questions, you  
5 indicated that there are -- that you're  
6 currently in some best practices. Could you  
7 explain specifically what those things are  
8 that you're currently doing?

9 A Well, we're adhering basically to  
10 the organic standards. We use -- we  
11 incorporate manure as a nutrient in our  
12 fertility program. We wait -- well, we  
13 started -- we used to apply raw manure, but we  
14 no longer do that. Now what we do is we do a  
15 composting process, which is we incorporate  
16 the carbon and the manure, and we put it in a  
17 compost pile. I have a probe thermometer and  
18 monitor the pile and turn it five times, 15  
19 days, and the temperature needs to vary  
20 between 130 and 171 degrees to kill all the  
21 pathogens and the weed seed.

22 And that's probably one of the

1 more important health issues that's been in  
2 the organic community, and I think that's  
3 probably a big source of a lot of the food  
4 safety factors of the spread of E. coli.

5           We do use ground water from a  
6 well, 180-foot-deep well from the aquifer. We  
7 do not use surface water for irrigation. We  
8 use a bleach solution when we rinse our  
9 vegetables for our post-harvest handling. We  
10 harvest things in the morning. Usually  
11 everything's harvested before ten or eleven  
12 o'clock in the morning. They're fresh,  
13 vibrant.

14           We wash and clean and package  
15 them, and they're in a 38-degree cooler within  
16 an hour, two hours after harvest, and we ship  
17 on the same day, so the freshness and storage  
18 is not a factor. We don't inventory anything  
19 more than usually 24 hours.

20           We ask employees not to come to  
21 work sick or sneezing or coughing. I guess --

22           Q       Are there any other requirements

1 that you place on your employees with regards  
2 to the handling of the products?

3 A Well, I mean, you know, we have --  
4 they wash their hands after they go to the  
5 bathroom. If they drop something on the  
6 ground when they're packing it, it has to go  
7 through -- either it's discarded or it has to  
8 go through the bleach solution again,  
9 basically just sanitation.

10 Q You mentioned that you are a  
11 certified organic operation, your operation  
12 is.

13 A Yes, ma'am.

14 Q How many audits do you undergo  
15 with regards to, I guess, maintaining your  
16 certification for that program on an annual  
17 basis?

18 A There's an annual inspection for  
19 recertification.

20 Q Okay. And do you undergo any  
21 other type of audits per -- at the request of  
22 your buyers?

1 A No. Not that I can recall.

2 Q Okay. That's all I have. Thank  
3 you.

4 A Uh-huh.

5 JUDGE HILLSON: Does the panel  
6 have any other questions? Ms. Dash?

7 MS. DASH: Suzanne Dash.

8 BY MS. DASH:

9 Q I think Antoinette asked the same  
10 question, but maybe mine's a little more  
11 general. I only have one question. Do any of  
12 your buyers currently have any food safety  
13 requirements for you?

14 A I think -- I haven't been  
15 approached with a list or any kind of formal  
16 agreements or anything for food safety. As I  
17 say, Disney has on occasion in the past taken  
18 samples and sent them to food labs for random  
19 testing, for E. coli or salmonella. We invite  
20 the culinary staff and have had many  
21 visitations from the restaurants, the chefs  
22 and the culinary crew to come to our farm and



1 be more intimate as far as like the source of  
2 where their food is coming from, the  
3 educational processes involved, and just  
4 the -- and cook and drink a little wine  
5 together.

6 But as far as anything formal, I  
7 don't think I've ever received anything  
8 written or anything, if that was your  
9 question.

10 JUDGE HILLSON: Any other  
11 questions? Mr. Souza?

12 MR. SOUZA: Anthony Souza, USDA.  
13 Thank you.

14 BY MR. SOUZA:

15 Q Good morning.

16 A Good morning.

17 Q In your prepared statement, in the  
18 second paragraph, you make a statement, "This  
19 is a move away from buy-local, fresh,  
20 organic." Could you elaborate what you mean  
21 by that?

22 A Well, I think that we understand

1 that a lot of our produce here, especially  
2 this time of year, leaf vegetables come from  
3 California here in Florida, and so if that is,  
4 you know -- that sources or whatever is  
5 maintained, then it would -- if the small  
6 producers are inhibited by this agreement,  
7 then the local people that that small farmer  
8 serves would no longer, you know -- if he goes  
9 out of business, then he's not going to be  
10 able to serve that market, that local market.

11 I feel that there's really a  
12 growing impetus to the local farm movement.  
13 In 23, 24 years, I've seen -- when I first  
14 began, I was pretty much alone. I felt that  
15 way, and that's easy for a small farmer to  
16 feel -- to be in that position. But in the  
17 last, say, ten years or so, there has been an  
18 explosion of small farmers that like to get  
19 into growing or an alternative occupation, and  
20 I've just --

21 I used to confer with a gentleman  
22 at the USDA there in Washington, and I don't

1 even know if the office -- perhaps you can  
2 tell me -- if it still exists. I think it's  
3 called the Department of Small Farms. The  
4 gentleman's name was Bud Kerr. Anyone  
5 remember Bud or -- he used to have a little  
6 peach farm near Beltsville.

7           But he used to call, and I'm  
8 talking ten, twelve years ago, and he used to  
9 call, and we had conference calls and talks,  
10 just informal talks. And he more or less kept  
11 me in step with the growth that he was  
12 familiar with and people that he was hearing  
13 from. So the small --

14           I think it's just that the local  
15 markets, people have started to feel that --  
16 be more aware of their food, where -- and to  
17 know the source of their food. That's a hard  
18 thing to do when you're 2,000 miles from the  
19 producer. So that's -- I guess, I don't know  
20 if that answers your question or not, but I  
21 just feel that the closer people are to the  
22 people that produce their food, then the food

1     itself has a story behind it.  They know where  
2     their food is coming from, and it's just  
3     something that is -- I feel is moving in the  
4     right direction, and I'm glad to be a part of  
5     it.

6           Q       With that being said, how do you  
7     feel a National Leafy Greens Marketing  
8     Agreement would put you at a disadvantage or  
9     possibly put you out of business?

10          A       Well, I thought I went through  
11     that.  It's my understanding that, say, Disney  
12     or Starwoods or whoever I'm working with, if  
13     they were a signator or whatever the term is  
14     on this agreement, I more or less would have  
15     to fall in line and be a signator also or not  
16     do business with them.

17          Q       Thank you.

18                   JUDGE HILLSON:  Anything else from  
19     the panel?  Ms. Deskins?

20                   BY MS. DESKINS:

21          Q       Good morning.  Sharlene Deskins,  
22     USDA, Office of General Counsel.  I just

1 wanted to clarify a couple of things in your  
2 statement. Is your entire farm certified as  
3 organic, or is it just this herb farm?

4 A No. Our entire -- well, I think  
5 14 acres of the farm is certified. I have 26  
6 acres, but we're in a heavily wooded area, and  
7 there's a lot of wetlands around us, so we  
8 don't farm those areas. So for certification  
9 purposes, just the part we farm, the hickory  
10 trees and oaks and the wetland swamp are not  
11 certified organic, but they are mine. I have  
12 26 acres.

13 Q Okay. And because you say you're  
14 the herb farm, is just the herb farm then  
15 certified organic, or the entire parts that  
16 you farm?

17 A Everything we produce.

18 Q Okay. Okay. The other question I  
19 had: You said that if the National Leafy  
20 Greens Agreement went through, your level of  
21 documentation would increase. Can you  
22 estimate, you know, how much more

1 documentation you anticipate having per week?

2 A Well, I don't think the  
3 agreement's even in place now or it's --

4 Q Yes. I know. I'm trying to see  
5 if you could see if you estimate. Based on  
6 reading the agreement, do you have any  
7 estimate of how many hours more per week you'd  
8 have to spend on documentation, just if you  
9 know?

10 A Well, I mean, I haven't been  
11 confronted with the parameters of what would  
12 be required, and I don't think it's been  
13 formalized, so that's a real tough question.  
14 I couldn't answer that right now honestly.

15 Q Okay. Thank you.

16 JUDGE HILLSON: Do the proponents  
17 have any questions of this witness? Go ahead,  
18 Mr. Giclas.

19 MR. GICLAS: Hank Giclas, Western  
20 Growers.

21 CROSS-EXAMINATION

22 BY MR. GICLAS:

1           Q       Mr. Andrews, thank you very much  
2 for your testimony this morning. I just have  
3 one question. You say that your principal or  
4 primary markets are Disney and JW Marriott,  
5 places like that. Correct?

6           A       I do have some independent  
7 restaurants that are much smaller. They're  
8 probably a larger portion of my business.  
9 Yes.

10          Q       Okay. Would you categorize those  
11 restaurants, those operations, as food safety  
12 buyers?

13          A       Food service buyers?

14          Q       Yes.

15          A       Well, they buy my food, my  
16 produce. Yes.

17          Q       Well, I just am -- I guess I was  
18 curious if you're aware that under the  
19 definition of handle and handler that's  
20 proposed in the marketing agreement, you're  
21 aware of the fact that food safety is actually  
22 not eligible to sign up as a handler. In

1 other words, they couldn't become signatory to  
2 the marketing agreement. Would that make you  
3 more comfortable with the marketing agreement?

4 A I'm not comfortable with the  
5 agreement at all, I don't think. I don't  
6 really think that the agreement does a whole  
7 lot for food safety, to be honest with you.

8 Q Okay. Thank you.

9 JUDGE HILLSON: Okay. Go ahead,  
10 Mr. Resnick.

11 MR. RESNICK: Thank you, Your  
12 Honor. Jason Resnick.

13 BY MR. RESNICK:

14 Q Would you -- good morning. Thank  
15 you for your testimony this morning. Would  
16 you please turn to the document in front of  
17 you. It's the Federal Register notice. About  
18 four pages in, the page ends in 68. And then  
19 I'll direct your attention to 970.15, Leafy  
20 green vegetables. Do you see that?

21 A Yes.

22 Q Would you, please, just for the



1 record, identify which, if any, of the leafy  
2 green vegetables identified in 970.15 you  
3 grow?

4 A For me to identify which ones we  
5 grow?

6 Q Correct.

7 A We grow arugula. We grow chard.  
8 We grow cilantro. We grow endive. We grow  
9 escarole. We grow kale. We grow lettuce, all  
10 types. We grow parsley. We grow raddichio.  
11 We grow spinach. We do a mix. We grow cress.  
12 We grow dandelion. We grow mache, mizuna, tat  
13 soi.

14 Q Thank you. Would you -- are you  
15 aware that there's a California Leafy Greens  
16 Marketing Agreement?

17 A Yes.

18 Q Are you aware there's an Arizona  
19 Leafy Greens Marketing Agreement?

20 A I'm not sure about Arizona. I  
21 know they had one in California for the last  
22 couple years or so.

1           Q       What do you think distinguishes  
2 your product from products grown in California  
3 and other parts of the country?

4           A       Well, it's fresher.

5           Q       Do you sell exclusively to local  
6 markets?

7           A       Our markets changed through the  
8 last about five or six -- actually since 9/11.  
9 We used to sell as far north as New York, but  
10 that market has basically just kind of faded  
11 away. Local being what? What do you define  
12 as local? Hundred miles? 200 miles? Or  
13 Florida? We sell basically in Florida.

14          Q       And do you feel that your  
15 customers that you sell to find your product  
16 fresh and unique in the manner and location  
17 where it's grown?

18          A       Yes.

19          Q       Do you think a Leafy Greens  
20 Agreement, National Leafy Greens Marketing  
21 Agreement, would change the way your buyers  
22 see your produce?

1           A        I don't think that would -- is  
2 really the issue, but, anyway, I don't think  
3 that it is a piece -- something on a piece of  
4 paper, an agreement, would influence a chef,  
5 how he looks at a product that he's trying to  
6 obtain the highest quality. I think his  
7 decision basically would be made on the  
8 product, not an agreement.

9           Q        And as Mr. Giclas pointed out, a  
10 Disney could not be a signatory of the  
11 agreement. Do you believe that regardless of  
12 whether there's a National Leafy Greens  
13 Marketing Agreement that Disney will continue  
14 to buy your product as it has?

15          A        I don't know what Disney would do.  
16 I haven't -- you know, I don't -- and for the  
17 record, too, actually it's not -- it's  
18 Starwoods Resort that we -- they lease a  
19 property there at Disney. We have done  
20 business with Disney, maybe seven to eight  
21 years ago.

22          Q        But the chef who buys product from

1 you directly, who could not be a signatory to  
2 the agreement, you realize that you could  
3 continue to sell your product to that buyer as  
4 you have before. Do you understand that, even  
5 if a leafy green agreement goes into effect?

6 A Okay. Let me ask you a question.  
7 Then who would be affected -- who is affected  
8 by the leafy green then, if not the buyers  
9 or --

10 Q Well, I'm afraid I can't answer  
11 questions for you, but we'd be happy to talk  
12 to you off-line and allay any concerns you  
13 might have about the agreement.

14 A Okay. I'd be open for that  
15 dialogue or whatever.

16 Q We're happy to discuss it. If the  
17 Leafy Greens Marketing Agreement goes into  
18 effect, would you be willing to give input  
19 into the concerns of small farmers and organic  
20 farmers?

21 A I certainly would.

22 Q Thank you. I have nothing

1 further.

2 JUDGE HILLSON: Okay. Do you want  
3 to ask questions?

4 VOICE Yes.

5 JUDGE HILLSON: You have to go up  
6 to the microphone, and you have to identify  
7 yourself.

8 VOICE: I just had one question,  
9 Mr. Andrews. Have you ever thought about  
10 selling --

11 JUDGE HILLSON: You need to  
12 identify yourself.

13 MS. LOVERA: I'm sorry. Patty  
14 Lovera from Food & Water Watch.

15 BY MS. LOVERA:

16 Q And so the question is: Just have  
17 you ever thought of doing wholesale or to  
18 someone that might be a handler beyond the  
19 chef world? Has that been an option for you?

20 A I'm sorry.

21 Q So in your -- right now, you're  
22 selling mostly to restaurants.

1           A        Yes.  I do -- I sell wholesale.  I  
2 do sell wholesale to -- well, I have on  
3 occasion sold to three or four brokers,  
4 different brokers.  Now we're kind of narrowed  
5 down to one, maybe two brokers, so --

6           Q        So it's been a part of your mix at  
7 some point of where you sell to.

8           A        Pardon?

9           Q        So it's been a part of your mix at  
10 different points?

11          A        Yes.  At all points we have  
12 depended on brokers for our secondary or our  
13 over-production, things we couldn't sell  
14 directly at the retail level.

15          Q        Okay.  Thanks.

16                    JUDGE HILLSON:  Okay.  Any further  
17 questions?

18                    (No response.)

19                    JUDGE HILLSON:  You may step down,  
20 sir.  Thank you for testifying.

21                    (Whereupon, the witness was  
22 excused.)

1 JUDGE HILLSON: I'm ready for your  
2 next witness.

3 (Pause.)

4 JUDGE HILLSON: Would you please  
5 raise your right hand, sir.  
6 Whereupon,

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

11 JUDGE HILLSON: Okay. Could you  
12 please state your name and spell it for the  
13 record.

14 MR. MESH: My name's Marty Mesh,  
15 M-E-S-H, and the first one's M-A-R-T-Y -- or  
16 I-N, Martin.

17 JUDGE HILLSON: Okay. And, Mr.  
18 Mesh, I'm going to mark your written statement  
19 as Exhibit 54.

20 (The document referred to was  
21 marked for identification as  
22 Exhibit Number 54.)

1 JUDGE HILLSON: And are you going  
2 to read your statement?

3 MR. MESH: Yes, sir.

4 JUDGE HILLSON: Go right ahead.

5 MR. MESH: Can I get a glass --  
6 can I get that water that's over there?

7 JUDGE HILLSON: I think it's  
8 coming your way. Why don't you wait and let  
9 it come to you.

10 (Pause.)

11 JUDGE HILLSON: I have a giant  
12 pitcher here. If you need more, just let me  
13 know.

14 MR. MESH: What's that?

15 JUDGE HILLSON: I said, I have a  
16 giant pitcher of water here, so --

17 MR. MESH: Oh, good. Thank you.

18 JUDGE HILLSON: -- there's plenty  
19 available. Go ahead.

20 DIRECT TESTIMONY

21 MR. MESH: Thank you for the  
22 opportunity to present testimony today. My



1 name is Marty Mesh. I am the executive  
2 director of Florida Certified Organic Growers  
3 and Consumers, Incorporated, which does  
4 business as Florida Organic Growers, or FOG,  
5 based in Gainesville, Florida.

6 In addition, I serve on the boards  
7 of the Organic Trade Association and am the  
8 past board president and current board member  
9 of the Southern Sustainable Agricultural  
10 Working Group. I serve on the board of the  
11 Accredited Certifiers Association, an  
12 association of USDA National Organic Program  
13 accredited organic certification agents.

14 I started farming conventionally  
15 in 1972 and quickly became committed to  
16 organic food production out of concerns for  
17 the environmental farm worker and farmer  
18 health, and, yes, food safety. I helped start  
19 Bellevue Gardens Organic Farm in Archer,  
20 Florida, in 1976. In its 34-year history,  
21 including growing a variety of crops including  
22 arugula, kale and cantaloupes, growing and

1 shipping watermelons throughout the country,  
2 and using hogs as part of the our crop  
3 rotation, Bellevue Gardens has never had a  
4 report of a food safety incident.

5           The comments submitted herein  
6 represent the official position only of  
7 Florida Certified Organic Growers and  
8 Consumers, Incorporated, or FOG. FOG is a  
9 501(c)(3) not-for-profit corporation  
10 established in 1989. FOG currently operates  
11 two major programs: Education & Outreach, and  
12 a separate regulatory compliance program,  
13 Quality Certification Services.

14           FOG's Education & Outreach Program  
15 promotes organic and sustainable agriculture  
16 and healthy and just food systems, working  
17 diligently to educate producers, consumers,  
18 media, institutions, and government about the  
19 benefits of organic and sustainable  
20 agriculture. Staff present at tours,  
21 conferences, workshops, classes and other  
22 educational venues in Florida, across the

1 United States, and internationally to  
2 audiences ranging from farmers and  
3 agricultural service providers to school  
4 children, college students, and citizens.

5 Education and outreach projects  
6 include but are not limited to organic and  
7 sustainable farming practices, Farm Bill  
8 opportunities, explanation of regulations  
9 regarding organic certification, marketplace  
10 trends, sustainable food systems, agricultural  
11 social justice, and opportunities and  
12 challenges in the organic marketplace. FOG's  
13 food systems work, which includes many years  
14 ago a Buy Local program, school and community  
15 gardens, nutrition education, youth job  
16 training using agriculture and processing, and  
17 is currently installing raised bed organic  
18 gardens to increase the vegetable consumption  
19 of low-income folks, as well as working on  
20 many policy efforts relating to local food  
21 systems.

22 To meet the demands of a growing

1 organic industry, FOG operates Quality  
2 Certification Services, QCS, a USDA and ISO  
3 Guide 65 accredited program that offers USDA  
4 National Organic Program, Canadian, Japanese,  
5 and European Union accredited certification  
6 options. QCS certifies organic farming,  
7 wildcrafting, livestock, processing, packing  
8 and handling entities large and small in more  
9 than 30 states and 13 countries. QCS also  
10 offers Agricultural Social, Aquaculture and  
11 Vegan certification options. Specific to  
12 today's subject, QCS certifies 44 leafy green  
13 producers in Florida and a total of 111  
14 nationwide.

15 FOG is celebrating its twentieth  
16 anniversary this year, and we are looking back  
17 at 20 years of remarkable advances in farming  
18 practices, food production, and agricultural  
19 technology. I should mention that the  
20 difference in when I started farming  
21 organically in 1973 the growth of a global  
22 multi-billion-dollar organic industry which

1 was really done up until 2001 with little to  
2 no government, land grant, research support,  
3 but was made possible by citizens' simple  
4 choices in the marketplace.

5           Now we see a commitment to growing  
6 more farmers and more soil and reinvigorating  
7 local food production and processing as we  
8 prepare for the future. The fact that food  
9 safety is one of the main issues now after all  
10 the other developments feels somewhat like a  
11 step backwards.

12           The proposed National Leafy Greens  
13 Marketing Agreement as it stands is not the  
14 answer to growing food safety concerns. As  
15 citizens lose faith in their current food  
16 options, they're becoming more and more  
17 educated in food production, policy issues,  
18 and are looking for a program that provides  
19 real food safety results and supports, not  
20 threatens, smaller scale farms and the  
21 availability of locally grown produce.

