

UNITED STATES OF AMERICA  
DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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IN THE MATTER OF:

LEAFY GREEN VEGETABLES	Docket No.
HANDLED IN THE UNITED	AO-FE-09-0138
STATES; HEARING OF	AMS-FV-09-0029
PROPOSED MARKETING	
AGREEMENT	

NO. 970.

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Thursday, October 22, 2009

Charlotte Marriott Executive Park  
5700 Westpark Drive

Charlotte, North Carolina

The above entitled matter came on  
for hearing, pursuant to notice, at 8:30 a.m.

BEFORE

MARC A. HILLSON

CHIEF ADMINISTRATIVE LAW JUDGE

APPEARANCES

For the USDA:

Sharlene Deskins, Esq.

Office of General Counsel  
Marketing Division  
Antoinette M. Carter  
Technical Assistant to the Chief, AMS

Melissa Schmaedick  
Senior Marketing Specialist, AMS

Anthony J. Souza  
Federal Program Manager, AMS

Suzanne Dash  
Agricultural Economist, AMS

For the Proponents:

Jason E. Resnick, Esq.  
Western Growers  
Henry Giclas  
Western Growers  
Charles Hall

Georgia Fruit and Vegetable Growers  
Association

Robert Guenther  
United Fresh Produce Association

For the National  
Organic Coalition:

Mr. Steven Etko  
  
National Organic Coalition

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

2 (8:30 a.m.)

3 JUDGE HILLSON: Let's go on the  
4 record. Good morning, everybody. It is  
5 October 22nd, 2009 and we're in Charlotte,  
6 North Carolina, the seventh location and  
7 eleventh day of hearing, our final day of  
8 hearing in the leafy green vegetables handled  
9 in the United States proposed marketing  
10 agreement, which has docket number AO-FE-09-  
11 0138, AMS-FV-09-0029, FV-09-970-01.

12 My name is Mark Hillson; I'm the  
13 chief administrative law judge at the  
14 Department of Agriculture. I'm here to -- to  
15 conduct the hearing. I'm not part of the --  
16 I'm not one of the people who participates in  
17 any decisions that are going to be made. Just  
18 a couple reminders, one is that all testimony  
19 is under oath. Anyone who testifies is  
20 subject to questioning by the USDA panel and  
21 actually questioning from anyone who is an  
22 interested person who is here.

1           Similarly, anyone who wants to  
2 testify can testify. So I know there's a  
3 sign-up list outside. If you're not one of  
4 the people -- if you're not one of the people  
5 scheduled to be called by either the  
6 proponents or the opponents, just speaking  
7 generically and you still want to testify,  
8 just let the woman outside know and she can  
9 sign -- sign you up.

10           And if anyone has any scheduling  
11 constraints, they -- you know, they just have  
12 to get back out to wherever they need to go to  
13 and need to be taken out of sequence, they  
14 need to let me know that like during the first  
15 -- first break.

16           Since this a continuation hearing,  
17 just for the record I'll state that this is  
18 not page 1 of the transcript, but this is  
19 probably page 4,000 or something like that.  
20 I don't know. So it's a continuation and so  
21 the transcript should be numbered from  
22 wherever the last one kicked off. And

1 likewise, the next exhibit that I'll be  
2 receiving will be Exhibit 128.

3           This has been going on for a while  
4 and I'm sure we're all looking forward to its  
5 conclusion. And I just want to -- let me just  
6 ask if anyone has any -- has any housekeeping  
7 measures to attend to, anyone has any  
8 preliminary things that they want to say or  
9 do? In that case, Mr. Resnick, you may call  
10 your first witness.

11           MR. RESNICK: Actually, there is  
12 just one housekeeping measure.

13           JUDGE HILLSON: You wait until I -  
14 - you didn't respond when I said were there  
15 any housekeeping measures.