22           For our producers, the proposed

1 agreement creates fears about maintaining  
2 market viability. As stated on the National  
3 Leafy Greens Marketing Agreement web site,  
4 those who do not sign on will not "enjoy the  
5 benefits of the program," including "market  
6 preference both domestically and  
7 internationally."

8           The producers we work with are  
9 also concerned about contradictions and  
10 duplications with other national programs,  
11 including the National Organic Program,  
12 environmental and conservation programs, and  
13 new food safety regulations sure to follow  
14 legislation currently being developed and  
15 considered.

16           Food safety -- I hope we got this  
17 right. Hang on. I think they may be out of  
18 order there.

19           JUDGE HILLSON: Do you want to go  
20 off the record to sort things out for a  
21 minute? Go ahead.

22           (Off the record.)

1 JUDGE HILLSON: You may continue.

2 MR. MESH: Thank you. Following  
3 are some of our areas of concern: Food safety  
4 is not a marketing issue. We would like to  
5 reiterate previous testimony given in  
6 Monterey, California, by both Steve Etko and  
7 Patty Lovera. According to the Merriam-  
8 Webster dictionary, food is defined as  
9 something that nourishes or sustains.  
10 Consumers should be able to expect that, at  
11 the very least, food in the marketplace will  
12 not harm or kill them.

13 This is a basic and reasonable  
14 expectation. Food safety cannot properly be  
15 assessed as a quality. There is no grading  
16 scale or degree of quality that can  
17 appropriately be associated with food safety.  
18 Food is either safe or not safe, and once it  
19 is not safe, it's no longer food.

20 Marketing advantage should not  
21 come into play. Consumers should not be led  
22 to believe that one brand is safer than

1 another. If a NLGMA is developed and  
2 improvements in food safety result from  
3 participation in the program, consumers should  
4 not be put at a higher risk as a penalty for  
5 selecting the wrong brand, namely product from  
6 producers and handlers not participating in  
7 the voluntary, quote/unquote, LGMA.

8           Is the proposed LGMA really  
9 voluntary? Technically, the proposal presents  
10 a voluntary program, but in practice, when a  
11 handler signs on, the producer will then have  
12 the only option of either also signing on or  
13 seeking other --

14           JUDGE HILLSON: Hold on a second.  
15 Your mike just stopped working.

16           MR. MESH: Oh, I'm sorry.

17           JUDGE HILLSON: It's not your  
18 fault. I don't think you did anything wrong.

19           MR. MESH: Oh, I'm sorry.

20           JUDGE HILLSON: Okay. You may  
21 continue now. Go ahead.

22           MR. MESH: What is the last word



1 you got?

2 JUDGE HILLSON: You just broke  
3 off. Your last half-sentence was lost  
4 basically.

5 MR. MESH: Producers will then  
6 only have the options of either signing or  
7 seeking other customers. For a small or  
8 medium-sized producer, especially one looking  
9 to increase production, this leaves little  
10 option, and the additional costs can prove to  
11 be too burdensome to continue production.

12 When a producer has a longstanding  
13 relationship with a handler that has been  
14 completely incident-free, interfering with  
15 that relationship may not promote food safety.  
16 To the extent that a voluntary program might  
17 improve food safety, it could only do so by  
18 affecting precisely what proponents say it  
19 won't, effectively forcing producers to  
20 implement the voluntary agreement or forcing  
21 out of the market those producers who won't or  
22 can't afford to implement the agreement.

1           In my communication with a  
2 certified organic farmer whose farm is ten  
3 acres and who owns a wholesale operation  
4 separately and thus would be a handler, the  
5 LGMA would preclude his continuation of  
6 purchasing from many farms who would not be  
7 able to comply, thus ending their market  
8 opportunity at a time when their products are  
9 desired the most.

10           The LGMA will not reduce the  
11 burden on growers and small businesses. Many  
12 producers feel they are already being  
13 monitored for food safety and that additional  
14 programs will be a waste of time and money,  
15 both for themselves and for the controlling  
16 agency, without any beneficial effect on food  
17 safety.

18           Because AMS has no authority to  
19 prevent supermetrics, buyers will be able to  
20 require participation in both their own  
21 programs and in the LGMA. For an organic  
22 producer, this would mean at least four sets

1 of standards to maintain: FDA regulations,  
2 you know, the ones that are existent and  
3 anticipated; organic standards; the buyer's  
4 supermetrics; and the LGMA. The metrics  
5 haven't even been yet put forward to us to  
6 see. As yet it is unclear how those metrics  
7 in the proposal will handle organic standards.

8           These programs mean extra cost to  
9 the producer, both in time and in money. In  
10 considering the California Leafy Greens  
11 Marketing Agreement, which presumably will be  
12 the model for the national agreement's  
13 metrics, producers saw a range of 17 to 28  
14 percent of their net income going to food  
15 safety costs. Also, the per-acre costs are  
16 higher for small producers than for large.  
17 These results come from the UC-Davis report by  
18 Shermain Hardesty and from Joanne Baumgartner,  
19 both of whom are on record in the Monterey  
20 hearing.

21           With the model of California's  
22 agreement, the disproportionate burden in

1 costs no smaller producers does not coincide  
2 with their risk potential in comparison to the  
3 greater risk potential of larger producers.  
4 Once past the farm gate, product from large  
5 producers travels through many critical points  
6 of contact, in processing, bagging,  
7 transportation, storage and retailing, and  
8 then reaches a vast number of consumers.

9           While there are details that have  
10 not been determined yet for this proposal,  
11 past experience, such as the California Leafy  
12 Greens Marketing Association, does not bode  
13 well for smaller producers who would choose to  
14 participate. In fact, USDA's history over my  
15 lifetime has not earned the trust that smaller  
16 scale and the vast majority of family farms  
17 benefit from many USDA marketing orders and  
18 programs. There has been improvement in  
19 direct marketing with the support of farmers'  
20 markets, but this proposal would affect many  
21 farms that sell beyond just direct marketing.

22           The same certified organic farmer

1 and handler pointed out that a crop-by-crop  
2 reactive strategy is not what's needed in  
3 thinking about food safety solutions to  
4 diverse multi-crop farms that are of interest  
5 to many new farmers as well as the backbone of  
6 smaller scale organic farms.

7           Concerning economic impact on  
8 small business, I also question the resulting  
9 expense in accreditation or auditing fees from  
10 USDA. Just our own certification program,  
11 which is competently operated but only  
12 certifies about 400 mostly smaller-scale  
13 operations, has seen accreditation costs last  
14 year to cover predominantly USDA and staff  
15 time exceed \$50,000 in quality system  
16 maintenance and actual hard accreditation  
17 costs from ISO, NOP and other accreditation  
18 site visits and audits. We really have  
19 nowhere else to turn except to pass the costs  
20 on to the folks that are using the program.

21           What does the consumer have in the  
22 NLGMA development? This proposed agreement

1 has allowed for insufficient public comment  
2 too late in the process. This raises  
3 suspicions that consumer involvement has more  
4 to do with selling the seal than achieving  
5 real advances in food safety.

6 Consumers Union West Coast office  
7 director Elisa Odabashian states, "All the  
8 safety standards will be developed by big food  
9 processors and other members of the industry.  
10 There will only be one consumer member on  
11 their Administrative Committee, and that  
12 consumer member will be chosen by the food  
13 processors." Consumers Union opposes the  
14 proposed National Leafy Greens Marketing  
15 Association.

16 This voluntary program provides  
17 consumers as well as farmers with no  
18 reasonable confidence that its food safety  
19 metrics will be duly and independently  
20 researched, transparently deliberated, and  
21 decided on by a body that adequately involves  
22 all stakeholders. The LGMA does not answer

1 the question of who ultimately is accountable,  
2 nor how the agreement would be regulated and  
3 enforced. Further, a National Leafy Greens  
4 Marketing Association could confuse consumers  
5 into wrongly believing that the federal  
6 government has taken on the accountability.

7           If the NLGMA is approved, who is  
8 then in control of the standards? The  
9 metrics, audit fees, and traceability  
10 requirements will be determined after the  
11 NLGMA is approved, which it's hard to comment  
12 on metrics that you don't see. At that point,  
13 the LGMA Administrative Committee of 23  
14 members, chosen from the industry in five  
15 delineated zones, will establish these  
16 requirements. The zones are separated in a  
17 way that does not make sense in terms of  
18 regional applicability.

19           There is a lack of justification  
20 in regards to the zone definitions of the  
21 committee configuration. When the two groups  
22 that will be affected the most, consumers and

1 smaller growers, are represented the least, it  
2 feels a bit unfair. A government program,  
3 even a voluntary one, that imposes standards  
4 that affect everyone, directly or indirectly,  
5 should not be written or controlled by just  
6 one segment of the industry.

7           How to reconcile the NLGMA with  
8 other programs? USDA recently launched the  
9 "Know Your Farmer, Know Your Food" initiative.  
10 This is a new and exciting chance for  
11 beginning, socially disadvantaged, limited  
12 resource and existing farmers to enter the  
13 institutional food service market by selling  
14 to local schools, institutions, and  
15 universities, thus providing new market  
16 opportunities.

17           The obstacles that the NLGMA would  
18 present to small and local producers directly  
19 contradict the goals of the "Know Your Farmer,  
20 Know Your Food" initiative. As stated by USDA  
21 Deputy Secretary Merrigan, "Americans are more  
22 interested in food and agriculture than at any



1 time since most families left the farm. 'Know  
2 Your Farmer, Know Your Food' seeks to focus  
3 that conversation on supporting local and  
4 regional food systems to strength American  
5 agriculture by promoting sustainable  
6 agricultural practices and spurring economic  
7 opportunity in rural communities."

8           This is probably the most visible  
9 USDA program at the moment. It is what the  
10 public sees the USDA doing. The proposed  
11 agreement will make the success of this  
12 initiative much more difficult. The marketing  
13 of food safety does not encourage the  
14 connection between Americans and their food  
15 that "Know Your Farmer" initiative seeks.

16           And there is a difference between  
17 food safety and the marketing of food safety.  
18 Again, the relationship between a community  
19 and its local producers should not be  
20 superseded by a marketing agreement.  
21 According to Mitch, the certified organic  
22 farmer and Global Organics wholesaler,

1 "Without the ability to source from small,  
2 local farms, our business is at risk."

3           If a grower, handler or group  
4 wants to frame food safety as a marketing  
5 tool, that is their right. But it should be  
6 on their time and on their dime. Involving  
7 the U.S. Government in a marketing program  
8 dealing with food safety can have a serious  
9 effect on public perception. I'm sure that's  
10 the intent. As stated before, food safety is  
11 not a marketing issue. Food safety is an  
12 important issue that does not belong in a  
13 marketing agreement.

14           To conclude, we do agree that  
15 there's a need for a food safety program for  
16 the leafy green industry. However, we do not  
17 feel that a voluntary marketing agreement is  
18 the right approach for this issue. Consumers  
19 will be further confused by added chaos in the  
20 marketplace. Small and mid-sized producers  
21 will lose market options and viability.  
22 Organic and sustainable farmers will face

1 multiple and duplicative certifications in  
2 order to remain viable.

3           Most producers have an existing  
4 food safety program, either from their own  
5 initiative or through other certifications.  
6 Basically all of the elements of the proposed  
7 agreement already exist in other programs,  
8 both voluntary and mandatory. Adding another  
9 voluntary set of similar reporting  
10 requirements to the mix may do little to  
11 actually promote food safety, especially one  
12 with potential devastating effects on the  
13 viability of family-scale and midsize farms.

14           For these reasons, and those  
15 detailed above, we find the National Leafy  
16 Greens Marketing Agreement to be inherently  
17 flawed and unnecessary, and therefore do not  
18 support it. Thank you again for the  
19 opportunity to share our perspective.

20           And then the next page of the  
21 testimony is the farmer that couldn't -- he  
22 had to fly to Atlanta to get to Jacksonville,

1 and so he -- I'm attaching his thing.

2 JUDGE HILLSON: Okay. Well, I  
3 can't accept testimony as testimony unless the  
4 person is here to be cross-examined by --

5 MR. MESH: Well, I could forward  
6 you the email that he sent to me last night.

7 JUDGE HILLSON: It doesn't matter.  
8 He has to be -- like they're going to get a  
9 chance to ask you questions, they're not going  
10 to get a chance to ask --

11 MR. MESH: His is real self-  
12 explanatory.

13 JUDGE HILLSON: Well, it could be  
14 an attachment to your testimony. Ms. Deskins,  
15 do you want to weigh in on this at all?

16 MS. DESKINS: Well, since the  
17 other farmer's not here to testify, we would  
18 object to his statement going in.

19 JUDGE HILLSON: You would?

20 MS. DESKINS: Yes.

21 JUDGE HILLSON: But it could come  
22 in as an attachment. I mean, it's not

1 coming -- if I put it in as an attachment to  
2 Mr. Mesh's testimony --

3 And I'll ask Mr. Resnick, does he  
4 have an opinion on this.

5 MR. RESNICK: I mean, whether it's  
6 an attachment or -- I mean, however you slice  
7 it, it's still going into the record without  
8 the opportunity for cross-examination.

9 JUDGE HILLSON: Okay. So you  
10 object to it as well?

11 MR. MESH: Absolutely.

12 JUDGE HILLSON: Okay. Both  
13 parties object to it, so what I'm going to do  
14 is I'm going to detach it from your statement.  
15 He can -- this gentleman can -- it is a  
16 gentleman. Right?

17 MR. MESH: He's the only handler  
18 that's been here in this whole meeting. I  
19 mean, that submitted testimony. it seems like  
20 handlers are the ones that you all want to  
21 hear from.

22 JUDGE HILLSON: I know, but if he

1 was here, he could submit testimony. He  
2 can't -- I mean, this is a hearing. Hearing,  
3 you know. Picture the word "hearing."

4 MR. MESH: Well, I could read it  
5 and you'd hear it.

6 JUDGE HILLSON: But it's not your  
7 testimony. I mean, any person can submit  
8 comments. There will be a briefing period at  
9 the close of the hearing when the whole  
10 hearing is done toward the end of this month.  
11 There will be like a 30-day briefing period,  
12 and anyone at that point can submit comments.

13 But I'm going to detach the two-  
14 page attachment, the statement from Mitch  
15 Blumenthal of Global Organic Specialty Source,  
16 and I'm going to grant the -- there weren't  
17 any formal motions, but I'm going to sustain  
18 the objections that both Mr. Resnick and Ms.  
19 Deskins preferred.

20 I will at this point receive your  
21 document, your statement, as Exhibit 54. I'll  
22 receive that into evidence.

1 (The document referred to, having  
2 been previously marked for  
3 identification as Exhibit Number  
4 54, was received in evidence.)

5 JUDGE HILLSON: And I'll ask first  
6 the USDA panel if they have any questions of  
7 Mr. Mesh.

8 MR. MESH: Thank you.

9 JUDGE HILLSON: Ms. Schmaedick?

10 MS. SCHMAEDICK: Melissa  
11 Schmaedick, USDA.

12 CROSS-EXAMINATION

13 BY MS. SCHMAEDICK:

14 Q Good morning, Mr. Mesh, and thank  
15 you for your testimony. You mentioned that  
16 you are on the board of the Organic Trade  
17 Association. Is that correct?

18 A Yes, ma'am.

19 Q Are you familiar then with the  
20 history and development of the National  
21 Organic Program or NOP, as you referred to it?

22 A Yes, ma'am. Somewhat, yes.

1           Q       Can you tell me what was the  
2   impetus for the development of the NOP?

3           A       Because we wanted enforcement.  As  
4   an organic farmer, I couldn't compete with  
5   stuff that was labeled organic but really  
6   wasn't organic.  And so, you know,  
7   certification programs could go after the  
8   folks they certified, you know, if there was  
9   a violation of the standards, but they  
10  couldn't go after somebody that wasn't  
11  certified and didn't meet any standard.

12                   In addition to that, back in the  
13  late '80s, you know, saw the rapid growth of  
14  more interstate commerce, some states having  
15  state laws, some states having no law, and so  
16  we the community felt the need to go to the  
17  government and say this is a label that needs  
18  some federal oversight.  Consumers, you know,  
19  should know that they're getting what they  
20  think they're paying for if they're buying  
21  something.

22           Q       And so would it be fair to say



1 that the development of the National Organic  
2 Program addressed a certain chaos or confusion  
3 in the market by creating one focused program?  
4 Is that kind of what you're saying?

5 A Yes. And a variety of standards  
6 as well, so, you know, in the context of  
7 bringing it back to this hearing, you know, if  
8 you have metrics that we've never seen yet,  
9 you know, and then other metrics from  
10 individual companies that may be who the  
11 farmer sells to, you know, there's still the  
12 same degree of chaos, so this doesn't really  
13 solve that problem of multiple sets of  
14 standards, you know, coming at an individual  
15 farmer.

16 Q And you were here yesterday. Is  
17 that correct?

18 A Yes, ma'am.

19 Q And did you hear testimony from  
20 other folks that indicated that this such  
21 program actually in their opinion would reduce  
22 the confusion?

1           A        I didn't hear anybody from Florida  
2 here, for a hearing in Florida. I'll say  
3 that. I did hear folks from Georgia Fruit &  
4 Vegetable Association. I heard them say that  
5 their board -- or I had a farmer say or  
6 somebody from the staff say that their board  
7 was the one that they got input from, not from  
8 the farmers. I know that there's no organic  
9 farmers on their board that I know of.

10                   And so, again, I'm representing  
11 organic farmers and, you know, those smaller-  
12 scale family farmers using sustainable farming  
13 practices that I worry about. So I think we  
14 have a different set of, you know, folks that  
15 we work with.

16           Q        Okay. Have you read the proposed  
17 agreement?

18           A        Yes, ma'am. Every word of it.

19           Q        Okay. Are you familiar with the  
20 process by which the metrics would be  
21 developed?

22           A        Well, I mean, I've read every word

1 of the proposal, but, you know, clearly  
2 there's no metrics in there to say that, to  
3 say that you have a process -- I mean, here we  
4 had an organic farmer, ten acres, and a  
5 handler, you know, who couldn't fly here today  
6 to give testimony, today this morning, and if  
7 he didn't get here this morning, you know, he  
8 was going to miss the boat, because you all  
9 are going to be gone by this afternoon. So he  
10 emailed this to me last night, but yet --

11           So, you know, how participatory  
12 and how public, public process is, is a little  
13 bit up in the air, plus you get, you know,  
14 zone 5, I think it is, you know, from Maine to  
15 Florida has one farmer on it, I think. I  
16 mean, I'd have to go back to the, you know, to  
17 the thing, but it's like one farmer, from  
18 Maine to Florida, one farmer. And I can rest  
19 assured, I can pretty much guarantee you that  
20 I can estimate the size and scale of operation  
21 that one farmer will be.

22           And so how -- the degree of which

1 smaller scale and family-scale size farms are  
2 listened to and have a chance for input that  
3 is seriously considered for me is debatable,  
4 is suspect, and I put something in there in  
5 that testimony about, you know, if you look at  
6 USDA -- and no offense to you all; you all are  
7 great folks. I mean, there's a lot of good  
8 folks at USDA. You know, I don't mean to, you  
9 know --

10 But the truth of the matter is  
11 that, you know, smaller scale, independent  
12 family farms have not been the focus in my  
13 estimation or the beneficiaries of some of the  
14 programs that USDA has developed, and so  
15 you're asking us to have blind faith in  
16 metrics to be determined at a later date under  
17 a process that we may be -- have real concerns  
18 about, even if you say that you can give  
19 public input.

20 Q So I'm not sure if you answered my  
21 question. Do you understand the process of  
22 developing the metrics that's being proposed?

1           A       Well, I mean, it talked about --  
2 you know, if you want to point me to that  
3 section in the thing -- again, I read every  
4 word of that thing. I mean, or if you want to  
5 clarify or point me to the section, I'll  
6 comment on it if you want. I mean, you know,  
7 there's no metrics in here that talks about  
8 developing metrics.

9                    It talks about the Administrative  
10 Council will be the ones to take, you know,  
11 consideration from the people that they elect  
12 or that they appoint to the technical  
13 committee to provide recommendations and that  
14 they'll be the ones to set the standards.  
15 Twenty-three, I think it is, you know, folks  
16 on the administrative counsel, again, one from  
17 Maine to Florida, one. That to me leaves  
18 thousands of growers probably out of the  
19 process.

20           Q       In your opinion, does the  
21 administrative body have the authority then to  
22 implement the metrics?

1           A           I'm not a lawyer or nothing, but,  
2    I mean, it seems to me as though -- and,  
3    again, if you'll refer me to the page or the  
4    section, but the way I remember reading it is,  
5    yes. I mean, the administrative body is going  
6    to be the one, you know, deciding on what the  
7    metrics are. You know, and the fact that you  
8    have consumer participation in it but you have  
9    one vote, or you have a small-scale farmer --  
10   I mean, you know, and I saw the words on the  
11   page, you know.

12                    I'm sorry. So you all lose -- we  
13   got 22 votes to one, 23 votes to two, or  
14   whatever. You know, but they're included in  
15   the process. That doesn't mean that there's  
16   a satisfactory outcome. It just means that --  
17   you know, I appreciate that, but why don't we  
18   make it to where every farmer, every leafy  
19   greens farmer, is the one that elects the  
20   administrative council, that every single  
21   leafy greens farmer is the one to vote for who  
22   sits on that administrative council or

1 something, because I think, in my humble  
2 opinion, it will be somewhat industry-  
3 dominated.

4 Q Do you have any alternatives to  
5 recommend?

6 A Well, again, you know, we've  
7 questioned the wisdom of food safety in a  
8 marketing agreement. I mean, food safety can  
9 the matter of essentially life and death, you  
10 know, and here you have a voluntary marketing  
11 agreement, you know, who's being care-taken  
12 and in the hands of some of the largest --  
13 what I perceive to be, what I estimate to be,  
14 what I think to be the largest agri-businesses  
15 and companies there are.

16 And, you know, it's a voluntary  
17 program, as has been stated over and over  
18 again. That, you know, again, to me, you  
19 know, safe food corresponds to food, and stuff  
20 that's not safe shouldn't be food. And so,  
21 you know, organic -- go label a word as  
22 "organic" or grass-fed beef or some other

1 quality or, you know, thing that labeling  
2 claim, not even a quality. Organic's not a  
3 quality. You know, it's a labeling claim;  
4 it's a marketing claim. You know, go sell the  
5 label, but to say that this is a quality, you  
6 know, in a voluntary marketing agreement, it  
7 just -- it didn't make sense to me so far.

8 Q So again my question is: Did you  
9 have any other suggestions or modifications?  
10 Did you answer that question?

11 A No. I reckon if you gave us some  
12 time, we could maybe come up with some  
13 suggestions on some thoughts on addressing  
14 food safety, you know, what -- I mean, you  
15 know, we're -- like everybody, we're  
16 overworked and under-resourced and all this  
17 kind of stuff, and you get this thing, this is  
18 what we had to react to.

19 So when you say, can you give some  
20 other suggestions, you give us some time. You  
21 put this one off the table, and I'll go back  
22 to our community and our industry and our



1 colleagues within the environmental and  
2 consumer organizations and the industry -- I  
3 mean, you know, I run a nonprofit that deals  
4 with farming and agri-business as well as  
5 small-scale family farms, and we can come up  
6 maybe with some suggestions for you.

7 Q I'd like to -- do you have a copy  
8 of the proposed language in front of you?

9 A Yes, ma'am. You're talking about  
10 the Federal Register notes.

11 Q Yes. That's correct.

12 A Yes, ma'am.

13 Q I'd like to direct your attention  
14 to 970.67.

15 A Hang on. 970.67?

16 Q Yes. That's correct.

17 A Audit metrics?

18 Q Yes. That's correct.

19 A Yes. That's what you was asking  
20 about before. All right.

21 Q Could you read the first line,  
22 please?

1           A        "Audit metrics shall be  
2 recommended by the Committee to USDA for  
3 approval after consultation with the Technical  
4 Review Board."

5           Q        So based on your understanding of  
6 that sentence, who would have the ultimate  
7 authority of deciding whether or not metrics  
8 are appropriate?

9           A        I reckon USDA, by that sentence.

10          Q        Okay. Thank you.

11          A        But -- can I just add to that  
12 comment?

13          Q        Sure.

14          A        But, again, I talked a little bit  
15 about history from a farm perspective of USDA  
16 and who really controls, has controlled ag  
17 policy and regulation at USDA over my lifetime  
18 anyway, and I'm probably older than you, I  
19 reckon. But -- and, you know, it says, after  
20 consultation from the Technical Review Board  
21 that the Administrative Committee empowers,  
22 that the Administrative Committee then takes

1 those recommendations and shapes their  
2 recommendations, and then they hand them to  
3 USDA.

4                   So, you know, while I agree that,  
5 "Shall be recommended by the committee to  
6 USDA," so USDA is the answer to your question,  
7 I suggest to you that an industry-controlled  
8 Administrative Council will have a great deal  
9 of -- you know, their fingerprints will be all  
10 over what the final metrics will be.

11           Q        I'd also like to turn your  
12 attention to 970.45, Technical Review Board.  
13 And I'll just read the last two sentences, and  
14 then I'll ask my question.

15                   "The Technical Review Board may  
16 appoint subcommittees as necessary to  
17 facilitate input and review from regions  
18 throughout the production area. Subcommittees  
19 may consist of producers, handlers and other  
20 interested parties as deemed appropriate by  
21 the Technical Review Board."

22                   That language, in your opinion,

1 does that allow for a process to consider  
2 input?

3 A Does that allow for input --

4 Q Yes.

5 A -- was your question. Sorry about  
6 that. I reckon.

7 Q Okay. Thank you.

8 A I mean, you know, again, words on  
9 a paper and how that gets executed and carried  
10 out, you know, a year and a half from now may  
11 be different things. You know, I mean, if you  
12 don't know what I'm talking about, it's hard  
13 for me to communicate it or understand it,  
14 but, you know, sometimes you can have words on  
15 a paper, but the reality of life on a farm and  
16 what happens coming down from Washington, D.C.  
17 or Administrative Council, wherever this one  
18 is housed at, and the effects it has on the  
19 very ability for one's farm to survive is a  
20 different story.

21 Q And if you were given the  
22 opportunity to be a representative, would you

1 take that opportunity?

2 A On the Administrative Council?

3 Q Yes.

4 A You know, within our resources, I  
5 mean -- are you offering me the job to be on  
6 the Administrative Council, and are you going  
7 to get them to agree to that? The -- you  
8 know, I mean, I think that we would -- just  
9 like we showed up here and developed comments  
10 as best we could to represent the growers and  
11 issues and the consumers that end up buying  
12 the products that farmers grow, we would be  
13 willing to give input into the process and  
14 participate in the process and we're able to.  
15 Yes, ma'am.

16 Q Okay. Getting back to your  
17 testimony, you mentioned that --

18 A But if it's a flawed process -- I  
19 mean, you know, that's the thing. If you set  
20 up a process where the outcome is essentially  
21 already predetermined, it's -- you know, you  
22 start -- I think an organization would have to

1 decide whether or not to really participate in  
2 it. Whether that was a worthwhile investment  
3 of time, if it seemed to be -- what do they  
4 call that? -- fait accompli, you know, that it  
5 was already -- you could already see the  
6 handwriting on the wall or where the train's  
7 headed down the track.

8 Q On the first page of your  
9 testimony, you talk about your  
10 organization's -- you have an education and  
11 outreach program, and then you have a quality  
12 certification services program. Is that  
13 correct?

14 A Yes, ma'am.

15 Q Could you tell me about the  
16 quality certification services program?

17 A Well, I mean, over and above what  
18 I said -- well, I said there, it's a  
19 certification program that verifies label  
20 claims, that verifies regulatory compliance,  
21 especially dealing with the National Organic  
22 Program. We go through ISO 65 accreditation

1 audits. We go through National Organic  
2 Program audits. We've gone through OIG  
3 audits. We've gone through -- that's just a  
4 canadian accreditation audits, and that's just  
5 in the last 12 months. And we provide  
6 certification services to those who request  
7 it.

8 Q Do you any of those programs  
9 include elements that you would fine in good  
10 agricultural practices or good handling  
11 practices?

12 A Yes, ma'am.

13 Q You mentioned --

14 A And, in fact, the National Organic  
15 Program standards. I mean, you know, I  
16 believe there's some overlap potentially  
17 between, you know, good handling practices,  
18 and certainly the record-keeping system that,  
19 you know, the --

20 You know, as well as when Charlie  
21 Andrews, the farmer that was here preceding,  
22 you know, testified as to some of the stuff

1 they're doing, he's doing it -- and, you know,  
2 you'd have to ask him -- but doing it in  
3 regards to food safety, but also doing some of  
4 that, because that's what's required under the  
5 National Organic Program.

6           So here he goes to a lot of  
7 trouble to comply with National Organic  
8 Program requirements, and now I think his fear  
9 or many farmers' fears are that you're going  
10 to layer more documentation, a little bit  
11 different but still more documentation on top  
12 of it, and more recordkeeping on top of it,  
13 and at some point, he keeps records and  
14 doesn't farm.

15           Q       You used a term on page 2 that I'm  
16 not familiar with. It's called  
17 "wildcrafting."

18           A       Yes, ma'am.

19           Q       Could you tell me what that is.

20           A       Wildcrafting is a section under  
21 the National Organic Program that allows for  
22 folks to harvest, you know, maybe it's wild



1 herbs in Florida. It could be solid on  
2 berries. It could be, you know, passion  
3 fruit, things that grow wild, if it can be  
4 demonstrated that the land meets the  
5 regulatory requirements for organic  
6 certification, and that it's managed in  
7 accordance with the National Organic Program  
8 regulation.

9           So not only did we land history  
10 but also, you know, the sustaining of crops,  
11 so somebody does go there and harvest every  
12 single, you know, herb or every single root,  
13 but takes that into account in their farm  
14 plan about the care and management of wild  
15 lands, but they could be included under the  
16 National Organic Program, and inside the  
17 regulation, it's called "wildcrafting."

18           Q       Okay. And you mentioned that you  
19 certify operations outside of Florida total of  
20 1,100 -- I'm sorry -- 111 nationwide. What  
21 other states do you operate in?

22           A       Well, I think that predominantly,

1 if you go in concentric circles, I mean,  
2 Florida clearly is a focus. That's where we  
3 are. But, you know, Georgia, you know, South  
4 Carolina, North Carolina, Virginia, Texas.  
5 I mean, so if you go outward, you know, and  
6 there may be one either farm or handling  
7 operation in the National Agreement Program --  
8 they're called handling operations -- you  
9 know, in another state. But that's how the  
10 state total ramps up to --

11 And I think in the account the  
12 other day, it was more than 30 states. You  
13 know, and sometimes a certified entity may  
14 have a farm in two different states or, you  
15 know, farms are certified independently, but  
16 it still is -- you know, it's another state  
17 with another independent farm in it, but it's  
18 almost under the umbrella of the systems plan  
19 or of an operation in Florida or somewhere  
20 else.

21 Q On page 3 of your testimony, the  
22 first paragraph under the second bullet that

1 reads, "The LGMA will not reduce the burden on  
2 growers and small businesses," you -- at the  
3 end of that paragraph, you state that "For an  
4 organic producer, this would mean at least  
5 four sets of standards to maintain: FDA  
6 regulations, those anticipated and  
7 anticipated; organic standards; buyer's  
8 supermetrics; and the LGMA."

9           Are you saying that the FDA  
10 regulations and the LGMA regulations would be  
11 different?

12           A       Well, we don't know that, because  
13 we don't know what the requirements for the  
14 LGMA are, and clearly FDA, you know, is  
15 putting out guidance documents. There's a  
16 discussion up on Capitol Hill right now to see  
17 where food safety belongs, which agency is  
18 going to be responsible and where the lines  
19 are drawn.

20           And, you know, Michael Taylor, I  
21 think, the head of FDA just did a listening  
22 session at a smaller-scale sustainable farm in

1 North Carolina, and is coming to Florida to  
2 hear input about food safety, so clearly we  
3 anticipate on some levels that there'll be  
4 some information, guidance, requirements,  
5 standards, something coming down from FDA that  
6 growers will need to be mindful of.

7 Q And are you aware of the role of  
8 FDA guidance documents in the proposed  
9 agreement?

10 A What page is that on in the  
11 proposed agreement? I mean, again, without  
12 the metric, you know, without the detail --  
13 you know, like they say, the devil's in the  
14 details, kind of. I mean, without knowing  
15 what it is, you don't know if an FDA guidance  
16 or a national program regulation or an LGMA,  
17 you know, set of metrics yet to be developed  
18 are the same, and if they're not, how much  
19 would they be different, and what the  
20 requirements are, so the sentence and the  
21 testimony, you know, is saying it's a lot to  
22 put on smaller scale, mid-scale, family scale

1 size farms that don't have folks just to keep  
2 records.

3           You know, they got the farmer  
4 who's trying to farm, as well as trying to  
5 keep records at night, you know, as well as  
6 being a dad or mom at night, et cetera, et  
7 cetera, and it's a lot to put on them  
8 sometimes.

9           Q       So my question again goes back to:  
10 Are you aware of the role of the FDA documents  
11 and the proposed guidelines --

12          A       Oh, you was going to send me to  
13 that section in the --

14          Q       Yes. It's 970.9 and 970.10.

15          A       (Perusing document.) Yes. Well,  
16 I mean, I see it, but -- is that the question,  
17 or do you want me to comment on it? Because,  
18 I mean, it says, you know, Good manufacturing  
19 practices, first of all, GMPs, and so, you  
20 know, how FDA -- and, again, you know, where  
21 the line is drawn at the farm or on the farm,  
22 you know, or is it just in processing and

1 facilities.

2 I mean, you know, I'm not the  
3 technical folks, but I'm not clear exactly on  
4 some of this stuff. And, you know, any other  
5 FDA regulation approved as a replacement or  
6 supplement thereof as approved by the  
7 Secretary -- I mean, you know, some of this is  
8 legalese that -- you know, you heard Charlie.  
9 I mean, it's hard to understand a lot of what  
10 this -- it's not plain English, so you can  
11 just read it and understand it. So it's hard.  
12 I mean, you know, I went to college, and I  
13 can't -- you know, I can't get some of this  
14 stuff.

15 Q On the bottom of page 3, you made  
16 a comment about USDA marketing orders. How  
17 familiar are you with USDA marketing orders?

18 A Say that -- I'm sorry. I was  
19 looking on page 3. Say that again.

20 Q It's page 3, the last full  
21 paragraph.

22 A Okay.

1           Q       The sentence before last, you  
2 mention -- you make a comment about USDA  
3 marketing orders.

4           A       Yes. You know -- what's the  
5 question?

6           Q       How familiar are you with --

7           A       I'm not really. But, you know,  
8 the thing that -- and I don't know if it's  
9 USDA or Florida Department of Citrus or -- you  
10 know, I don't know where all the regulatory,  
11 or whatever you call that, responsibility lies  
12 for some of the marketing orders.

13                    But I have talked to many, many  
14 organic citrus farmers who wonder, Why am I  
15 paying an assessment to the Florida Citrus  
16 Commission for a marketing order that does me  
17 no good, that never mentions organic, that  
18 doesn't, you know, help my marketing, my  
19 labeling, my farm, but I -- you know, when you  
20 add up all the organic growers, they go, We've  
21 contributed hundreds and hundreds of thousands  
22 of dollars into something that is really

1 geared towards, you know, I mean, for lack of  
2 better words, you know, agri-business, and  
3 they use our marketing orders.

4 I think the same, in my humble  
5 opinion, could be said with pork producers  
6 that have paid into marketing or check-off  
7 programs that family farmers would say, Yes,  
8 I have to pay into it and it's done me no  
9 good. This is geared towards, you know, agri-  
10 industrial operations and companies that  
11 control the market, and for me as a farmer,  
12 all the money that I paid into this doesn't do  
13 any good.

14 I would venture to say that my  
15 partner at Bellevue Gardens Organic Farms --  
16 I talked about rotating hogs -- that he's paid  
17 into pork marketing programs, and he and I  
18 haven't talked, but, you know, I know his  
19 sense of what's the sense of -- you know, what  
20 have I gotten out of the government; what have  
21 I put in through my tax dollars or marketing  
22 check-off stuff. That was the spirit behind



1 the sentence, that there seems to be marketing  
2 programs that folks are contributing to but  
3 not feeling like that they get very much out  
4 of.

5 Q Okay. On the last page of your  
6 testimony, you mention USDA Deputy Secretary  
7 Merrigan.

8 A Oh, sorry. I was looking at --  
9 you said last page. Okay. I got it.

10 Q In your opinion, do you believe  
11 that Ms. Merrigan is aware of this proposal?

12 A Of the Leafy Greens Marketing  
13 Agreement?

14 Q Yes.

15 A I have no idea. I mean, I imagine  
16 the Deputy Secretary of Agriculture got a  
17 bunch of stuff on her plate to try to deal  
18 with, and no matter how much you try to deal  
19 with all the stuff at that level, that  
20 something's going to fall through the crack,  
21 or you're not going to be as aware of  
22 something as you might want to be or should

1 be. I wouldn't want to put words in Ms.  
2 Merrigan's mouth, as to her familiarity or not  
3 with it.

4 But I know that, you know, from  
5 what I've read, she's been a supporter of  
6 local food systems and the reinvigoration of  
7 local food systems, of organic and sustainable  
8 agriculture, certainly. Whether or not she's  
9 familiar with a proposed Leafy Greens  
10 Marketing Agreement, I wouldn't have a clue.

11 Q If she were aware of it, would you  
12 have an opinion about that?

13 A No. I mean, we've -- you know, I  
14 can't put my faith -- you all are all, I'm  
15 sure, great USDA staff folks, you know, and  
16 Ms. Merrigan, I'm sure, is a wonderful deputy  
17 secretary of Agriculture. You know, my  
18 comments to USDA are not geared at any  
19 individual, and, you know, it's that almost,  
20 you know, herd mentality or group mentality or  
21 corporate mentality, when one hog -- one end  
22 of the office may not know what the other

1 office is doing, you know, and they're working  
2 in really diametrically opposed directions.

3 I mean, here you have USDA in  
4 charge of nutrition, the very health of our  
5 children. Yet on the other end of the hall,  
6 they're subsidizing corn, you know, and high  
7 fructose corn syrup and all these kinds of  
8 products that are really the result of some of  
9 the health issues of our country. Are they  
10 both good folks at each end of the hall? I'm  
11 sure they are, but, you know, I worry about  
12 sometimes the disconnect. So none of my  
13 comments are personal.

14 It's just, you know, seeing what  
15 comes out of USDA historically as nutritious  
16 or as health or as marketing, you know -- and  
17 I don't know how the -- I do know that  
18 industry, you know, in the words of Secretary  
19 Butts, Get big or get out. That phrase -- the  
20 ex-Secretary of Agriculture. That phrase  
21 stuck in my mind as a farmer, that that's the  
22 Secretary of Agriculture, saying, Get big or

1 get out. Okay. Well, I guess I know where  
2 USDA stands. I never forgot them words.

3 Q Okay. That concludes my  
4 questions. Thank you.

5 JUDGE HILLSON: Any other  
6 questions from the panel members? Ms. Dash?

7 MS. DASH: Suzanne Dash.

8 BY MS. DASH:

9 Q I had a question, just one  
10 question, from page 3 on the costs, the third  
11 paragraph that says that producers saw a range  
12 of 17 to 28 percent of their net income going  
13 to food safety costs. Was that from Dr.  
14 Hardesty or from Ms. Baumgartner?

15 A I believe those results are from  
16 Dr. -- or Shermain Hardesty and that they were  
17 conveyed to testified by Joanne Baumgartner.  
18 I haven't read the whole transcript of the  
19 Monterey hearing, but I thought that that's  
20 the outcome -- that that's what was entered  
21 into the record in Monterey.

22 JUDGE HILLSON: They both

1 testified in Monterey, did they not? I think  
2 they did both testify.

3 MS. DASH: I think that's right.

4 JUDGE HILLSON: Okay.

5 MS. DASH: You know, I don't have  
6 the testimony from California with me, but I  
7 have Dr. Hardesty's report, and I didn't see  
8 it, but I'll go back and look. That was all  
9 I had.