16           MR. RESNICK: My coffee hasn't  
17 kicked in. Thank you, Your Honor. I just  
18 wanted to ask USDA to take notice of a  
19 document that was eluded to by Casey Collings  
20 in Yuma that was referenced in his testimony.  
21 The document is entitled Good Agricultural  
22 Practices and Good Handling Practices Auditor

1 Identification Program, April 2007. That's a  
2 USDA document. We understand that USDA can  
3 take notice of that document.

4 JUDGE HILLSON: I'm the one who  
5 has the notice taking, so we will take notice  
6 of that document.

7 MR. HAMIL: I can't hear very well  
8 out here.

9 MR. RESNICK: Can you hear me now?

10 MR. HAMIL: I can, but they seem  
11 to have it very low in terms of --

12 JUDGE HILLSON: A voice in the  
13 audience says that he can't hear very well.  
14 If we could find the audiovisual people, we'll  
15 try to tell them to fix things up. In the  
16 meantime, I'll ask people, can you hear me  
17 okay?

18 MR. HAMIL: Yes, sir, now.

19 JUDGE HILLSON: Maybe we just need  
20 to speak a little closer to the microphones.  
21 Okay. I will take notice of the document that  
22 you've just described.

1 MR. RESNICK: Thank you, Your  
2 Honor.

3 JUDGE HILLSON: I'm not hearing  
4 any objections. And Mr. Etkka, you're going to  
5 have to go to the mic if you're going to talk.

6 MS. DESKINS: Your Honor, perhaps  
7 if the person in the audience can't hear,  
8 maybe if they sat someplace else, they might  
9 be able to hear better.

10 JUDGE HILLSON: Beats me. I don't  
11 know.

12 MR. ETKA: Actually, I was just  
13 wondering if there was a copy of that  
14 document.

15 MR. RESNICK: We don't have a  
16 copy. It's about 140 pages.

17 MR. ETKA: Okay.

18 JUDGE HILLSON: And one other  
19 thing before we call witnesses is that I  
20 normally ask all people who are here in a  
21 representative capacity to introduce  
22 themselves for the record as well. So Mr.



1 Resnick, as long as I'm looking at you, why  
2 doesn't the proponents panel introduce  
3 themselves first just for a little change of  
4 pace?

5 MR. RESNICK: Thank you, Your  
6 Honor. Jason Resnick, Western Growers,  
7 counsel for the proponent group.

8 MR. GICLAS: Hank Giclas, Western  
9 Growers.

10 MR. HALL: Charles Hall, Georgia  
11 Fruit and Vegetable Association.

12 MR. GUENTHER: Robert Guenther,  
13 United Fresh Produce Association.

14 MR. ETKA: Steve Etka with the  
15 National Organic Coalition.

16 JUDGE HILLSON: If there is anyone  
17 else of interested parties in the audience who  
18 wants to introduce themselves who are going to  
19 be in a representational capacity, please do  
20 so.

21 MR. PARROT: I'm Charles Parrot.  
22 I'm associative deputy administrator with AMS.

1                   MR. MCREYNOLDS: I'm Roland  
2 McReynolds. I'm the executive director with  
3 the Carolina Farm Stewardship Association.

4                   JUDGE HILLSON: Okay. People who  
5 have introduced themselves who have business  
6 cards, it would be nice if they gave a copy --  
7 gave a card to the court reporter.

8                   MR. SCOTT: My name is Gary Scott.  
9 I'm with Twin Springs Farm and also president  
10 of the Virginia Association of Biological  
11 Farming.

12                  JUDGE HILLSON: Thank you. And  
13 would the USDA panel introduce themselves,  
14 starting with Ms. Deskins.

15                  MS. DESKINS: Good morning, Judge  
16 Hillson. My name is Charlene Deskins. I'm an  
17 attorney with the Office of General Counsel,  
18 United States Department of Agriculture and I  
19 represent the Agricultural Marketing Service.

20                  MS. CARTER: Antoinette Carter  
21 with USDA, Agricultural Marketing Service.

22                  MR. SCHMAEDICK: Melissa

1 Schmaedick, USDA AMS.

2 MR. SOUZA: Anthony Souza, USDA

3 AMS.

4 MS. DASH: Suzanne Dash, USDA AMS.

5 JUDGE HILLSON: Okay. Anyone else  
6 here --

7 MR. MARTIN: Good morning. Joseph  
8 Martin, I'm here individually as a farm owner,  
9 but I'm also an officer of New River Organic  
10 Growers and the membership did authorize me to  
11 speak on their behalf today too so thank you.  
12 New River Organic Growers, thank you.

13 Business card?

14 DR. GUNTER: I'm Chris Gunter.  
15 I'm with NC State University and I'm a co-  
16 chair of the NC Fresh Produce Safety Task  
17 Force.

18 JUDGE HILLSON: Okay. Thank you.

19 MR. SAWYER: My name is Chris  
20 Sawyer and I represent Jake's Farm in Candler,  
21 North Carolina and Carolina Organic Growers in  
22 Asheville. Thank you very much.

1                   JUDGE HILLSON:   Okay.   Anyone  
2   else?

3                   MR. JOHNSON:    I'm Ned Johnson.  
4   I'm the editor of the Community Farm and Table  
5   newsletter.

6                   JUDGE HILLSON:   Thank you.   What  
7   we're going to do now is I'm going to let Mr.  
8   Resnick call -- I think he told me he has  
9   three witnesses.   And after they testify,  
10   they'll be subject to examination by the USDA  
11   panel and examination by any other interested  
12   person who has a question.   Any time anyone is  
13   going to be asking a question of the witness,  
14   they're just going to need to identify -- come  
15   up to the mic and identify themselves again  
16   just so that we're sure that we have an  
17   accurate transcript.   So without further ado,  
18   Mr. Resnick, will you please call your  
19   witness?

20                   MR. RESNICK:    Thank you, Your  
21   Honor.   The proponent group calls Charles  
22   Wingard.

1                   MR. DESKINS: Judge Hillson, while  
2 he's walking up, I checked with the  
3 audiovisual person. They said we have to talk  
4 directly into the microphones.

5                   JUDGE HILLSON: Okay. Let's try  
6 to do that. If you have written statements,  
7 I need -- someone else is distributing for  
8 you. Would you have a seat over there then?

9                   CHARLES WINGARD, first being duly  
10 sworn, was examined and testified as follows:

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

14                   THE WITNESS: My name is Charles  
15 Wingard; C-h-a-r-l-e-s, W-i-n-g-a-r-d.

16                   (WHEREUPON, Exhibit Number 128 was  
17 marked for identification.)

18                   JUDGE HILLSON: Okay. Mr.  
19 Wingard, I marked a document that appears to  
20 be your written testimony as Exhibit 128. And  
21 I take it you want to read that statement, is  
22 that correct?

1 THE WITNESS: I'm going to read  
2 from it, yes, sir.

3 JUDGE HILLSON: Okay. And try to  
4 stay close to the microphone.

5 THE WITNESS: Yes, sir. Is this  
6 good enough for everybody?

7 MR. HAMIL: Thank you.

8 MR. WINGARD: Good morning. My  
9 name is Charles Wingard. I'm director of  
10 field operations at Walter P. Rawl and Sons in  
11 Pelion, South Carolina. We are a family owned  
12 and operated business that grows, ships, and  
13 processes leafy greens year round as well as  
14 seasonal vegetables in the spring, summer, and  
15 fall. My family and I are in support of the  
16 proposed National Leafy Greens Marketing  
17 Agreement because we believe it will increase  
18 consumers' confidence in leafy greens, which  
19 will ultimately increase this industry.