10 JUDGE HILLSON: Okay. Any other  
11 panel members have questions of -- go ahead,  
12 Mr. Souza.

13 MR. SOUZA: Anthony Souza, USDA.

14 BY MR. SOUZA:

15 Q Good morning, Mr. Mesh. I have a  
16 couple questions. On page 2 in your written  
17 testimony on the -- at the bottom of your  
18 second full paragraph on that page, the last  
19 sentence: "As citizens lose faith in the  
20 current food options, they're becoming more  
21 and more educated in the food production  
22 policy issues and are looking for programs

1 that provide real food safety results."

2 In that statement, do you feel  
3 that it would be necessary for members of the  
4 industry, especially in some of the industry  
5 such as organic, that they would have to fall  
6 under and become a signatory participant in  
7 this program, or that they've got a market,  
8 that there's a group out there that  
9 appreciates what you have to offer and that  
10 they would forgo membership of a national  
11 leafy green and purchase from the program  
12 provided by people within members of your  
13 organization?

14 A I'm really sorry. I was -- you  
15 know, when you was trying to direct me to it,  
16 you said the bottom of page 2 --

17 Q The second paragraph on page 2,  
18 bottom sentence --

19 A Oh, I thought --

20 Q -- in that second paragraph.

21 A The second page, page 2 -- do it  
22 again, please.

1                   JUDGE HILLSON: Why don't you just  
2 read the sentence that you want him to  
3 comment.

4                   BY MR. SOUZA:

5           Q        "As citizens lose faith in the  
6 current food options, they're becoming more  
7 and more educated in food production policy  
8 issues and are looking for a program that  
9 provides real food safety results and  
10 supports, not threatens, small-scale farmers  
11 and the availability of local-grown produce."

12           A        Okay.

13           Q        In that statement, do you think  
14 that the public, the consumer, who would be  
15 purchasing product would forgo the product  
16 grown or handled by a national interest leafy  
17 green handler and still continue to purchase  
18 the same product that they're purchasing  
19 today?

20           A        If I understand the question  
21 right, given the choice, I believe that many  
22 citizens would choose to support, if possible,

1 a local, you know, my hope organic, but I have  
2 my own viewpoint, you know, but organic,  
3 local, fairly produced food, that that would  
4 be the first tier of it.

5 I don't know if I can say this.

6 The testimony that you all didn't want to  
7 accept but told to me by Mr. Blumenthal, you  
8 know, that that's where -- and I could read  
9 it, but that's where his market is. That's  
10 the biggest demand. That's where he's making  
11 his living as a handler, because that's what  
12 people want, and that, you know, to do this,  
13 you know, whether or not folks are direct  
14 marketing, which I understand will be not  
15 included in the LGMA.

16 But, you know, Charlie who you  
17 just heard from, Mr. O'Dare who'll be next.  
18 You know, folks do more than just direct  
19 market. They sell to wholesalers. They sell  
20 to restaurants. They want to grow their farm  
21 bigger, and bigger probably mean the wholesale  
22 and handler. If a handler can't buy from



1     them, then it is really limited.

2                 So, I think, you know, you phrased  
3     the question, if I remember correctly, more  
4     about consumers, but if the product's not  
5     available through a wholesaler -- you know,  
6     the distribution chain, it's a pretty narrow  
7     pipeline. I mean, I don't know if you all  
8     know this, but, you know, the folks that  
9     decide what products get put on the store  
10    shelf, I mean, unless it's an independent, you  
11    know, store and there's not a whole lot of  
12    them around, it's a pretty small pipeline.

13                There's a lot more growers looking  
14    to try to get through that pipeline than  
15    product that can make it through the pipeline.  
16    Thus, a lot of growers are now saying, The  
17    only way I can survive is to really focus as  
18    much as I can on direct marketing, but I can't  
19    just sell direct markets, or it's not close to  
20    really get to know my consumers. I need not  
21    have a wholesale option.

22                So the spirit of the thing, you

1 know, I believe that they will continue to  
2 support local and organic, and hopefully,  
3 fairly produced food, but they need wholesale  
4 market options.

5 Q Thank you. On page 3 in your  
6 testimony, you bring up the phrase, "the  
7 buyer's supermetrics." Are you aware of any  
8 of your members that have -- that are  
9 requested by major retailers to have such  
10 supermetrics in place in order for them to  
11 sell their product?

12 A You know, in my role on the  
13 different boards that I'm on and different  
14 meetings that I go to, I have the chance to  
15 talk with a lot of farmers, you know, and I  
16 believe -- and I've seen, you know, T-GAPs,  
17 tomato GAPs. Well, this is all about leafy  
18 greens. Will the tomato GAP be the next one?  
19 How about the melon one? You know, on our  
20 farm, you know, we grew watermelons and  
21 cantaloupes. That one's coming down the pike  
22 when I said FDA earlier and somebody asked

1 about FDA, because there was an FDA guidance  
2 document on melons, you know, cantaloupes.

3           You know, I mean, smaller scale  
4 growers, you know, could have a diversified  
5 farm, and I believe that many of them have --  
6 that that's a theme that I've heard throughout  
7 the country, that growers are becoming more  
8 and more approached, and in fact, have taken  
9 steps in -- certainly have -- you know, have  
10 had almost -- you know, they've gotten paid by  
11 NRCS to implement conservation strategies, and  
12 then because of the market demands, the  
13 supermetrics, they've had to level, buffer a  
14 native habitat, ecosystem improvements to  
15 comply with supermetrics.

16           Q       In your opinion, if a National  
17 Leafy Greens Marketing Agreement became  
18 reality and there were a set of metrics that  
19 were developed by all players at the table and  
20 that set of metrics was accepted nationwide,  
21 do you feel that that could be a benefit to  
22 the reduction of some of these supermetrics

1 and the scorch and burn, which we've heard in  
2 Monterey, and have people comply to a certain  
3 set of standards rather than several sets of  
4 standards?

5 A You mean, for the melon grower or  
6 for --

7 Q For leafy greens.

8 A Right. But what about the farm  
9 that grows melons, tomatoes and leafy greens?  
10 So now all of a sudden, there's -- I mean,  
11 it's -- you asked me whether I got the  
12 answers, and I don't. I mean, it's a  
13 complicated issue. You know, we oppose the  
14 Leafy Greens Marketing Agreement as a way to  
15 solve the problem, but we think it is  
16 problematic to have so many different sets of  
17 metrics coming at you, you know, crop-  
18 specific, and in this case, you know, leafy  
19 greens.

20 But, again, there's tomato  
21 producers trying to deal with tomato metrics,  
22 with, you know, melon metrics coming down the

1 pike, so it's a problem. I just don't think  
2 that this is the solution.

3 Q One last question: On page 5 in  
4 your conclusion, you state that, "We do agree  
5 there's a need for a food safety program for  
6 leafy green industry. However, we do not feel  
7 the voluntary marketing agreement is the right  
8 approach." And then you go down and state,  
9 "Basically, all the elements of the proposed  
10 agreement already exist in other programs,  
11 both voluntarily and mandatory."

12 What type of -- what needs to be  
13 done for industry, in your opinion, then?

14 A I'm going to have to get back to  
15 you on that. Maybe we can submit some  
16 comments at the end of the process when the --

17 JUDGE HILLSON: Anyone can submit  
18 comments at the end of the process.

19 MR. MESH: You know, thinking  
20 about the future. We were only trying to  
21 react to this proposed rule. You know, again,  
22 we admit that something needs to be done for

1 farmers and for consumers, you know, to have  
2 confidence and faith that all food is safe,  
3 not just the people that are part of a signer-  
4 on to a leafy greens marketing association,  
5 that the food out there is safe. And some of  
6 the practices that Agriculture utilizes  
7 contributes to some of the problems.

8           So I don't have the final answer.  
9 You know, this goes back to one of the  
10 questions I think you all asked Mr. Andrews,  
11 you know, about the differences in Florida and  
12 California. Well, I know Charlie's pulling  
13 water from the aquifer, you know, from a  
14 fairly deep -- for Florida, fairly deep well,  
15 and in California, they're pulling water out  
16 of ditches that are, you know -- likely that  
17 are -- you know, could be suspect, you know,  
18 that the water quality in different states,  
19 you know, may result in, you know, in  
20 different issues for, you know --

21           You know, you're kind of asking me  
22 to name that solution, you know, with one

1 paint brush, one stroke, and I'm just not able  
2 to do it at this moment. But, again, you  
3 know, one of the things that I do value is our  
4 relationship with environmental, with citizen  
5 and consumer organizations, with farm  
6 organizations and industry, with the growers  
7 actually having to comply with a lot of this  
8 stuff, you know, that comes down at them, and  
9 try to figure out a solution to it. I just at  
10 this time can't think that the leafy green  
11 marketing agreement is the solution.

12 MR. SOUZA: Thank you. No further  
13 questions.

14 JUDGE HILLSON: I'm going to call  
15 a ten-minute morning break right now, and then  
16 we'll finish up after that.

17 (Whereupon, a short recess was  
18 taken.)

19 JUDGE HILLSON: And the USDA  
20 panel, does anyone else have questions of Mr.  
21 Mesh? Go ahead, Ms. Deskins.

22 MS. DESKINS: Sharlene Deskins,

1 USDA Office of --

2 JUDGE HILLSON: Your mike's not on  
3 for some reason. Try that again.

4 BY MS. DESKINS:

5 Q On page 2 of your testimony, you  
6 use the term "ISO Guide 65." I just -- could  
7 you just tell us for the record what that is?

8 A ISO is the International Standards  
9 Organization. Guide 65 is the standards for  
10 the operation of a product certification  
11 program. So we certify crops or products as  
12 organic, and even before the National Organic  
13 Program, you know, we tried to operate a  
14 certification program in compliance with the  
15 ISO standards, and we get audited by USDA not  
16 only for compliance with being an accredited  
17 National Organic Program, certification  
18 program, but we get audited by USDA under the  
19 ISO 65 auditing program for extra money.

20 Q Okay. The other question I had  
21 was in that same paragraph. You refer to 45  
22 leafy green producers in Florida and 111



1 nationwide. And I was just wondering. The  
2 definition of leafy greens is 970.15. Do you  
3 see that?

4 A Yes, ma'am.

5 Q Just if you know, just to your  
6 knowledge, do all of these leafy green growers  
7 grow the items that are listed in 970.15, if  
8 you know?

9 A Well, I have a high degree of  
10 confidence that our staff that did the  
11 research in preparing the testimony would  
12 have -- you know, did, in fact, read the  
13 970.15, whatever it is, the definition, then  
14 look at the growers list and that the numbers  
15 accurately reflect compliance with the  
16 definition.

17 You know, you'll hear from two  
18 today, and Mr. Andrews clearly testified that  
19 he almost knew every crop that was in the  
20 definition, and I don't know what Kevin, the  
21 next grower, grows, but I'm sure that you  
22 could ask him and that will be two out of that

1 number in Florida right there.

2 Q Okay. Thank you.

3 JUDGE HILLSON: Anything else from  
4 the panel? Ms. Carter?

5 MS. CARTER: Antoinette Carter  
6 with USDA.

7 BY MS. CARTER:

8 Q Good morning, Mr. Mesh.

9 A Good morning.

10 Q I wanted to just direct your  
11 attention to page 2 of your prepared  
12 statement. I believe in response to some of  
13 Ms. Schmaedick's questions regarding the  
14 qualified certification services program --  
15 well, under the -- where you're certifying  
16 for -- under the USDA National Organic  
17 Program, you mentioned that there was, I  
18 believe, duplication of best practices as part  
19 of the, I guess, audit certification for that  
20 program. Could you specifically explain what  
21 some of those are or could be under --

22 A I don't have --

1 Q I'm sorry. Go ahead.

2 A I don't have the National Organic  
3 Program regulation with me, and so I'm  
4 hesitant to talk about regulatory compliance  
5 without really having the regulation right in  
6 front of me. But from my memory -- and  
7 certainly we can -- we in our comments can  
8 make a commitment to identifying overlap  
9 potentially. I think that's what you're  
10 asking.

11 Q Yes. Potential.

12 A And, you know, there's certainly  
13 language in the National Organic Program about  
14 adequate recordkeeping which is clearly a  
15 focus of the LGMA, and organic has had that  
16 since the beginning. You know, can you follow  
17 it through? Can you trace it back? Can we --  
18 easily auditable records, you know, that do  
19 it; you know, contamination and commingling.

20 You know, both words --  
21 commingling certainly is in there, more from  
22 the handling perspective about commingling,

1 you know, product that is -- somebody signed  
2 on to it or included it and somebody's that  
3 not commingling. But in the National Organic  
4 Program, contamination -- you know, is  
5 something contaminated? You know, does it  
6 still maintain its compliance with the  
7 regulation? Those are just some. Certainly,  
8 there's, you know, there's issues involved in  
9 soil quality and soil health and water in the  
10 protection of ground water.

11           You know, those are practices that  
12 while not dealing with the leafy greens  
13 marketing, those are practices that organic  
14 farmers are already doing, that they're  
15 already audited for, that, you know, what's  
16 your nutrient management plan, what's your  
17 pest control plan, what's your fertility plan,  
18 what's your, you know, disease control plan,  
19 what materials do you use, you know, when do  
20 you use them, under what circumstances do you  
21 use them, what's the decision-making.

22           I mean, we as a certification

1 program, as well as most, I hope, all  
2 accredited certifiers put them through fairly  
3 grueling documentation requirements and, you  
4 know, hoops to say, We need to determine if  
5 you're compliant. We believe that a lot of  
6 that overlaps with the intent, at least, of  
7 the food safety effort currently underway.

8 Q Okay. On page 4 of your  
9 statement, you reference related costs  
10 associated with the certification that your  
11 company does or your organization does. Can  
12 you give us, if you can, what the average cost  
13 of doing an audit certification is?

14 A The average of doing the audit?

15 Q Uh-huh.

16 A If I had to ballpark guess, I  
17 would say an average cost -- it is directly  
18 dependent upon how far the auditor travels to  
19 the farm, so a farm that is 100 miles away is  
20 going to pay considerably less than a farm  
21 that's 380 miles away one way, you know, and  
22 has a 6- or 700-mile round trip, et cetera, et

1 cetera. So part of it is just the distance  
2 from the auditor.

3 But I would think that the average  
4 cost is probably about 3- to \$400 average.

5 Q Okay. And the average time period  
6 spent on --

7 A That's just the audit. That's  
8 just the on-site audit. That doesn't include  
9 the technical staff's review of the organic  
10 system plan, of, you know, chasing down, you  
11 know, more questions that come up, the final  
12 review after the audit is performed of  
13 compliance with the regulation, and then  
14 follow-up with the grower-handler about  
15 status -- a determination status, whether or  
16 not they are compliant, and what deficiencies  
17 or corrections or non-compliances, in  
18 certification speak, non-compliances need to  
19 be addressed to maintain or gain their  
20 certification.

21 Q So excluding any follow-up, what  
22 in terms of total hours, in terms of prepping

1 for the audit and the actual conduct of the  
2 audit, how many hours are we talking about on  
3 average for --

4 A For the auditor or for the whole  
5 staff separate from the audit or from the --  
6 or an aggregate audit and staff time?

7 Q For the auditor.

8 A For the auditor?

9 Q Uh-huh.

10 A I can tell you that the next  
11 witness does farm audits, and so I looked over  
12 at Kevin, because, you know, you could ask him  
13 the same question. But if I had to guess from  
14 when I have done farm audits, it takes, you  
15 know, several hours to prepare for an audit.

16 You know, if you're very familiar  
17 with the crop production or the farm or the  
18 farming system, you know, it's several hours.  
19 If you're not and you have to do a little bit  
20 more research, to say these are whatever, a  
21 crop that I may not be, you know, intimately  
22 familiar with so I want to do a little bit

1 more research, you know, to get a better frame  
2 of reference and look at some technical books  
3 or materials or talk to farmers, you know,  
4 that may add considerable more time.

5 Q Now, is there an hourly charge  
6 that your company charges the farm?

7 A I'd have to have the certification  
8 program staff, you know, talk about setting --  
9 you know, whether or not we charge by the hour  
10 for setting rates. I'm really not part of the  
11 technical certification program staff. You  
12 know, I don't reviews. I don't do initial  
13 reviews, final reviews, or audits anymore.

14 Q Okay. As you understand the  
15 proposal --

16 A But I do know that whatever our  
17 rate is, is a lot less than what USDA  
18 accreditation audits per hour run us, because  
19 I see those totals, and that's what, you know,  
20 contributes to that \$50,000 last year in  
21 accreditation costs is the cost of USDA  
22 auditors, not that the auditors maybe are



1 getting all that money, but that's what it  
2 costs USDA to have the program, the auditing  
3 program. You know, it's quite expensive.

4 Q Just going further down on page 4,  
5 your understanding of the proposal, as you  
6 understand it, who would be assessed under the  
7 proposed program?

8 A Well, I got at that. The  
9 handlers -- you know, I forget the exact  
10 wording. The first tier or the first, you  
11 know, line handlers pay, you know. I mean, I  
12 got news for you. As a farmer, if somebody  
13 puts up money on my behalf, you know,  
14 somebody's going to pay.

15 Either they're going to say, you  
16 know, the price that we can offer for your  
17 product, because after all, you know, we're  
18 kind of covering the cost of that audit to get  
19 you up to speed so that we can buy your  
20 product, so, you know, we're subtracting that  
21 out of it, and if they don't make it explicit,  
22 it will be whatever -- you know, implicit.

1           I mean, they will deduct it.  
2   Companies are in business to survive and make  
3   a profit, and if I'm putting money out on  
4   behalf of a small farmer or of a farmer, you  
5   know, I mean, I'm saying, you know, what's our  
6   investment in dealing with this person; what  
7   do we buy from him or her. Is it worth doing  
8   that? And how do we recoup our investment,  
9   the resources that we put out to have this  
10   person as one of our suppliers?

11           I mean, or I'll charge it on the  
12   other end, or I'll do a little bit of both.  
13   You know what? For that lettuce, here's what  
14   we need to get, because -- you know, because  
15   actually we're invested now on the upstream  
16   end. One way or the other, somebody's going  
17   to pay, and when there's money that a  
18   company's putting out and it's portrayed as,  
19   It won't cost you anything, one, it may cost  
20   you your market, you know, if you don't do all  
21   this recordkeeping.

22           Charlie, again, in his testimony,

1 he was saying, I'm there; I've done it. I've  
2 never had a food safety problem. You know, I  
3 keep records. If you pile one more layer of  
4 records on me, call me a recordkeeper and not  
5 a farmer, because that's what you're going to  
6 drive me to. You know, so that's the danger  
7 in some of the stuff.

8 Q Okay. On page 5 of your  
9 statement -- let me see if I'm referencing the  
10 right section. Within your statement, you  
11 reference the use of the certification mark  
12 under the program, and on page 5, you  
13 reference -- you say that the marketing of the  
14 food safety does not encourage the connection  
15 between Americans and their food. And you  
16 also go on to say that, and there is a  
17 difference between food safety and the  
18 marketing.

19 In terms of your understanding of  
20 the program and the use of the certification  
21 mark, do you understand that to be used on the  
22 packaging of product as it's proposed?

1           A           I'm thinking that's what I'm saw.  
2   I'm thinking that that was my understanding,  
3   that it talked about the mark, you know, a  
4   certification mark, you know, and I think  
5   that's what our staff and what our issue was.  
6   Again, are you penalized in the marketplace  
7   for buying a product that doesn't participate  
8   in a voluntary marketing program.

9                    One, is the product that you want  
10   no longer available because the retailer or  
11   the handler is only saying, No, we are only  
12   buying from farmers that are, you know, within  
13   the corral, within the fencepost, not outside.  
14   So, you know, one way or the other, that that  
15   certification mark, you know, is kind of that  
16   signal to the buyer, and maybe to the ultimate  
17   consumer, that this meets this -- these  
18   marketing agreements, and anything less, if  
19   you buy that other bag of salad mix, it may  
20   not. It may not be as safe as ours.

21           Q           Just to clarify with regards  
22   particularly to -- with regards to the

1 consumer, do you have a copy of the  
2 proposed -- the Federal Register notice?

3 A Yes, ma'am.

4 Q Section 970.69, Official  
5 certification mark --

6 A Yes. I think that's the one I  
7 read that I said, oh, a certification mark.

8 Q In paragraph --

9 A Let me turn to that section.

10 Q Paragraph (b) of that section --

11 A The one that says, "The committee  
12 may license" --

13 Q Yes.

14 A -- "to affix the official  
15 certification mark to bills of lading or  
16 manifests" -- (Perusing document.)

17 Q So do you understand that to mean  
18 that it would be on any packaged products?

19 A Well, I'm not seeing any language  
20 in there that says, The mark will not be used,  
21 you know, on the retail shelf, will not be on  
22 a packaged product. I mean, there's nothing

1 in there that says -- unless I'm  
2 misunderstanding, which it could be.

3 "The committee may license  
4 signatories to affix the official  
5 certification mark to bills of lading or  
6 manifests, subject to the verification,  
7 suspension, revocation requirements or any  
8 other such uses recommended by the committee,"  
9 which are, you know, folks involved in leafy  
10 greens marketing and production and handling.

11 -- "any uses recommended by the  
12 committee and approved by the Secretary to  
13 carry out the purposes of this agreement. A  
14 signatory's compliance with the regulations  
15 under this agreement is a condition precedent  
16 and subsequent to the signatory's entitlement  
17 to use the mark."

18 Well, I understand that. If  
19 you're not part of the club, then don't use  
20 the seal or the mark. But there's nothing in  
21 there that doesn't -- that makes me think, I  
22 mean, from reading, that there may be a mark

1 on a product on a store shelf to let me, as  
2 a -- you know, to hopefully tell me as a  
3 consumer that this product may have qualities  
4 which are not qualities, again. You know,  
5 it's being framed as that food safety is a  
6 quality. I mean, it's a basic tenet of food.

7           You know, organic is a labeling  
8 term. You know, USDA has always said, This is  
9 about marketing and labeling, a consumer  
10 choice. To me, food safety is not a choice.  
11 That should be a gut -- you know, there's  
12 nothing in the store that should, you know,  
13 kill somebody.

14           Q       Okay. Thank you.

15           JUDGE HILLSON: Anything else from  
16 the panel?

17           (No response.)

18           JUDGE HILLSON: Any questions for  
19 you, Mr. Resnick?

20           MR. RESNICK: Yes, Your Honor.  
21 Jason Resnick, Western Growers, proponent  
22 group.

1 CROSS-EXAMINATION

2 BY MR. RESNICK:

3 Q Good morning, Mr. Mesh. Thank you  
4 for your testimony this morning.

5 A You're welcome.

6 Q You do agree that a food safety  
7 program for the leafy green industry is  
8 necessary.

9 A I think the industry and  
10 agriculture need to deal with food safety  
11 concerns. You know, you have, you know,  
12 multiple bills right now on the Hill. You  
13 have FDA holding hearings. To me, the rush to  
14 a marketing agreement, you know, is premature  
15 and is jumping ahead of really what the  
16 industry -- of where the industry -- the  
17 industry may want to hold back and wait to see  
18 what happens in the legislative arena. But I  
19 agree that some attention needs to be paid to  
20 food safety by agri-business.

21 Q I appreciate that. Assuming that  
22 the industry has held back, as of today, we



1 don't have any mandatory food safety program  
2 for leafy greens. Is that correct?  
3 Legislatively.

4 A I'm not familiar with the  
5 California -- you know, what -- if you're not  
6 part of it, what you can or can't do in  
7 California. You know, when you say,  
8 legislatively --

9 Q As far as the FDA is concerned.

10 A No. But like I say, the head of  
11 FDA, I believe, was in North Carolina this  
12 week, visiting farms to get -- to listen about  
13 food safety. That same person is coming to  
14 Florida and some other state to do a listening  
15 session on food safety. To me, FDA is very  
16 much aware that food safety is something that  
17 they will continue to develop guidance and/or  
18 more on.

19 Q I appreciate that. Would you  
20 agree that any food safety for leafy greens  
21 should be auditable?

22 A Yes.

1           Q       And would you also agree that any  
2 food safety program for leafy greens should  
3 also be verifiable?

4           A       Yes. I mean, you know, I assume  
5 that if you was with the tomato folks, you'd  
6 be asking me the same thing; that if you were  
7 with the melon folks, you would be asking me  
8 the same thing.

9           Q       I'm just asking about leafy  
10 greens.

11          A       I know but I'm saying that, you  
12 know, I could envision me sitting in another  
13 room, talking to the tomato folks and then the  
14 cantaloupe folks and then the melon folks and  
15 then the other folks, that to do this, you  
16 know, individual crop by crop is not the way  
17 that farmers -- that you're going to -- you  
18 know, you're not --

19                   In organic farming we really  
20 encourage diversified, you know, farm. You  
21 know, we think that if somebody has problems  
22 with one crop failure, God forbid, that there

1 will be other crops to pull him or her  
2 through, that, you know, you increase bio-  
3 diversity, and that, you know, you all seem to  
4 be focused on saying, No, we're only dealing  
5 with leafy greens here, which is what you just  
6 said. No, this is about leafy greens, and  
7 that therefore, there's some conflict in  
8 thinking about the whole farm, the whole farm  
9 versus one individual crop.

10           And my fear is that some of the  
11 folks that grow leafy greens will also be  
12 growing tomatoes, will also be growing melons,  
13 will also be growing other crops that will  
14 subject them to differing food safety and  
15 protocols and, you know, hoops to jump through  
16 or records to keep.

17           Q       I appreciate that, Mr. Mesh. I'm  
18 just asking you if, for a food safety program,  
19 you agree that it should be auditable. I just  
20 asked if you think it should also be  
21 verifiable.

22           A       I think I said yes.

1           Q       Oh, you didn't. That's why I just  
2 wanted to get that, but now you did. I just  
3 appreciate that clarification. And then  
4 finally on that point, I just wanted to ask if  
5 you agree that a food safety program should  
6 also be science-based.

7           A       You know, yes, but I think we need  
8 research and good science. I mean, you know,  
9 I think that folks have a tendency to pick out  
10 what science they want to base something on  
11 and, you know, leap to that, you know, kind of  
12 rush to, Here's the science that supports our  
13 limited argument, and by God, that's what  
14 we're going to hang our hats on.

15                   And so while I do agree that it  
16 should be science-based, you know, who picks  
17 the science, and what researchers, and are we  
18 recognizing research that was done on whole  
19 farming systems maybe in France or Europe or  
20 Switzerland. Is that credible research as  
21 well, or is it just land grant institutions  
22 here in this country that have become wholly

1 dependent upon agri-business and biotech  
2 companies for their research funds?

3           And so it's not information-based  
4 research. It's product-based research. I  
5 mean, and so that's my fear, when you say  
6 science. It's science and how limiting we --  
7 how limiting or expansive we include credible  
8 scientific research in our deliberations.

9           Q       So you would agree that a food  
10 safety program should be based on good  
11 research and good science.

12           A       Can you define good?

13           Q       Well, actually that was the term  
14 you used. I said, science-based. You said as  
15 long as there's research and good science, so  
16 if you want to define the term "good" -- I  
17 think you just did. Using the terms you use,  
18 then you would agree, would you not, that a  
19 food safety program should be based on good  
20 research and good science, as you just defined  
21 it? Is that correct?

22           A       I reckon. If you're saying that I

1 get to define the science, I'm comfortable  
2 with that.

3 Q Well, I think --

4 A I don't mean to be sarcastic,  
5 but --

6 Q No, no. I mean, your point is  
7 that it should be based on good, sound,  
8 science and not any particular point of view.

9 A Right.

10 Q Yes. And I think we all agree  
11 with that. I just wanted to confirm your  
12 viewpoint for the record, and I appreciate it.  
13 I think the proponent group would agree with  
14 you, that we support good, auditable,  
15 verifiable metrics based on good science.

16 A But lacking the research, it seems  
17 to me as though the research needs to be done.  
18 I think that on some levels there may be a  
19 void in consideration. Plus when we talk  
20 about food safety, I mean, you all seem to  
21 focus obviously on microbiological stuff,  
22 which is clearly part of it, but, you know, I

1 think that the discussion of science and  
2 science-based stuff and food safety is  
3 probably more expansive than just, you know,  
4 pathogen content on something, as we talked  
5 about the -- I mean, you know, pesticide  
6 tolerance or even the amount of pesticides.  
7 I mean, there's science based on that, about  
8 the environment effects.

9           How about -- there's all sorts of  
10 stuff that deal with whether or not, you know,  
11 something's safe to eat or healthy,  
12 functioning agri-ecosystem.

13           Q       You've read the marketing  
14 agreement, the proposal. Correct?

15           A       Yes, sir.

16           Q       So there's nothing in there that  
17 would limit the application of sound science  
18 and looking at all of the aspects of food  
19 safety you just described, is there?

20           A       Well --

21           Q       Is there anything limiting in that  
22 document that would limit the application of

1 that type of scientific approach?

2           A        Again, you know, I raised  
3 concerns, I think, in response to questions  
4 from USDA, you know, about who the gatekeepers  
5 are, to who's on the technical advisory panel.  
6 They get elected by the administrative  
7 council. You know, the administrative council  
8 has -- you know, I think it was again -- I  
9 need to go back, but -- I could be mistaken,  
10 but, you know, one farmer from Maine to  
11 Florida.

12                    That's one farmer to vote for --  
13 you know, and then the committee itself votes  
14 for what representative from a land grant  
15 institution -- and, you know, I need to  
16 read -- you know, be focused, sent to the  
17 paragraph. But, you know, the administrative  
18 council is the one who votes for, you know,  
19 what scientist, you know, what representative  
20 from a land grant institution goes on the  
21 technical advisory panel.

22                    You know, well, do environmental



1 citizen organizations, consumer organizations,  
2 do they get to vote, too? I mean, you know,  
3 who decides on, again, the quality and the  
4 neutrality of some of the science folks? So  
5 I'm concerned about the gatekeepers from the  
6 results. Again, and with metrics that aren't  
7 even in here. I mean, you know, we're talking  
8 about research that hasn't been done maybe,  
9 about metrics that haven't been proposed. Yet  
10 about an administrative council that is really  
11 the ultimate gatekeeper.

12 Q And those concerns have been noted  
13 in your comments earlier. Thank you for that.  
14 Would you agree that food safety is an issue  
15 for organic farms just as much as it is an  
16 issue for conventional farms?

17 A Absolutely. I think food safety  
18 is an issue for any farm.

19 Q Would you also agree, then, that  
20 an outbreak of a pathogen such as E. coli or  
21 salmonella impacts your members just as much  
22 as it would impact conventional farming?

1           A        I think an outbreak of E. coli  
2 would -- you know, as Charlie mentioned  
3 earlier, could devastate any farm, you know,  
4 even one, you know, quote, innocent or, you  
5 know, a thing could bankrupt a company, could  
6 bring down a farm or a company. And so, you  
7 know, some of the --

8                   As opposed to, you know, a set of  
9 metrics and this and that, or, you know, oh,  
10 we got it wrong a few years ago, or we need to  
11 change that, you know, some of this stuff, you  
12 know, again may be better, and what brings it  
13 to mind is I see the lady there from Georgia  
14 Fruit & Vegetable, and she was talking about  
15 the educational stuff that they do. And they  
16 do educate growers.

17                   I mean, and, you know, we've  
18 educated growers and land grants -- Charlie  
19 was talking about IFAS at the University of  
20 Florida. You know, education and real  
21 understanding of where some of the risks are,  
22 that's -- you know if farmers have education

1 and information enough, that maybe we get  
2 further towards food safety than, you know,  
3 driving folks crazy with pieces of paper.

4 Q I appreciate that. Would you also  
5 agree, Mr. Mesh, that those farmers that don't  
6 employ best practices, that don't invest the  
7 time and money and resources for their own on-  
8 farm food safety programs, put those that do  
9 at risk, and put them at risk as far as  
10 possibly having an outbreak and devastating  
11 that farm or the industry?

12 A I think I hear your question, you  
13 know, which is a loaded question. You know,  
14 I'm more concerned about the farms that are  
15 practicing safe practices, that don't have  
16 food safety incidents. You know, the farm  
17 that I was involved in, it's never had  
18 anything. We put a sticker on every single  
19 watermelon, and we did that starting to say,  
20 if anybody ever got a bad watermelon, call us  
21 up. It's easily -- you know, they know what  
22 farm it came from, because our sticker's right

1 on the watermelon.

2           And we never got people  
3 complaining about watermelons. What we got  
4 are people thanking us, letters for such good  
5 and high quality watermelons, writing letters  
6 about watermelons. I mean, it was a shock to  
7 us. But that's where I think that my problem  
8 with all this is, is that Charlie was saying,  
9 Look, I'm out there planting; I'm out there  
10 doing the greenhouse. I left my irrigation,  
11 which is why he flew out of here, you know, a  
12 little while ago, to say, I've got to get back  
13 to turn the irrigation on.

14           You know, he's out there  
15 harvesting. He's packing, and, yes, he has  
16 some help with him, but, you know, he's doing  
17 things right and that the cost involved in  
18 hiring a quality assurance person -- your job  
19 is just to fill out these papers and keep them  
20 set up, because, you know, our obligation  
21 under the Leafy Greens Marketing Agreement and  
22 then under the tomato one and then under the

1 melon one, and then under the National Organic  
2 one and then under this other one -- you know,  
3 we need to have all these file folders full of  
4 all this stuff.

5           And so, you know, you talk about  
6 auditable and recordkeeping. You know, the  
7 question, the loaded part of it, was to say do  
8 I think that people practicing unsafe farming  
9 practices are a liability to the industry.

10           Q       Correct.

11           A       I mean, you know, am I going to  
12 defend somebody that's trying to sell  
13 contaminated food or food that's, you know --  
14 no. But, in fact, you know, the spinach  
15 issue -- I mean, and I don't know where the  
16 culpability came from. Those, I believe, were  
17 all good farmers. I mean, they're all good  
18 farmers, and they've gone to the extent to  
19 test stuff and to do this and that.

20                    You know, things happen, and we  
21 can put systems in place, but it's more -- my  
22 faith is more in the farmer on the ground than

1 the pieces of paper that have a check by it in  
2 a file, that then, if something were to  
3 happen, you go, Well, we have all this stuff.  
4 It's really what the intent and the  
5 operational capacity is on the farm to do the  
6 right thing. And the lower priority for me  
7 sometimes on a consuming level is filling out  
8 what is volumes and mountains of paperwork and  
9 paying somebody else to test stuff constantly  
10 or whatever.

11 Q Would you also agree then that  
12 consumer confidence is critical for your  
13 industry success?

14 A Absolutely, which is why seeing --  
15 we had already developed our position, but,  
16 you know, the quote from Consumers Union, you  
17 know, that organic was really only made  
18 possible because of citizens' choice in the  
19 marketplace, and that that quote from my  
20 testimony, from Consumers Union, saying, We  
21 don't have confidence in this proposed  
22 marketing agreement, you know, weighs and

1 should weigh, because it's folks buying --  
2 Consumers Union opposes the  
3 proposed NLGMA. Well, you know, you can't  
4 please everybody all the time, but those are  
5 the folks that are buying the produce. At the  
6 end of the day, if I can't sell what I grow,  
7 you know, I'm not going to be around very  
8 long, and that consumers ultimately are the  
9 ones that can vote with their food dollar.  
10 They need to have confidence in the way the  
11 program's set up, with the intent of it, and  
12 I think that's been one of the major benefits  
13 of developing the National Organic Program.

14 Q I agree with you on that, and I'll  
15 end there. Thank you.

16 JUDGE HILLSON: Any other  
17 questions from the USDA panel? Go ahead, Ms.  
18 Schmaedick.

19 MS. SCHMAEDICK: Melissa  
20 Schmaedick, USDA.

21 RECROSS-EXAMINATION

22 BY MS. SCHMAEDICK:

1           Q       Mr. Mesh, you a couple of times  
2 brought up the issue of land grant  
3 universities and their representation on the  
4 proposed Technical Review Board. What is your  
5 opinion of the ability of land grant  
6 universities to provide, in your terms, good  
7 science?

8           A       I think that land grant  
9 universities have -- do a lot of great things  
10 and that they are viewed as good sources of  
11 information by a lot of producers, but that  
12 they are strapped with the inability to fund,  
13 you know, at least recently, I mean, you know,  
14 to fund true systems research and ecosystem  
15 research, and some of the research that I  
16 believe would help solve some of the  
17 environmental and production challenges, and  
18 that much of the focus has been on, you know,  
19 product-based research, so that the outcome of  
20 the research says, If you have that problem,  
21 spray this Monday and Wednesday; in fact,  
22 spray this other thing Tuesday and Thursday,



1 and that should solve the problem.

2 It's not about information, how to  
3 manage a farm and how to manage a problem.

4 It's about what product to apply. The  
5 consolidation of agricultural inputs in seed  
6 companies, you know, and tying those to land  
7 grant information, you know, I believe that  
8 there's undue influence, you know, and I hope  
9 I don't get sued by some big old company for  
10 saying stuff. And maybe in a hearing it's  
11 okay. I don't know. Maybe not, though.  
12 That's my fear.

13 But, you know, I believe that  
14 there's some, you know, companies that have  
15 undue influences over what research does and  
16 doesn't get done, and what sees the light of  
17 day in research at land grant universities,  
18 and that to me is wrong. If research is done  
19 at a land grant, you know, it should be  
20 available. We did the research, and here's  
21 what it says.

22 Not, We did the research, but

1 because it was funded by -- or, you know,  
2 somewhat supported by the efforts of a  
3 company, you'll never see that information.  
4 It will never see the light of day, and it  
5 doggone sure ain't going to get published, and  
6 anybody associated with doing the research  
7 will never be talking about it.

8           And, you know, of course, they  
9 don't talk about that kind of stuff, so, you  
10 know, I'm not so sure I could give you case  
11 textbook examples of it, but that's the  
12 information that I've herd, both in  
13 agricultural research, which causes me  
14 problems, as well as drug research, which I  
15 wonder what the future is for my kids and the  
16 effects of drugs, you know.

17           But when companies fund the  
18 research, companies have a vested interest in  
19 whether or not the results -- a vested, you  
20 know, part of whether or not that research  
21 sees the light of day. So it makes you then  
22 question, you know, the institution. Whether

1 or not that's a valid questioning, I think it  
2 is, but I know that it makes me somewhat  
3 suspect sometimes of some of it.

4           And then plus, you know, land  
5 grant universities -- I mean, I've been told.  
6 I was told personally, You cannot grow  
7 blueberries organically in Florida by land  
8 grant, you know, the top people at land  
9 grants, and you go, blueberries are a native  
10 crop in Florida. You can grow them  
11 organically. They said, No, you can't, and if  
12 you want to grow them organically, this  
13 meeting's over.

14           Well, you know, that -- and that  
15 was just, you know, I mean, not that long ago.  
16 It was a decade ago, but that's still, you  
17 know, in 1996, '97. That's when it was. You  
18 know, and so land grants, I think, change with  
19 personnel obviously, with chairmen of  
20 departments, but, you know, it does make you  
21 question land grants sometimes as to say, I  
22 know I can grow blueberries organically. I

1 know I can.

2 I don't need to be told that by a  
3 land grant as, This is the truth and anything  
4 less than what we believe, we won't tolerate  
5 you saying on campus is somewhat disheartening  
6 to me. I don't know if I answered your  
7 question about land grants.

8 Q I think you did. Thank you. In  
9 your testimony, you refer to a study that was  
10 done by Shermain Hardesty from UC-Davis. Do  
11 you happen to know if that's a land grant  
12 university?

13 A I don't know. I mean, I think UC-  
14 Davis is a land grant, but I don't really know  
15 that for sure. I mean, I'm Florida. I'm sure  
16 somebody -- you all -- whoever's in California  
17 would know whether UC-Davis is a land grant,  
18 I would think.

19 Q Okay. Thank you.

20 A But I know they do a lot of  
21 agricultural stuff, it seems like.

22 Q That's the end of my questions.

1 JUDGE HILLSON: Anyone else have  
2 any questions for this witness?

3 (No response.)

4 JUDGE HILLSON: Mr. Mesh, you may  
5 step down.

6 (Whereupon, the witness was  
7 excused.)

8 JUDGE HILLSON: Listen, I -- let's  
9 go off the record for a second.

10 (Discussion held off the record.)

11 JUDGE HILLSON: Back on the record  
12 to say it's 11:25 almost, and we're going to  
13 take an hour for lunch and come back at 12:25.

14 Thank you. Off the record.

15 (Whereupon, at 11:25 a.m., the  
16 hearing in the above-entitled matter was  
17 recessed, to reconvene at 12:25 p.m., this  
18 same day, Thursday, October 1, 2009.)