20 I was on the drafting team that  
21 proposed this to the USDA and I appreciate all  
22 the time and resources that many others

1 committed to this cause. In fact, I would  
2 refer to the 970.35 of the agreement, the  
3 proposed agreement, and I want to particularly  
4 highlight the last sentence. The purpose is  
5 to implement a uniform audible science based  
6 food quality verification program to provide  
7 for USDA validation and verification of  
8 program compliance, to foster greater  
9 collaboration of local, state, and federal  
10 regulators, and most importantly here, most  
11 importantly, to improve consumer confidence in  
12 leafy green vegetables.

13           This -- I want to emphasize that  
14 this was a collaborative and is a  
15 collaborative effort by the leafy greens  
16 industry to take proactive food safety  
17 measures in order to protect consumers'  
18 confidence in the supply of US produced leafy  
19 greens. This agreement is designed to ensure  
20 that all producers and handlers follow  
21 scientific, risk based metrics across the US  
22 in order to minimize the risk of food borne

1 illnesses associated with leafy greens.

2           As a proponent and as part of the  
3 drafting team, I have reached out to various  
4 groups and have heard some complaints. There  
5 are legitimate concerns which I agree with and  
6 I pledge to work for a reasonable solution  
7 while others, I believe, are misunderstandings  
8 about the intentions of this proposal.

9           A summary of the concerns is that  
10 number one, this is a California driven --  
11 this is California driven and will lead to  
12 California metrics, which will not work for  
13 me. As part of the drafting team and  
14 proponent group, I can assure you that many  
15 people outside of California and Arizona have  
16 been involved in this process. It is very  
17 detailed and included many discussions by  
18 members of the leafy greens industry and  
19 allied organizations about how to construct a  
20 marketing agreement that would work for the  
21 entire country. In fact, there were 13 groups  
22 that started this discussion, only three from



1 California.

2           Nowhere in this proposal is there  
3 any mention about metrics. In fact, the  
4 administrative committee and technical review  
5 board would be created to undertake the  
6 process of establishing metrics for the  
7 production and handling of leafy greens.

8 There have been numerous complaints about the  
9 California metrics being adopted nationally.

10 And this is simply not true. In all the  
11 discussions I was in, I never heard any  
12 discussions to that fact or to that point.

13           I agree that California metrics  
14 will not work in all areas of the US. I agree  
15 that the idea of one size fits all is not the  
16 way for this to work. I believe that the  
17 marketing agreement should include metrics  
18 that encompasses various production practices  
19 of producers and handlers all across the  
20 United States.

21           The next complaint I heard was  
22 that small and organic farmers should be

1 exempt. Even though they have voiced this  
2 concern loudly, it is very much an invalid  
3 point. Everyone, and I want to stress  
4 everyone, who handles and produces leafy  
5 greens has a responsibility to do so in a safe  
6 manner. This responsibility should be based  
7 on sound science and known risks. Every  
8 producer should adhere to a uniform set of  
9 GAPS and food safety standards to ensure that  
10 our consumers' health is protected to the best  
11 of our abilities. And every handler should  
12 adhere to a uniform set of GMPs, GHPs, HACCP,  
13 and food safety standards for the same  
14 reasons.

15           Frankly, food safety is no longer  
16 an option, but rather a responsibility that  
17 everyone must take seriously. No one should  
18 be exempt from basic food safety principles  
19 and practices. The bottom line is this,  
20 pathogens do not know, in fact, they don't  
21 care whether they're on a small farm or a  
22 large farm, conventional or organic, whether

1 they're going to be sold whole or fresh cut.  
2 So the size of a facility or a farm does not  
3 change the risk of a pathogen surviving all  
4 the way to the consumer and causing an  
5 illness.

6           Many have said that if  
7 contamination -- that if contamination takes  
8 place on small farms it will sicken far fewer  
9 people than if it occurs in an industrial  
10 setting. This argument would be small  
11 consolation to the family that is sickened by  
12 produce from a small farm.