19

20

21

22



1 marked or I am marking Mr. O'Dare's written  
2 statement as Exhibit 55.

3 (The document referred to was  
4 marked for identification as  
5 Exhibit Number 55.)

6 JUDGE HILLSON: And you want to  
7 read your written statement. Is that correct,  
8 sir?

9 MR. O'DARE: Excuse me?

10 JUDGE HILLSON: You want to read  
11 your written statement. Is that correct? Are  
12 you ready to read it?

13 MR. O'DARE: Yes.

14 JUDGE HILLSON: You may proceed.

15 MR. O'DARE: Okay.

16 DIRECT TESTIMONY

17 MR. O'DARE: I'm more of a farmer,  
18 not a talker, so -- but first of all, I want  
19 to say, God bless of America. I don't think  
20 they have food safety meetings like this in  
21 China. If they do, it's probably trying to  
22 export bad food to America, so like I said, I

1 feel very fortunate that you guys are here  
2 listening to us.

3           It blows me away that the USDA, a  
4 group of you guys, would be here, to talk to  
5 small farmer like us, to get reaction. I  
6 mean, I think this is what America was based  
7 on, you know, letting the government -- people  
8 talk to small government. I think it's a  
9 great thing to go back to. I'm just blown  
10 away that you guys will even be here,  
11 listening to us and stuff, so thank you. I  
12 really appreciate it.

13           As you guys read here, I've been  
14 an organic farmer for 15 years. I specialize  
15 in growing leafy greens. My biggest market  
16 are restaurants. I also do a little stand at  
17 my farm, and I do a farmers' market, and we do  
18 a little bit of wholesale also.

19           As a small organic farmer, I am  
20 very interested in good food, and along with  
21 the good food, I am just -- food safety is one  
22 of my number one issues, and I believe it is



1 with a lot of us small farmers and organic  
2 farmers. We're trying to grow good food,  
3 nutritious food for people who want it, who  
4 see the difference, and the last thing we want  
5 to do is contaminate it from seed, all the way  
6 to harvest, and packing and shipping and  
7 everything like that.

8           So I do think food safety is a  
9 very, very big concern, not only with the big  
10 guys, but us small guys. When I harvest  
11 something, I'm the person who delivers that  
12 product, either to my restaurants. I'm the  
13 guy at the farmers' market, directly face to  
14 face with my customers. I see them face to  
15 face, and when we package stuff and we send it  
16 out, I'm the one who delivers it.

17           And for me to even think about  
18 delivering something that could have some kind  
19 of bad effect on somebody when I'm trying to  
20 grow good food is just quite the opposite of  
21 what I do and what I think. I think a lot of  
22 small farmers are like that, too.

1                   Over the last 15 years, I've had  
2 the privilege to inspect farms. I'm an  
3 independent -- an international independent  
4 organic inspector. I belong to the Organic  
5 Inspectors Association for 15 years. I have  
6 done inspections all over Florida and the  
7 Caribbean. I inspect a lot of small farms and  
8 larger farms. I do processing facilities,  
9 that does cosmetics, essential oils,  
10 everything.

11                   Over a 15-year period, I feel I  
12 rarely see the small farmers have problems  
13 where I've seen some of the larger groups have  
14 more problems. I mean, they have all the  
15 money. They have quality control managers and  
16 all sorts of things like that, but sometimes  
17 that stuff doesn't stick. I really believe  
18 the small farmers are very conscientious about  
19 their product, not only food quality but food  
20 safety also.

21                   I read this proposal a couple of  
22 times. I really -- I feel like, hey, it's

1 good for the big guys, but, you know, for the  
2 small guy, it has no context or no basing. In  
3 Florida here, we get inspected enough. We're  
4 inspected for organic. The inspector comes  
5 out there, and he also looks for food safety  
6 violations. We have the Florida Department of  
7 Agriculture will send out inspectors. They  
8 come by for safety inspections.

9           We also -- you know, we also  
10 educate ourselves, and we also have the  
11 Florida Department of Agriculture helping us  
12 educate. They'll send in a third-party  
13 auditor to do a food safety inspection, and  
14 he'll help with those cost-sharing effects, so  
15 it's not like that we're blind or we don't  
16 have anywhere to get this education or it  
17 costs too much or anything. All those  
18 components are in place, and a lot of the  
19 small farms I have inspected over the years  
20 have gone through this.

21           Again, like I said, food safety is  
22 just as important as food quality when it

1 comes to me, and I'll speak for a lot of other  
2 small farmers. Like I said, I've been to  
3 almost every small farm in Florida over the  
4 last 15 years, and I see a lot of  
5 conscientious farmers, not only for food  
6 safety but food quality also.

7           Most small farms, when we handle  
8 our product and process and pack and stuff,  
9 there's only a couple people involved. At my  
10 farm, there might be three sets of hands that  
11 will touch somebody's produce before it's  
12 delivered to them, which eliminates a big food  
13 safety issue.

14           Like I said, I'm the guy who faces  
15 my customers every day through one way or the  
16 other, and it's just -- I can't see -- there's  
17 not enough money in the world to make me hand  
18 over somebody a bad mango or a bad apple or a  
19 bad lettuce. It's just -- it's not a money  
20 thing. I grow food because I love doing it  
21 and I love quality food, and that food safety  
22 issue goes right in there with the quality.

1                   Most small farmers do have SOPs  
2 and SSOPs in place. They know about HACCP.  
3 Some of them even have been inspected by  
4 Primus and AIB, as all the big guys have been,  
5 and, again, I've been to these places that  
6 have been inspected by Primus and American  
7 Institute of Baking, and they're a lot more  
8 lost than some of the small farmers I deal  
9 with, too, so --

10                   Like I said, a lot of small  
11 farmers have their standard operating  
12 procedures in place. They also have their  
13 sanitation standard operating procedures in  
14 place, and they do use them. They might not  
15 be written, but they use these things on daily  
16 operations. Again they do have whatever you  
17 want to call it, best practices, better  
18 management practices. They are in place.  
19 These are what these guys do every day as  
20 their standard operating procedures. Again,  
21 they might not be written, but they're  
22 mentally intact, and they do use them every

1 day.

2 Another thing I really want to say  
3 is this year, we've had a 300 percent increase  
4 in our market. With the way the economy is  
5 nowadays, people go, How can that happen. Why  
6 does it happen? Because a lot of my customers  
7 are tired of the food safety issue. They want  
8 something that they can see the person who's  
9 producing. they want a face. They want to  
10 know it's local, so these local restaurants --

11 One of my restaurants says, We'll  
12 pay 1,000 percent more if we know it's  
13 produced locally. Then we don't have to worry  
14 about China or Mexico or food safety issues.  
15 So the local food thing has really made small  
16 farmers stronger now, and this is a very big  
17 opportunity to us to carry it through. This  
18 local thing, it's just huge.

19 I mean, like I said, we had a 300  
20 percent increase over least year, and it's  
21 just amazing. I mean, the way the economy is,  
22 for us to do that good, it's just -- it blows

1 me away, too. We had such a good year, I'm  
2 sending my kid to school right across town  
3 here at Jacksonville University. It's a  
4 private school. It costs more money than a  
5 public school, but we had a couple good years,  
6 working hard at the farm, and being a  
7 successful small farm, I'm very proud that I'm  
8 able to put my son through school, and it's  
9 because I do respect the food safety and food  
10 quality issues.

11 And that's all I have to say.

12 JUDGE HILLSON: Okay. I'm going  
13 to receive your written statement, Exhibit 55,  
14 into evidence.

15 (The document referred to, having  
16 been previously marked for  
17 identification as Exhibit Number  
18 55, was received in evidence.)

19 JUDGE HILLSON: And then I'm going  
20 to ask the USDA panel if they have questions  
21 of you, Mr. O'Dare.

22 MS. DESKINS: Did you want to read

1 your statement?

2 MR. O'DARE: Do you want me to  
3 read it?

4 JUDGE HILLSON: Well, it's in the  
5 record. You can cross-examine him on it. I  
6 mean, he says it is his statement, and he is  
7 here to testify to it. If you want him to  
8 read it --

9 MS. DESKINS: Well, I'm just  
10 asking him. I didn't know if he wanted to  
11 read it or --

12 JUDGE HILLSON: That's your call,  
13 Mr. O'Dare. I'll let you --

14 MR. O'DARE: If you want me to  
15 read it, I'll be glad to read it.

16 MS. DESKINS: It's up to him. I'm  
17 just asking.

18 JUDGE HILLSON: I guess we have  
19 time, so if you want to --

20 MR. O'DARE: I'll read it. It  
21 will only take me a minute. Okay?

22 JUDGE HILLSON: Go ahead.



1                   MR. O'DARE: All right. That's  
2 when I get scared. I start hearing my own  
3 voice.

4                   My name is Kevin O'Dare. I own a  
5 ten-acre farm that is certified organic. We  
6 have been on this farm since 1993, and it was  
7 first certified in 1996 and currently are  
8 certified. We specialize n field greens that  
9 we sell locally at our farm stands,  
10 restaurants, and farmers' markets.

11                  And by the way, coming in that  
12 back door, that's where I come in those  
13 restaurants. I can't afford to go in the  
14 front door. I come in the back door, so  
15 that's normally how I make my entrance anyway.  
16 But most of the restaurants, I do deal with  
17 are private clubs, and there's no way I'll  
18 ever go through the front door.

19                  I've been a member of the  
20 International Organic Inspectors Association  
21 since 1996 and have inspected over 500 farms  
22 and processing facilities throughout Florida

1 and the Caribbean. I am also the chairman of  
2 the Indian River County Agriculture Advisory  
3 Board to county commissioners. I also am a  
4 committee member of The Farm Service Agency.  
5 I'm a paid elected employee, and as a Farm  
6 Service Agency committee member, I make the  
7 decision on loans and disaster funds and  
8 things like this.

9 I came here to let my feelings be  
10 known and my professional opinion about the  
11 proposed marketing agreement 970. Did I get  
12 that right? I have read the proposal and feel  
13 we do not need it. Marketing and food safety  
14 are not related at all. And I truly do  
15 believe that.

16 I mean, you know, it's nice to  
17 say, oh, yes, we're HACCP-certified as part of  
18 one of your marketing things, but I do believe  
19 that marketing and food safety are two  
20 different things, and there's two different  
21 management groups involved, and that's why I  
22 have the statement that says, when

1 sales/marketing managers overrule quality  
2 control managers, releasing products that are  
3 unsafe.

4           The small organic farmer is  
5 already inspected once a year by organic  
6 inspectors whose duties are also to report and  
7 document food safety violations. I have  
8 inspected almost every organic farm in Florida  
9 over the last 15 years, and the people who own  
10 and operate small farms are more conscientious  
11 about food quality and food safety. Most of  
12 them personally know their customers, and they  
13 do the deliveries themselves, avoiding many  
14 critical control points that often affect food  
15 safety.

16           The 970 proposal rule should be  
17 abandoned, because it's duplicating and time-  
18 wasting measures being implemented with Big  
19 Brother's hands getting larger. You guys had  
20 a little bit of a different thing there, but  
21 I couldn't read the small print one.

22           JUDGE HILLSON: Okay. Well, the

1 one I have to put in evidence is the one that  
2 omits the Big Brother part of it, but that's  
3 what I received. Aren't you glad you asked  
4 him to read it, Ms. Deskins? But, anyway,  
5 I've accepted your witness statement as you  
6 submitted to me as Exhibit --

7 MR. O'DARE: I have that, too, but  
8 I don't know where I got these glasses, but  
9 they just don't seem to be working.

10 JUDGE HILLSON: There were a lot  
11 of similarities. It's okay. Let me move back  
12 to the panel and see if they have any  
13 questions of Mr. O'Dare. Ms. Schmaedick?

14 MS. SCHMAEDICK: Yes. Melissa  
15 Schmaedick, USDA.

16 CROSS-EXAMINATION

17 BY MS. SCHMAEDICK:

18 Q Good afternoon, Mr. O'Dare.

19 A Good afternoon.

20 Q Thank you for your testimony.

21 A Thank you for listening. I mean  
22 that from the bottom of my heart, too.

1           Q       My pleasure. Just for  
2 clarification, in your written statement that  
3 you've submitted, you used the acronym IRC.  
4 Does that stand for Indian River County?

5           A       Indian River County. That's the  
6 county that my farm is in, one of -- in  
7 Central Florida here.

8           Q       Okay.

9           A       And the city's Vero Beach.

10          Q       Okay. Thank you. So you  
11 mentioned that you're a grower and a handler.  
12 Is that correct?

13          A       I'm a grower.

14          Q       You also harvest and package and  
15 delivery your product. Is that right?

16          A       Well, yes, we do. But I'm not  
17 considered a handler, because we field pack  
18 it, is the term that is used. I mean, we do  
19 rinse it and wash it, but I'm not considered  
20 a handler, though.

21          Q       According to ag practices in  
22 Florida, or according to the proposed language

1 in the agreement?

2 A Just I've never been considered a  
3 handler, even inspected by the Florida  
4 Department of Agriculture or Quality  
5 Certification Services, my certification  
6 agency.

7 Q Okay. But if I understood your  
8 statement correctly, you feel that food safety  
9 in product is important. Is that correct?

10 A Food safety is definitely  
11 important. I mean, like I said, it's on my  
12 mind all the time.

13 Q And in your opinion, is it an  
14 issue that is just limited to within the realm  
15 of production, or is it also a responsibility  
16 that extends beyond the field into how  
17 products are harvested and handled beyond that  
18 point?

19 A Well, that's where most  
20 contamination takes place, is outside of the  
21 field, when you start to handle it and process  
22 it and wash it and pack it and ship it and,

1 you know, bring it to brokers and stuff like  
2 that. That's where more contamination takes  
3 place. You do have -- well, in my case --  
4 let's put it that way -- we don't have any  
5 animals on our farm or any animals near our  
6 farm, so we don't have to take that other into  
7 consideration.

8 Q In your understanding of the  
9 proposed agreement, would it include best  
10 practices for production as well as handling  
11 and processing?

12 A Repeat that question.

13 Q Sure. Based on your understanding  
14 of the proposed agreement, would the proposed  
15 look at developing best practices for  
16 production, as well as handling and processing  
17 activities?

18 A Would this proposal?

19 Q Yes.

20 A It's written that way.

21 Q And do you think that that's an  
22 important approach?

1           A        This proposal?

2           Q        No.  To look at the entire system,  
3 from production through the end of handling.

4           A        Yes.  I think it's important, very  
5 important.

6           Q        Okay.  You mentioned that you are  
7 also an inspector.

8           A        I'm an inspector.  I audit organic  
9 farms and processing facilities.

10          Q        Okay.  And you also -- you  
11 mentioned SOPs in your testimony, SOPs,  
12 standard operating procedures.

13          A        Right.

14          Q        Are there differences between SOPs  
15 on small farms or in small processing  
16 facilities versus large farms and large  
17 processing facilities?

18          A        Yes.  Every farm and every  
19 processing facility has its own SOPs, standard  
20 operating procedures, and SSOPs, your  
21 sanitation standard operating procedures.  
22 Every farm's different.  Every processing



1 facility is different. They're set up  
2 differently, so you're going to have different  
3 standard operating procedures, you know.

4           And like I said, a lot of small  
5 farmers don't have written standard operating  
6 procedures, but you're standard operating  
7 procedure is what you do daily in and out, the  
8 procedures that you do to plant your seed,  
9 transplant your plants, go to harvest, your  
10 packing, everything that -- you know, you're  
11 doing this routine, daily in, daily out, and  
12 that becomes your standard operating  
13 procedure.

14           Q       And do the -- even though the  
15 standard operating procedures are different,  
16 between large and small operations, is the  
17 goal, the end goal, the same?

18           A       Yes, yes. I mean, like I say,  
19 they're different, but we might use a broader  
20 guideline and then fine-tune them to our farm  
21 or your neighbor's farm or the processing  
22 facility, and that's a difference in the

1 sizing and everything, too. When you start  
2 having more employees and stuff, you're  
3 definitely going to have different operating  
4 procedures. You're going to have employees  
5 assigned to different tasks and stuff like  
6 that, and you'll have -- each employee will  
7 have different standard operating procedures  
8 for that day as part of their job description.

9 Q So if a similar approach were  
10 taken in terms of the development and  
11 application of metrics in the leafy green  
12 industry, would you feel that that would be  
13 appropriate?

14 A Yes, I would. But I would  
15 definitely leave it up to the individual,  
16 again, to make sure -- see if they feel like  
17 they need it and stuff. Like I was offered --  
18 the Florida Department of Agriculture offered  
19 me, offered all small farms in Florida, an  
20 opportunity to have a third-party auditor come  
21 in and go through your whole farm, from  
22 seeding all the way through shipping and

1 everything, and we took advantage of that, and  
2 they paid for most of it and stuff, and they  
3 put us on a good track that we actually ended  
4 up developing written SOPs and written SSOPs,  
5 you know.

6           And I'm proud we did that, too. I  
7 mean, I had the time to do it, but also,  
8 there's some people, especially if you're new  
9 into farming and stuff, it just takes so much  
10 time and energy. Just, for instance, when i  
11 got into it for a while, I used to do  
12 inspections after I tried to work at night and  
13 stuff.

14           And I just didn't have the energy  
15 because of all the paperwork involved, and I  
16 can see a lot of new farmers or farmers who  
17 are just struggling out in the field, just  
18 being overburdened by paperwork and stuff like  
19 that, where to me, because I've got my farming  
20 ability down, that the paperwork isn't such a  
21 burden, but I can see and I do see --

22           Like in the last two years, I've

1 probably done about 80 inspections, and I do  
2 see some farmers really struggling, just for  
3 the paperwork and stuff, you know, and they  
4 don't have -- the guidelines have changed  
5 since I first started as an inspector to now,  
6 since the National Organic Program came into  
7 place, that we used to be able to help people  
8 out, resource and help them fill out the  
9 application, but once the National Organic  
10 Program took place, we had to become regular  
11 auditors, inspectors, and we weren't allowed  
12 to provide resources or help people fill in  
13 blanks and stuff like that.

14           So I do see stress in the small  
15 farmers doing that paperwork, so that would be  
16 one of the only drawbacks.

17           Q       There have been suggestions from  
18 other witnesses -- and I'm assuming you were  
19 not here yesterday. Is that correct?

20           A       No. I got here about 10:30 this  
21 morning.

22           Q       Okay. So there have been other

1 witnesses who have suggested that an  
2 educational component to the proposed program  
3 would be helpful. Do you believe that that  
4 would be helpful, if an educational component  
5 were to be included?

6 A Oh, yes. Yes. Anytime you've  
7 got -- especially for small farmers in  
8 Florida. About six weeks ago, I had just put  
9 on a two-day -- a three-day seminar in  
10 Orlando, and they had over 700 attendees for  
11 small farms, and they did have some seminars  
12 on food safety courses in there and stuff like  
13 that, so the opportunity to gain that  
14 knowledge is there already, and it's just  
15 seeking it, too.

16 And when I do an inspection, if I  
17 see somebody off, I just tell them, You need  
18 to go take a food safety course, and, you  
19 know, you can go take a HACCP course in almost  
20 any one of these colleges. IAB is providing  
21 the HACCP course now, too, so, you know, the  
22 knowledge is there. It's just for the farmers

1 to take time to go gain that knowledge. Or  
2 should I say, the resources are there for them  
3 to gain the knowledge for it.

4 Q Based on your testimony, I have  
5 the impression that you have a fairly good  
6 understanding of the leafy green industry in  
7 Florida. Is that correct?

8 A Repeat that, please.

9 Q Based on your testimony, I  
10 understand that you have a fairly broad  
11 knowledge of the leafy green industry in  
12 Florida.

13 A Right.

14 Q Do you have any sense in terms of  
15 what percentage of the leafy green production  
16 in Florida is produced by small producer  
17 entities?

18 A I'm just trying to think of the  
19 farms I've inspected, and leafy greens -- you  
20 know, there are some small farmers who'll grow  
21 some mustards and collards. The lettuce and  
22 spinach is a more -- it's not as hard as

1 those. There's a little bit more fragile to  
2 handle, and it's a little bit more specialty,  
3 and also it's where you are in Florida.

4 I know farmers who don't grow  
5 lettuce, and they do very well. I would be  
6 out of business in about ten seconds if I  
7 didn't grow lettuce. That's a strong point  
8 where we are. I think the closer you are to  
9 bigger cities and trendier cities, that  
10 there's a bigger demand for organic field  
11 greens, you know, the trendy term for it and  
12 everything like that.

13 So every farm is a little bit  
14 different, but I see the people who specialize  
15 in growing baby lettuce and stuff like that.  
16 It's just a lot smaller percentage of -- I  
17 would say about maybe 20 percent of the  
18 organic -- small organic farmers might grow  
19 leafy greens, you know. A lot of them do  
20 citrus and all sorts of other things, you  
21 know, so we -- on our farm, we tried to grow  
22 everything at first and found out, you know,

1 if you just go down the USDA checklist, you  
2 know, lettuce is number one produce, tomatoes  
3 number two, potatoes three.

4                   You grow one of those three,  
5 you'll eventually make a profit, because  
6 that's what the people want. You know, you  
7 start growing this outrageous, exotic stuff,  
8 and you can't sell it. You know. people want  
9 lettuce, tomatoes and potatoes, you know,  
10 so --

11           Q       That's all the questions I have  
12 for now.

13                   JUDGE HILLSON: Thank you. Does  
14 anyone else from the USDA have questions? Ms.  
15 Dash.

16                   MS. DASH: Suzanne Dash.

17                   BY MS. DASH:

18           Q       The Small Business Administration  
19 defines a small farm as an entity that has  
20 gross income of less than \$700,000 per year.  
21 Would you be willing to identify yourself as  
22 a small or large farmer, based on that



1 definition.

2           A        I'm a small farmer, but with big  
3 goals. I'm serious about that. Like I just  
4 told you all, we -- you know, my son's going  
5 to the University of Jacksonville over here,  
6 and it's a private school, so, you know -- and  
7 like I said, we had a 300 percent increase  
8 this year, and I'm going to try and take it to  
9 the limit this year again. I think I can do  
10 about another 200 percent on top of that, so  
11 I might be in that other goals, so, you know,  
12 it's something that we're looking forward to.  
13 We're trying to meet, anyways.

14           Q        Thank you. That was my only  
15 question.

16                    JUDGE HILLSON: Anything else from  
17 the panel? Mr. Souza.

18                    MR. SOUZA: Thank you. Anthony  
19 Souza, USDA.

20                    BY MR. SOUZA:

21           Q        Good afternoon, Mr. O'Dare.

22           A        Good afternoon.

1           Q       In your statement you state, "We  
2 specialize in field greens." Could you give  
3 a definition of field greens is?

4           A       Actually that's your leafy greens.  
5 I'll go through as many -- you've got your  
6 mustards, your collards, Swiss chard. Then  
7 you've got like your Chinese cabbages and Bok  
8 Choy, and you have all your different  
9 lettuces, and you got your iceberg. We don't  
10 grow that. You have romaine. And we grow  
11 about ten other varieties. We grow Lollo  
12 Rosso, red oak, green oak, Tango, Rouge  
13 d'Hiver, Speckles, Freckles, Little Gem. What  
14 else?

15                   We grow some arugula, some of the  
16 little bitter lettuces, Lejuna, an oriental  
17 lettuce, so that's all the different leafy  
18 greens that we do grow, and that's a lot of  
19 them right there, but that's all the ones I do  
20 grow. And spinach. Excuse me.

21           Q       In your statement, you stated that  
22 you've audited a good portion of the farms in

1 Florida.

2 A Yes, sir.

3 Q As an auditor, in completing those  
4 audits, what benefits do you believe the audit  
5 gave to the client?

6 A It doesn't give them any benefit.  
7 They're mandated. If they want to be a  
8 certified entity, that they have to fill out  
9 a form, send in money. The form has to be  
10 reviewed. If it looks like that they are able  
11 to pass a review, then they'll send out an  
12 auditor. The auditor goes out and does an  
13 inspection. The audit can last anywhere from  
14 two to four hours, maybe five hours.

15 When I do an inspection like that,  
16 if it's a four-hour inspection, three of those  
17 hours are on documents. The other hour is  
18 just actually looking at the facility, but we  
19 really look at that. The only benefit that  
20 person gets is if they pass and they get their  
21 certificate of organic status, that they will  
22 get a premium for their product.

1                   Again, like I said, before NOP  
2 took over the program, that we used to maybe  
3 help out the farmer and give them resources  
4 and give them a little bit more direction, but  
5 since the NOP took over in the late '90s, they  
6 stopped those inspections, as inspectors or  
7 auditors for adding any resources or helpful  
8 in any way.

9           Q       Do you feel a strong outreach  
10 program could accomplish those goals?

11           A       Yes, yes. And like I say, one of  
12 Marty's branches, the FOG group, they're an  
13 outreach program. If you see what they have  
14 on their calendar for this month in Florida,  
15 all the stuff that they're working for -- with  
16 local schools and everything like that, it's  
17 incredible.

18                   Again, like I said, six weeks ago  
19 IFAS, which is the food branch of Florida,  
20 University of Florida -- IFAS stands for  
21 Institute of Food and Science, and it's a  
22 program by the University of Florida, and they

1 put on seminars.

2 Like I said, they just did one  
3 that was six weeks ago, and it did have food  
4 safety courses in it, and there were 750  
5 attendees there, so there is some educational  
6 things, and when they are offered, it seems  
7 like the people are really taking advantage of  
8 it.

9 Like I remember the last time that  
10 we did a small farm seminar about three years  
11 ago, there might have been only 200 people,  
12 but this one had 750 people in it, so --

13 Q Do you see the audit as a tool in  
14 which a client could actually improve its  
15 system that it has in place?

16 A Repeat that again, please.

17 Q Do you see that an audit could be  
18 used as a tool in which the client could  
19 actually improve their system?

20 A Yes. Definitely. And going back  
21 to that, when a farmer first applies for  
22 organic certification, they have to go

1 through -- I think there's like 14 pages of  
2 the application, and it definitely makes them  
3 think about, Oh, I never thought about that or  
4 I never looked at that before or anything.

5           So, you know, the inspection form  
6 or the questionnaire's in about ten different  
7 sections, and it goes, you know, from your  
8 legal entity, a written farm plan, where do  
9 you get your seeds, you know, your greenhouse  
10 production record, your field production  
11 record, your harvest production record, your  
12 sales production records, all that. And they  
13 have to keep this.

14           So if you keep those records and  
15 stuff, you are going to be a better farmer,  
16 because you'll have records that you can look  
17 back and see what you did, what you did wrong  
18 and stuff, so having your farm plan an audit  
19 form is definitely an educational tool that's  
20 positive.

21           Q       In the end of your written  
22 statement, you've got, "The proposed Leafy

1 Greens Marketing Agreement should be abandoned  
2 because it duplicates existing food safety  
3 protocols, wasting time and money." Are those  
4 existing food safety protocols, are they  
5 auditable protocols?

6 A Oh, yes. Yes. I mean, the number  
7 is like a small farm that just gets certified.  
8 I mean, there's 14 pages of audit right there,  
9 you know.

10 Q So --

11 A It's documented, audited. I mean,  
12 we have -- and we have to -- if they document  
13 something, we have to go and back it, too. We  
14 have to find out and research and make sure,  
15 you know, what they're telling us and  
16 documenting is the truth, whether supporting  
17 with any kind of other documents like MSDS  
18 sheets or anything like that.

19 Q So the different protocols would  
20 also be verifiable then if there's records and  
21 documents that exist.

22 A Right, right. Like I say, you

1 know, we've have third-party audit come and  
2 audit our farm, and with the audit they did,  
3 it was definitely a document that we could use  
4 to better our system with. There's no doubt  
5 about that. I mean, you know, it's really  
6 good to get outside eyes to look on any  
7 system, like any business or any people. You  
8 get caught in your own thing, and you tend not  
9 to focus out and focus in more, and you can  
10 definitely skip things.

11           So having a third party come in or  
12 an auditor come in once a year, I think it's  
13 a great thing, because, you know, like I said,  
14 you start looking at one thing one way, and  
15 you sort of don't look out of it, and you can  
16 miss things. That's from my own personal  
17 experience.

18           Q       So as an auditor, you're going in  
19 as basically an unbiased set of eyes, and you  
20 may see things from a different perspective  
21 than somebody who's at an operation day in and  
22 day out.



1           A       Right, right. And that's it. I  
2 go in there with an unbiased -- I follow  
3 exactly what I'm taught to do. I have an  
4 outline that I follow. I sit down with that  
5 person, let that person look at my outline and  
6 make sure that they know I'm not stepping  
7 outside my boundaries. So it's pretty  
8 structured, the audit and everything.

9           Q       So if the National Leafy Greens  
10 Marketing Agreement proposal went forward and  
11 a set of metrics were established based off of  
12 sound science, do you feel that it would be a  
13 waste for industry to conform to such?

14          A       I just can't see it. You know, I  
15 mean, I just -- like I said, we're burdened  
16 with enough paperwork as it is. I can't see  
17 where it could be more helpful. I could  
18 actually look at it at the opposite and look  
19 at it, you know, they can use that against the  
20 people who don't sign up. I know it's  
21 voluntarily, but people can go, Well, you  
22 know, if you're not a part of that group, that

1 means they could have food safety issues.

2           And in the same token, people can  
3 also hide behind that little stamp or that  
4 little certificate. They think they got their  
5 certificate, and now they can just do what  
6 they want to do and forget about food safety.  
7 So, you know, I don't see a positive thing  
8 with that.

9           Q       In programs that you audit, do you  
10 see that to be the case?

11          A       Yes, I do.

12          Q       Okay. Thank you.

13          A       You're welcome.

14                   JUDGE HILLSON: Anything else from  
15 the panel? Ms. Carter?

16                   MS. CARTER: Antoinette Carter,  
17 USDA.

18                   BY MS. CARTER:

19          Q       I just had a few follow-up  
20 questions for you. you indicated that audits  
21 generally take between two to four hours. And  
22 does that vary, depending on the size of the

1 farm?

2           A        Yes. Yes, it does. And, you  
3 know, definitely a smaller farm is going to  
4 have less paperwork. What we're trained to  
5 do, we have to go look at their purchases of  
6 their seed. Number one, your seeds have to be  
7 organic nowadays, because that's the only way  
8 we can ensure that there's no GMO seeds  
9 getting into the organic industry is to make  
10 sure they're certified organic.

11                    So depending on the size farm and  
12 the facility, it could take different. Like  
13 if I do like a big processing facility, let's  
14 say, that has 20 different products, and then  
15 each one of those products might have ten or  
16 fifteen ingredients in it, and then what we  
17 have to do is on every inspection we do or  
18 audit, we have to do a sample audit trail and  
19 balancing, meaning that they'll have to --  
20 I'll pull a random sample of one of their  
21 products, and we have to trace it all the way  
22 back to where it came in the door, make sure

1 it has certificates for all the ingredients  
2 and everything like that, so that can be very,  
3 very time-consuming.

4           But then, again, you can go to a  
5 place and it could be a five-acre cabbage  
6 farm. They use one set of seeds. They grow  
7 one product. They use one fertilizer. You  
8 know, you can look at their books in 45  
9 minutes and look at their farm in an hour, but  
10 that's rare. I mean, I really do an  
11 inspection in less than three hours, and part  
12 of that is it's hard.

13           You know, we only go there once a  
14 year, and they have their paperwork, and it's  
15 hard to feel somebody's integrity within an  
16 hour or so, so I really take my time and walk  
17 around and try to look in a person's eyes and  
18 their movements and stuff like that, just to  
19 make sure, can I trust what this person's  
20 telling me, because we're only there once a  
21 year, and they document everything, so  
22 spending enough time to make sure I do it

1 right is very, very important.

2           So like I said, it can vary from  
3 two hours, which is rare. i would say my  
4 least inspection's about three hours, and then  
5 my longest one is seven or eight hours.

6           Q       And along those lines, could you  
7 give us sort of a range of what an audit  
8 costs?

9           A       Yes. Basically with the QCS,  
10 they're probably one of the bigger  
11 certification agencies in Florida. Florida,  
12 I think, has seven certification agencies that  
13 are accredited. QCS is one of them; QAI out  
14 of California; CCOF out of California;  
15 Oregon -- there's a bunch of different  
16 agencies.

17                   With QCS, their starting fee for a  
18 small farm is \$275, and then it's plus the  
19 inspector's fee and drive time, too. When you  
20 go to a farm that's over 100 acres, I think,  
21 it goes up to 375, and then they have a  
22 breakdown for the processing facility, and

1 that's just basically to cover their review  
2 committee and all the paperwork they do in  
3 their office, and then we get paid by our  
4 hours and by our mileage out of the inspection  
5 itself.

6 I would say like on my farm, it  
7 costs me about \$800 a year, okay, and that's  
8 with a .005 assessment fee that we pay on our  
9 gross. We pay that basic, which with the  
10 inspector and the inspection fee, it costs me  
11 about \$600, and then I pay about a 200, \$250  
12 assessment fee for how much products I sold  
13 that year.

14 Now, the USDA has cost-sharing  
15 programs with that, where I file for that, for  
16 the \$850, and I got \$620 back this year, so  
17 the USDA is doing their part, thank God, you  
18 know.

19 Q Now, you mentioned QCS. What does  
20 that stand for?

21 A QCS? That's stands for Quality  
22 Certification Services. One of the other ones

1 I mentioned, QAI, is Quality Assurance  
2 International. And then CCOF, which probably  
3 was one of the original ones, is California  
4 Certified Organic Farmer. Like I said,  
5 there's about 80 agencies in the United States  
6 that are accredited by the USDA for  
7 certifications, and I think there's seven of  
8 them accredited in Florida.

9 Q Just one last question. The last  
10 paragraph or your prepared statement, you have  
11 a phrase in here regarding duplicating  
12 existing food safety protocols. Based on your  
13 experience and as you understand the proposal  
14 currently, what could be some examples of what  
15 could be duplicated under the proposed  
16 program?

17 A Well, just the auditing system,  
18 just the paperwork involved. I mean, the  
19 standard operating procedures, the sanitation  
20 standard operating procedures, your -- you  
21 know, all your harvest records, your sales  
22 records, all that's already been done. It's

1 already in place. You've already had two  
2 inspectors come out. You have your organic  
3 inspector that comes out, and then the Florida  
4 Department of Agriculture sends out an  
5 inspector, too, and I mean, that's for food  
6 safety.

7                   It's not for food quality, where  
8 the organic inspector isn't there for food  
9 quality either. He's there for the inspection  
10 audit, but he also gets to look at the food  
11 safety. You know, the food quality is all up  
12 to those farmers and stuff. You know, if you  
13 want to be a successful farmer, you better  
14 have quality, so does that answer your  
15 question?

16           Q       Yes, you did. Thank you.

17           A       You're welcome. Thank you.

18           Q       That's all I have.

19                   JUDGE HILLSON: Anything else from  
20 the panel? Ms. Schmaedick?

21                   MS. SCHMAEDICK: Thank you.

22                   Melissa Schmaedick, USDA.



1 BY MS. SCHMAEDICK:

2 Q Just a couple of clarifying  
3 things. Earlier when you were asked to  
4 describe the types of leafy green vegetables  
5 that you produce, you mentioned Speckles,  
6 Freckles, and Little Gem.

7 A Bok Choy.

8 Q Are those varieties of --

9 A Yes. They're just so many  
10 different ones, but those are basically ones  
11 that we grow.

12 Q So I just wanted to clarify for  
13 the record that those are varieties of  
14 lettuces or --

15 A Or leafy greens. Right, right.  
16 And they're all -- you know, I think, a  
17 cabbage and mustards and collards, there's a  
18 Basilica variety, and then the lettuce is in  
19 a different -- I can't even tell you what the  
20 Latin word is for the lettuce, so, you know,  
21 but they're all what you consider leafy  
22 greens, so --

1 Q Okay. Thanks. And you mentioned  
2 integrity and an auditing function as, I  
3 guess, a mechanism for looking at the  
4 integrity of an operation. Is that correct?

5 A Yes.

6 Q Do you feel that it's important to  
7 audit or to check that integrity more than  
8 once a year?

9 A I'm thinking about that through an  
10 inspector's eyes and a farmer's eyes. As a  
11 farmer, you know, it gets a little hectic.  
12 Like I said, you get inspected by them and the  
13 FDA, and then you don't know who else is  
14 allowed to walk on your farm and stuff. I  
15 mean, you know, so I really -- you know, I  
16 think -- well, in a perfect world, if I felt  
17 their integrity was good, once would be  
18 enough, but if I didn't feel their integrity  
19 was good, it would be written in their report.  
20 I would feel something's shady. I really do  
21 think once is enough, and that's like I'm  
22 going back to, you know, as an inspector, I go

1 down an outline. I follow that.

2           You know, I go everything I do,  
3 every question I make, I make sure I get a  
4 black and white answer, leave no gray areas,  
5 and go through that whole procedure. And I do  
6 feel once a year is adequate. I do and I  
7 don't. You know, I just have mixed feelings  
8 about that. Sometimes I like to go to a farm  
9 when they have more activity going on. Or  
10 farms aren't especially -- like processing  
11 facilities.

12           Sometimes I might go into a period  
13 where they have slow production, where I'd  
14 rather go into a peak production, so I can see  
15 when things are really active, what is going  
16 on in there. I really believe, you know -- I  
17 mean, and that's the way the system's set up.  
18 The USDA, United States Department of  
19 Agriculture, Florida Department of Agriculture  
20 citrus inspectors, they've got a co-op  
21 together where both of those are inspectors.

22           Now, they're only required to go

1 into a citrus operation once a year, unless  
2 they've had problems in the past, and then  
3 they will go there once a -- make their once-  
4 a-year, and they'll do a couple surprise  
5 visits, too, you know. And we do have that  
6 legal procedure that we are allowed to make  
7 surprise visits and unexpected visits with the  
8 organic industry.

9 I've done it on a non-official  
10 basis, if I just have a feeling, and I go  
11 by -- if I was driving by a farm and I stopped  
12 by and make it like it was a more friendly  
13 visit or something like that, but, you know,  
14 I basically say, yes, once a year is what  
15 everybody does from, you know, the federal  
16 government to the state government, and the  
17 organic industry follows suit to that, too.

18 There again we're -- you know, I  
19 think that's a good thing where the USDA/FDA  
20 has it set up that if they do have a problem,  
21 that they will make surprise inspections to  
22 those facilities where they've had problems

1 before, which I think is a great idea, you  
2 know. There's a lot of -- I wouldn't say a  
3 lot of, but I know there's got to be a few  
4 people that once the inspector leaves, things  
5 change, so --

6 Q In your testimony, you mentioned  
7 that based on your experience, many farmers  
8 either have written SOPs or if they don't have  
9 written SOPs, they are already putting into  
10 practice things that would be in a written  
11 SOP. Is that correct?

12 A Right, right. I mean, you know,  
13 that SOP is -- what is the first thing a  
14 farmer does when he gets to the farm in the  
15 morning? What's the second thing he does?  
16 What's the third thing and the fourth thing?  
17 And does he do that on Monday, Tuesday,  
18 Wednesday, Thursday and that? That's pretty  
19 basically your standard operating procedure,  
20 you know, and same thing with your clean-up,  
21 as your sanitation standard operating  
22 procedure, you know.

1                   What do you do after you -- or  
2 before you -- like, you know, in the morning  
3 we wash our baskets. We wash our sinks. Then  
4 we start putting our harvest in there, and  
5 then when we're done, we wash the baskets and  
6 wash the sinks again, and afterwards, and we  
7 do that before and after every we do stuff,  
8 you know, and that's part of our SSOPs.

9                   And, you know, it's just the  
10 things that you do, and like I say, I can go  
11 to a farm and do an inspection, and you can  
12 start seeing -- watch a person, and you're  
13 going through their daily routine, whether I'm  
14 there or not. I'm following them along, you  
15 know, and that's what their SOPs are.

16                   And most farmers do not have  
17 written SOPs in general. It's when you get a  
18 farmer that's bigger, that have resource  
19 officers or somebody who can do that kind of  
20 work, you know, and people who have to follow  
21 me or do all the paperwork for me or for the  
22 FDA inspector or USDA inspector, too.

1           Q       So other than the process of  
2 writing down what it is that a farmer or a  
3 handler is doing, is already doing, are there  
4 any other changes that you could foresee any  
5 additional actions that might result from a  
6 good agricultural or a GAP or GHP type of  
7 program?