13           The next concern I heard is that  
14 small farmers are concerned that handlers will  
15 push the metrics down onto them. And this is  
16 a legitimate concern, I agree with that, but  
17 the fact is there's nothing to prevent that  
18 now and indeed it already is happening. It's  
19 happening with me. Currently food safety is  
20 designed by whoever comes calling next and the  
21 producers' metrics, my metrics, for that  
22 matter, are subject to change from customer to

1 customer, year to year, depending on the  
2 desires of each producers' customers. In my  
3 situation we have to comply with several  
4 different customers' audits. And although  
5 they have similar standards, they have  
6 different requirements for each standard.  
7 With marketing -- with a National Leafy Greens  
8 Marketing Agreement in place, all producers  
9 should be subject to one standard as set forth  
10 by NLGMA.

11           The next complaint is that the  
12 metrics should be varied by state or region.  
13 And I believe that there should be some  
14 variances, but not by geographical areas  
15 alone. I believe the standards should apply  
16 uniformly across the entire US for leafy  
17 greens, which are ultimately included in this  
18 agreement. Variances should be based much  
19 more so on production practices than  
20 geographical boundaries. For example,  
21 irrigation -- for example, producers who use  
22 overhead irrigation supplied by surface water

1 should adhere to the same metrics regardless  
2 of what state the production is located in.  
3 Likewise, producers who use drip irrigation  
4 with plastic mulch and have water going in at  
5 the root -- in the root zone should adhere to  
6 slightly different metrics. Theoretically,  
7 producers on one side of the state line could  
8 have significant advantages over those just a  
9 few miles away who are producing greens in  
10 essentially the same environmental conditions  
11 that are across the state line.

12           The next complaint I heard was  
13 that -- or the next concern I heard was that  
14 the marketing agreement zones are not fair for  
15 states within each zones. And that is -- that  
16 is an invalid complaint. I've heard about  
17 that. And in fact, the zones are for  
18 administrative purposes only and have nothing  
19 to do with production regions or production  
20 areas. The zones are set up for the -- for  
21 the administration of the committee and  
22 technical review board and have nothing to do

1 with production regions.

2           The next concern I heard was that  
3 bagged salad processing plants are the problem  
4 and not the producers. And there is no doubt  
5 that processing plants inherently increase the  
6 risk of pathogen contamination due to the  
7 nature of how greens are processed.

8 Producers, however -- also however have some  
9 risks that can be easily mitigated and steps  
10 should be taken at that level to do so as  
11 well. My vision for the Leafy Greens  
12 Marketing Agreement is that metrics for  
13 producers would apply to producers and metrics  
14 for handlers to handlers.

15           I really don't see a situation  
16 where producers and handlers have to comply  
17 with each other's standards, except where  
18 there is an operation that is a producer and  
19 a handler, such as myself. And even then the  
20 metrics would apply -- different metrics would  
21 apply at different steps along the way.

22           According to FDA statistics, about

1 two-thirds of the illness outbreaks linked to  
2 produce since 1996 were linked to whole  
3 produce, not fresh cut. Furthermore, where  
4 fresh cut product was implicated, none of the  
5 outbreak investigations determined that the  
6 contamination occurred at the processing -- in  
7 fact, the FDA concluded that the contamination  
8 that resulted and the three -- in three big E.  
9 coli outbreaks in 2006 that were linked to  
10 fresh cut spinach and iceberg lettuce most  
11 likely occurred on the farm. So it's  
12 important that growers not be misled into  
13 thinking that food safety is a processing  
14 problem alone.

15           The next concern I heard is about  
16 environmental damages due to Leafy Greens  
17 Marketing Agreement metrics. I read some  
18 testimony about that from other hearings,  
19 about the destruction of environmentally  
20 important features such as vegetative buffers,  
21 windbreaks, and et cetera. And I agree that  
22 given the potential benefits of such

1 conservation devices, it is disturbing. I  
2 believe that all farmers should work to be  
3 good stewards of all of our natural resources,  
4 including those around leafy greens production  
5 areas. I hope that this marketing agreement  
6 would somehow address these concerns and  
7 maintain the delicate balance between  
8 environmental concerns and food safety. Both  
9 of those are issues -- both of these issues  
10 are important and each should be willing to  
11 compromise in order to benefit all. We simply  
12 can not throw environmental concerns out for  
13 the sake of food safety and we can't throw  
14 food safety concerns to the side for the  
15 benefit of the environment. We have to reach  
16 a balance.

17           The last concern that I -- that  
18 I've heard and have read about is that the  
19 USDA marketing agreements are not the right  
20 vehicle for food safety and food safety  
21 regulations are being considered anyway, so  
22 why bother with this? Marketing -- this



1 marketing -- marketing agreements are set up  
2 by law whenever an agricultural industry  
3 desires to collectively increase the quality  
4 of its products, I think the laws back in the  
5 1930s. Food safety is definitely a  
6 characteristic of quality. And certainly food  
7 safety legislation is in the works in  
8 Washington. Very soon some type of  
9 legislation will be finalized and then the  
10 rules will be promulgated. The rule making  
11 procedure will be lengthy and cumbersome and  
12 probably difficult to navigate based on  
13 previous experiences with rule making.  
14 Even more so, whenever adjustments to metrics  
15 will be made, it will be a lengthy process.

16           However, a marketing agreement  
17 which is governed as proposed would be much  
18 easier to work with initially and whenever  
19 adjustments are needed. The National Leafy  
20 Greens Marketing Agreement gives the leafy  
21 greens industry an opportunity to get ahead of  
22 food safety regulations and build a workable

1 system ourselves instead of waiting on  
2 Washington to mandate something for us. The  
3 FDA is currently considering mandatory GAPS  
4 and guidance documents for leafy greens  
5 production.

6           So at the end of the day, leafy  
7 greens producers and handlers are going to  
8 have some type of food safety system, which is  
9 much more -- which probably will be much more  
10 prescriptive than the current structure. I  
11 hope our industry can get ahead by  
12 establishing science based audit metrics that  
13 are practical, specific, measurable,  
14 verifiable, and meaningful to all leafy greens  
15 producers and consumers as well.

16           I think this process has been  
17 driven by progressive leadership in the leafy  
18 greens industry as opposed to being something  
19 that California and Arizona is pushing off on  
20 the rest of the country. I believe everyone  
21 along the food supply chain, regardless of  
22 their size, has a responsibility for food

1 safety and that the metrics of the National  
2 Leafy Greens Marketing Agreement should,  
3 within reason, allow for this. I think it can  
4 and should be fair for producers and handlers  
5 alike. I think that metrics should be based  
6 on production practices more so than regional  
7 or geographical locations. All producers,  
8 regardless of their locations who share common  
9 practices should also adhere to common  
10 metrics.

11 I think that a reasonable,  
12 practical balance between food safety and  
13 environmental concerns has to be reached. In  
14 fact, hanging in that balance must be the  
15 health of our consumers at every turn in the  
16 way. And I think that with significant food  
17 safety legislation looming, now is the time to  
18 accomplish food safety for the entire leafy  
19 greens industry. I believe that without this  
20 marketing agreement, the federal government  
21 will mandate new leafy greens food safety  
22 regulations that may be over-burdensome and

1 difficult to adjust when needed.

2 I'm also concerned that food  
3 safety will get politicized during that  
4 process, during -- especially during the  
5 legislative and the promulgating process and  
6 will be very difficult on our industry. This  
7 is especially true as we adopt new and better  
8 technology that mitigates known risks and  
9 would allow for the modification of some  
10 metrics.

11 I would conclude with one of the  
12 main aspects of the marketing agreement and  
13 that is the fact that it is total -- totally  
14 voluntary. Every leafy greens producer and  
15 handler, no matter your size, will have an  
16 automatic exemption if they don't -- in that  
17 they don't have to sign up to participate.