8           A       Right. You know, with the organic  
9 industry, as part of filling out your  
10 application for organic certification, you've  
11 got to have a farm plan, and that's like an  
12 outline for your SOPs, and you basically have  
13 to follow that farm plan, too. So, you know,  
14 it is documented. How intense it's documented  
15 is a different story, though.

16          Q       And if a person is already  
17 documenting a number of these activities and  
18 their results, then is there any reason why  
19 that same documentation could not be also  
20 reviewed under a GAP program?

21          A       Well, we do. If they've got SOPs,  
22 we review them. I'm required to obtain copies

1 and forward to the office, too, other SOPs and  
2 other SSOPs. I mean, it's just -- you know,  
3 those written ones make everything more black  
4 and white. Like I said, that's one thing that  
5 we strive as an inspector to leave nothing  
6 gray. You know, it's either -- you either get  
7 it right or you get it wrong, and let's get it  
8 on paper which way it's going to go here, you  
9 know. Does that answer your question?

10 Q It does. I guess what I'm trying  
11 to understand is, if I understand your  
12 statement correctly, you indicate that there's  
13 additional documentation that would be  
14 required. Yet you're also saying that there  
15 is already a significant amount of  
16 documentation happening. So I'm trying to  
17 understand what is the additional  
18 documentation, and if it's in a situation  
19 where a farmer's SOPs are in his mind, is it  
20 necessarily, in your opinion, a bad thing to  
21 have them written down?

22 A No. By my opinion, too -- and



1 this is coming from a third party as the  
2 auditor, is if you write that down and  
3 document SOPs and SSOPs and you've got a  
4 checklist, you better be doing it. If you've  
5 got stuff in there, procedures that you're not  
6 following and you've got them written there,  
7 that's more of a liability than not having  
8 them written, so having too many rules can be  
9 a liability, especially if you're not  
10 following your own SSOPs or SOPs that you have  
11 documented.

12           And, you know, that's what I  
13 started to do, and the guy said, Do you really  
14 do this. And I go, No, but you got in the  
15 book. He says, Don't ever document something  
16 you don't do. But I said, It's in your  
17 book -- he said, Well, if you don't do it,  
18 don't document it. And so that's where I got  
19 that piece from, and I really believe that's  
20 the truth, you know. Don't document something  
21 you're not going to say you're doing, you  
22 know, so --

1                   But that was one of the first  
2 times I got audited by a third-party group.  
3 They said, Well, you can write this down. He  
4 goes, Do you do that. I go, Well, not  
5 exactly. He said, Well, you need to write  
6 exactly what you do, not more generally.

7           Q        Okay. Thank you.

8           A        You're welcome.

9           Q        That's all my questions.

10                   JUDGE HILLSON: Anything else from  
11 the panel? Mr. Souza?

12                   MR. SOUZA: Thank you. Anthony  
13 Souza, USDA.

14                   BY MR. SOUZA:

15           Q        One last quick question. You  
16 mentioned that not all the farms or clients  
17 that you've audited may have the integrity as  
18 some of the others, and may be adhering or not  
19 adhering to the program after the audit takes  
20 place. As an auditor, would you feel more --  
21 would you be a little bit more comfortable if  
22 you knew that a program was going to be in

1 place that had more than one audit and in that  
2 component, there would be an unannounced audit  
3 as well?

4 A It depends on the size of the  
5 facility and stuff. Like I said, these bigger  
6 facilities, they've got AIB, American  
7 Institute of Baking, as a third-party auditor.  
8 They've got Primus as a third-party audit.

9 And I believe those bigger,  
10 complicated places should do that kind of  
11 stuff, because they've got so many components  
12 and so much going on and so many employees,  
13 where on a small farm, it's just like I said,  
14 there's no necessary to do that. It's just  
15 not that much going on and everything's so  
16 condensed, and you're limited to a couple of  
17 employees and your documentation's so small.

18 So, you know, it changes from --  
19 you know, the whole -- you know, the outline  
20 stays the same, but everything else changes  
21 within that outline, depending on your size.

22 Q So am I to assume that the

1 companies that you were referring to that may  
2 not be adhering to policies were all large  
3 companies and not small companies?

4 A Repeat that again.

5 Q Earlier in your statement, you  
6 answered a question as to whether the -- you  
7 felt there was credibility on all the  
8 individuals that you audited, and you stated,  
9 I believe, no, that there were some that may  
10 not be practicing the same practices after the  
11 audit. And I'm just asking if those are --  
12 are all those large companies? Or are some of  
13 those small companies inclusive, or small  
14 farms, either/or?

15 A Well, what I said was that things  
16 change after I leave, and I'm not saying that  
17 for a good or bad or better, but it's just a  
18 fact. So I can't -- I'm not there after I  
19 leave, so I can't tell you that. Like I said,  
20 things -- you know, you just don't know. When  
21 you leave, you leave, so you don't know what  
22 goes on, and that's what I meant by that, too.

1           So -- but I feel that out of all  
2 the inspections I've done, I've had one case  
3 of fraud actually. That came out -- or two  
4 cases of fraud, and that came out in their  
5 documentation, so -- and I believe that even  
6 if you're -- no matter if you're small or big,  
7 it will definitely catch up with you, because,  
8 you know, all you need is one red flag to be  
9 thrown up.

10           And if you're a diligent enough  
11 inspector and follow that red flag, you can  
12 find out if there's a mistake or a document  
13 mistake, or if it's just somebody trying to be  
14 doing something the wrong way.

15           Q       Do you feel that multiple audits  
16 and an unannounced audit may speed up being  
17 able to catch somebody if they are doing those  
18 type of practices?

19           A       Right. But like -- you know,  
20 you've got your scheduled audits, and like I  
21 said, I mean, we're already audited so much  
22 already, and I do believe -- you know,

1 auditing more I don't think is the key, but an  
2 unannounced audit, I think that's a good idea,  
3 you know. We do it, took, and when you sign  
4 on the organic program, you sign on that you  
5 can be inspected at any time within -- I think  
6 we have to give them a 12-hour notice or  
7 something like that.

8 Q Okay. Thank you.

9 A But I really don't think more is  
10 going to do anything. Like I said, I think a  
11 surprise one, knowing that at any time an  
12 inspector can walk out on your property and  
13 walk on it with legal rights and look around  
14 and make sure -- I think that's a great idea,  
15 but, you know, saying we need another group or  
16 we need to inspect two times a year, I don't  
17 think that's a solution.

18 Q Okay. Thank you.

19 A You're welcome.

20 JUDGE HILLSON: Is the panel done?

21 Mr. Resnick?

22 MR. RESNICK: Thank you, Your

1 Honor. Jason Resnick, Western Growers, the  
2 proponent group.

3 CROSS-EXAMINATION

4 BY MR. RESNICK:

5 Q Good afternoon. Thank you for  
6 your testimony.

7 A You're welcome.

8 Q Appreciate it. When you do an  
9 audit of a organic operation, what percentage  
10 of that audit is geared towards the organic  
11 aspects, for example, not using prohibited  
12 pesticides and things of that nature, as  
13 opposed to issues that are purely food safety  
14 and making sure that pathogens are not  
15 introduced to product?

16 A Well, that -- say, if the  
17 application is 12 pages, okay, one of those  
18 pages -- if the application is 12 pages, it's  
19 like 12 or 14 pages, one or two of those pages  
20 is pushed towards food safety, and the rest of  
21 it is more for the organics of what products  
22 you use, your inputs, how you do it, how you

1 apply it, when you apply it, your rates, you  
2 know, your production record, your harvest  
3 record, all that. Okay.

4 But there is the issues about food  
5 safety, making sure you're not storing your  
6 fish emulsion next to your cleaning -- where  
7 you clean your stuff and everything like that.  
8 All that is taken into consideration. Yes, it  
9 is.

10 Q And have you yourself been through  
11 a pure food safety audit that's not related to  
12 the organics?

13 A Repeat that again.

14 Q Have you, has your farm, been  
15 subject to a food safety audit, apart from any  
16 organics?

17 A Yes, yes.

18 Q And how many pages is that  
19 checklist?

20 A That was quite a few pages. And  
21 like I said, it was Florida Department of  
22 Agriculture offering any entity that they



1     could have a third-party food -- it had  
2     nothing to do with the organics.  Okay.  This  
3     group of Boca -- Mays Crop Service, they're a  
4     third-party auditor for farms.  They were the  
5     one came out and audited our farm, and they do  
6     it for food safety, but all your components of  
7     your farm, too.

8           Q        So would it be fair to say that  
9     the pure food safety audit is more  
10    comprehensive than the food safety component  
11    that's in a certified organic audit?

12           A        Yes.  I mean, of course.  That's  
13    what it's geared for.

14           Q        And is there anything about that  
15    food safety audit that's inconsistent with  
16    organic practices?

17           A        No, because, you know, the organic  
18    and any -- it's all geared toward good  
19    management practices, better management  
20    practice, whatever you want to say.  It's all  
21    geared to make food safe, you know, and the  
22    organic steers that way.  Like I said, the

1 sections are small and stuff like that, but,  
2 you know, that food safety issue is just as  
3 big.

4 Like I said in the beginning, it's  
5 a big issue to all us small farmers. All it  
6 would take is one little crack, and we're out  
7 of business, you know. And that's how we make  
8 our living, and we're very, very conscientious  
9 about food safety.

10 Q Thank you for that. So, again,  
11 there's nothing inconsistent with the food  
12 safety audit and the organics. They are --  
13 they're not mutually exclusive. Is that  
14 correct?

15 A Not exclusive?

16 Q Mutually exclusive. In other  
17 words, you can be certified organic and still  
18 satisfy the food safety audit and not -- and  
19 one doesn't conflict with the other.

20 A Right, right. And, you know,  
21 that's a big thing. And, you know, using your  
22 food safety as a marketing tool it's not the

1 right way to do it, but it is a marketing  
2 tool. All right. When you tell a chef that  
3 you're HACCP certified or something like that,  
4 it's, Don't have to worry about him. You  
5 know, so it is a marketing tool.

6 But to be used solely as a  
7 marketing tool, to push people and to say, You  
8 need to belong to this group if you want to  
9 have safe food, that's not right.

10 Q Do you believe there's anything in  
11 the LGMA, the proposal that we're discussing  
12 today, that does not put best practices, good  
13 agricultural practices, good handling  
14 practices and good manufacturing practice into  
15 effect?

16 A Yes. They're duplicating it, as  
17 far as I'm concerned. This is already done as  
18 far as, like I said, you have farmers who have  
19 written SSOPs and SOPs, and those food safety  
20 items are taken into effect when you're  
21 talking about your standard operating  
22 procedures and then your clean-up which is

1 your sanitation, too.

2 Q I appreciate that. I just want to  
3 be clear. You're not suggesting that the  
4 proposal is a marketing gimmick as opposed to  
5 something that actually does actually put into  
6 place good agricultural practices.

7 A I just can't see why we need it.  
8 I just can't see it. We have enough  
9 regulation on us already, and I don't -- like  
10 the way it looks like it's set up to me is if  
11 you don't have the seal or the certificate,  
12 then those guys who do are going to badmouth  
13 you, and then like I said before, a lot of  
14 people are going to hide behind that  
15 certificate, you know. They can lax off, you  
16 know. That's just my opinion.

17 Q You and your farm sells to the  
18 farmers' market?

19 A Yes, sir.

20 Q You have your own farm stand?

21 A Yes, sir.

22 Q Is that a yes?

1           A        Yes, sir.

2           Q        And you sell to local restaurants?

3           A        Yes, we do.

4           Q        Between the farm stand and the  
5 farmers' market and the restaurants, does that  
6 encompass 100 percent of your sales?

7           A        Once in a while if I get lucky --  
8 or I don't know if it's lucky or unlucky -- we  
9 grow too much, and then we have to wholesale  
10 it. And then when you wholesale, it's like  
11 giving it away.

12          Q        Do you -- when you wholesale it,  
13 who are you selling to or through?

14          A        There's two groups that I've  
15 worked with in the past. One is Albert's  
16 Organic, and they're -- they've got a place in  
17 Orlando, they've got a place in New Jersey,  
18 they've got a bunch of places out in  
19 California. And then we work with Global out  
20 of Sarasota, Florida, here.

21          Q        Are they a broker?

22          A        They're handlers, brokers. They

1 buy from the farmers and resell it to  
2 restaurants and food chains and stuff like  
3 that.

4 Q Do they take possession of the  
5 product?

6 A Yes. Yes, they do.

7 Q They do.

8 A Yes. And those handlers have to  
9 also be inspected by the organic industry as  
10 handlers, too, or processors. There's some  
11 handlers that I've inspected don't touch the  
12 fruit, okay, but there's some that do, too.

13 Q Thank you for that. What  
14 percentage of the farms that you audit are  
15 certified organic?

16 A All of them. That's why I go  
17 there.

18 Q And it's to ensure that --

19 A The only ones that aren't --

20 Q -- they're in compliance.

21 A -- are new entities that are --  
22 that want to become organic. Okay. I only do

1 organic inspections.

2 Q Do you have any sense for how many  
3 small farms there are that are not certified  
4 organic and are not trying to be certified  
5 organic?

6 A There's quite a few of them, and,  
7 you know, I'll be honest. I do a little bit  
8 of consulting for free, just to get more  
9 people in it, and the bottom line is some of  
10 them are so small, like I said, it costs about  
11 800 bucks to -- on the average for a small  
12 farm to be certified. If you're only grossing  
13 five, seven -- if you're part-time, like a  
14 retired farmer, which I have at the end of my  
15 street --

16 He grows killer stuff, but he'll  
17 never be certified, because he only grossed 6-  
18 to \$8,000. But, you know, again here is a guy  
19 selling direct to restaurants or direct to  
20 people, face to face, you know, and those  
21 people see him and stuff, and they trust what  
22 he does and everything, so there are a lot of

1 small farmers out there who are not organic,  
2 and they do show up at the farmers' market and  
3 stuff like that.

4 Q Thank you for that. Would you  
5 agree that the absence of contamination in  
6 food is a quality issue, and that is you can't  
7 have a quality piece of produce that's  
8 contaminated?

9 A Yes. I do agree with you there  
10 100 percent. Like I -- the first thing about  
11 it, I keep saying, the food safety is a huge  
12 issue, and if you don't have that incorporated  
13 into your mind and stuff, you know, you're  
14 playing a game, you know. I mean, you know,  
15 chances are you might never contaminate  
16 anybody, but there's always that possibility.

17 But, yes, being educated and  
18 having a third party, it's just like anything,  
19 you know, taking constructive criticism is --  
20 if you can do that, you can improve yourself  
21 so much. I mean, like I have one chef who's  
22 my biggest -- he's my biggest account, and



1 he's my biggest pain in the butt, and I call  
2 him my daddy, because he's the one give me  
3 constructive criticism, and he's my outside  
4 eyes.

5           And he sees -- and I have no  
6 really food safety issues, but once in a  
7 while -- I'm a farmer. I'm going to sell  
8 stuff -- I want stuff to get big so it weighs,  
9 I get more money for it. He says, I don't  
10 want that heavy lettuce; I want baby lettuce,  
11 you know. So I listen to constructive  
12 criticism, and, you know, and everybody can  
13 learn like that.

14           And a third-party group coming in,  
15 looking at you, like I said, an outside set of  
16 eyes is some of the best things. I just hired  
17 a new employee, and I told her, I said, Me and  
18 the other employees been here three or four  
19 years, and, you know, we get used to things,  
20 so we might not see, so if you see something  
21 that's wrong, outright wrong or something  
22 we're not -- we don't see anymore tell us. So

1 that outside eyes is very, very important, you  
2 know.

3 Q Well, we appreciate your  
4 testimony, your coming to Jacksonville to  
5 testify.

6 A All right. Thank you very much.

7 Q Thank you. I have nothing  
8 further.

9 JUDGE HILLSON: Anything else?  
10 Anything else?

11 (No response.)

12 JUDGE HILLSON: Thank you very  
13 much for testifying, Mr. O'Dare. You can step  
14 down now.

15 (Whereupon, the witness was  
16 excused.)

17 JUDGE HILLSON: Just a couple of  
18 housekeeping things. One was that the  
19 statement that I sustained the objections on,  
20 the Blumenthal statement, I do have it here,  
21 so I'm going to mark it as -- even though it  
22 will remain rejected, but it was attached to

1 Mr. Mesh's statement, so I'm going to mark  
2 that as Exhibit 54A, just to keep the  
3 documents organized basically.

4 (The document referred to was  
5 marked for identification as  
6 Exhibit Number 54A.)

7 JUDGE HILLSON: And I also  
8 understand that Mr. Resnick wanted to get a  
9 document in that Ms. Bland was asked about  
10 yesterday. Right?

11 MR. RESNICK: That's correct.

12 JUDGE HILLSON: Do you think Ms.  
13 Bland to come on the stand to say that that  
14 document is what -- it was requested, I think,  
15 by one of the USDA panel.

16 MS. DESKINS: I think we can  
17 accept the representation --

18 JUDGE HILLSON: Okay. If you want  
19 to do that, then --

20 MR. RESNICK: I think that's  
21 appropriate. This is Guidance for Industry,  
22 Guide to Minimize Microbial Food Safety Hazard

1 for fresh fruits and vegetables, U.S.  
2 Department of Health and Human Services, Food  
3 and Drug Administration, October 1998. I'd  
4 like to admit that into the record.

5 JUDGE HILLSON: Okay. And we just  
6 have the one copy. Right?

7 MR. RESNICK: We only have the one  
8 copy.

9 JUDGE HILLSON: Why don't you  
10 bring it up to me, so that I can mark it, and  
11 we can at least keep the stuff together in a  
12 somewhat organized fashion.

13 Okay. I'm going to mark this one  
14 copy as Exhibit 56.

15 (The document referred to was  
16 marked for identification as  
17 Exhibit Number 56.)

18 JUDGE HILLSON: And I guess the  
19 USDA will make the copies, or are you  
20 making -- I don't know who's making the  
21 copies. I'm just marking it as Exhibit 56,  
22 and I'm going to put it in with the rest of

1 the exhibits, so it is received into evidence.

2 (The document referred to, having  
3 been previously marked for  
4 identification as situation 56,  
5 was received in evidence.)

6 MS. DESKINS: Judge Hillson, I had  
7 one more matter. Ms. Dash was asked for some  
8 additional information in Monterey, and she  
9 has it, if we could put it on the record.

10 JUDGE HILLSON: Okay. Is it the  
11 same kind of thing where we can just have a  
12 document, or do you want Ms. Dash to --

13 MS. DESKINS: It's a document.  
14 It's a citation to the USDA web page where  
15 some information is located.

16 JUDGE HILLSON: Oh, okay. You can  
17 just read it from there, if you're just  
18 reading a citation. Why don't you just read  
19 it into the record, Ms. Dash, right now.

20 MS. DASH: Suzanne Dash. I have  
21 two links to web pages at USDA ERS's web site,  
22 that talk about fresh-cut vegetables. This

1 was research that was done, I believe, in 200-  
2 -- was published in 2000 and 2001 by ERS.

3 The first one is  
4 [www.ers.usda.gov/publications/aib767](http://www.ers.usda.gov/publications/aib767). And the  
5 title is, Recent Changes in Marketing and  
6 Trade Practices in the U.S. Lettuce and Fresh-  
7 cut Vegetables Industries. And that was  
8 published in May of 2001.

9 The other research is at  
10 [www.ers.usda.gov/publications/agoutlook/Apri](http://www.ers.usda.gov/publications/agoutlook/Apri12001/ao280d.pdf)  
11 [12001/ao280d.pdf](http://www.ers.usda.gov/publications/agoutlook/Apri12001/ao280d.pdf). And this research is  
12 titled, Lettuce In and Out of the Bag. And it  
13 was published in April 2001. Another way to  
14 get either of these is to go to USDA's web  
15 site, and if you search on those titles, it  
16 should pop up.

17 JUDGE HILLSON: Thank you, Ms.  
18 Dash. Any other things to talk about right  
19 now?

20 (No response.)

21 JUDGE HILLSON: Then in that case,  
22 we will close the Jacksonville portion of the

1 hearing, and we'll continue the hearing on  
2 Tuesday, October 6, in Columbus, Ohio.

3 Off the record.

4 (Whereupon, at 1:45 p.m., the  
5 hearing in the above-entitled matter was  
6 recessed, to reconvene on Tuesday, October 6,  
7 2009, in Columbus, Ohio.)

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