18 I believe I want to leave with one  
19 thought and that is I think that food safety  
20 is a lot like traffic safety. As I drove to  
21 Charlotte today, I was in a small truck and I  
22 got by a big truck, but we still had the same

1 speed limit. We still had to stop at the same  
2 stop lights. We were required to wear  
3 seatbelts. We had to use turn signals when we  
4 changed lanes and et cetera. And that's  
5 because traffic safety laws are set up for  
6 safety, or basic traffic safety laws are for  
7 safety. I think that basic food safety laws  
8 should be for safety regardless of the size of  
9 an operation. Now granted, that big truck  
10 probably had a few more regulations to deal  
11 with than I had and I think that would be the  
12 same here.

13 I ask that those who oppose this  
14 marketing agreement not to deny those who want  
15 to be a part of a national system to improve  
16 the safety of leafy greens, increase consumer  
17 confidence, and ultimately grow this industry.  
18 Thank you for your time, sir, and I look  
19 forward to answering any questions you may  
20 have.

21 JUDGE HILLSON: Okay. Thank you,  
22 Mr. Wingard. I will receive your written

1 statement into evidence as Exhibit 128.

2 (WHEREUPON, Exhibit Number 128 was  
3 submitted into evidence.)

4 JUDGE HILLSON: Mr. Resnick, do  
5 you have any further direct at this time?

6 MR. RESNICK: Not at this time,  
7 Your Honor.

8 JUDGE HILLSON: Okay. Then I will  
9 turn it over to the USDA panel and let them go  
10 first. Ms. Schmaedick?

11 CROSS-EXAMINATION BY THE USDA:

12 MS. SCHMAEDICK: Melissa  
13 Schmaedick, USDA. Can you hear me?

14 MR. WINGARD: Perfect.

15 MS. SCHMAEDICK: Okay. Good  
16 morning and thank you, Mr. Wingard, for your  
17 testimony. Could you being by explaining a  
18 bit more about your company? You state that  
19 you are a grower, shipper, and processor. How  
20 many acres do you grow?

21 MR. WINGARD: Of leafy greens or  
22 total?

1 MS. SCHMAEDICK: Just in general  
2 and then we'll focus on leafy greens.

3 MR. WINGARD: I harvest about --  
4 or my company harvests about maybe 5,000 acres  
5 of leafy greens and -- and other vegetables  
6 when in season.

7 MS. SCHMAEDICK: And what type of  
8 leafy green vegetables do you grow?

9 MR. WINGARD: I grow collard,  
10 kale, mustard, and turnip greens, cilantro,  
11 parsley, that's probably all the leafy greens.

12 MS. SCHMAEDICK: And in your  
13 shipper and processor capacity, do you handle  
14 your own -- only your own product or do you  
15 receive product from other growers?

16 MR. WINGARD: My company has a  
17 deal with an operation in Florida that  
18 provides greens -- or grows greens and we  
19 harvest them during the -- during the winter.  
20 And we got a little small deal up in Virginia  
21 for the summertime. But about 90 percent of  
22 what we handle, 90, 95 percent we produce

1 ourselves.

2 MS. SCHMAEDICK: And how wide is  
3 your distribution area? How far does your  
4 product go?

5 MR. WINGARD: We deliver product -  
6 - it's a little bit out of my school here. We  
7 deliver product probably in about 25 -- 20, 25  
8 states in the eastern United States.

9 MS. SCHMAEDICK: And as far as the  
10 processing that you do, can you describe what  
11 type of processing or processed products you  
12 make?

13 MR. WINGARD: Our collard,  
14 mustard, and -- collard, mustard, turnip, and  
15 kale greens, we produce it and sell it bulk,  
16 such as in a box with 24 bunches, 12 bunches,  
17 six bunches, whatever, or loose. In addition  
18 to that, we also process it -- or further  
19 process it in what we call the fresh cut  
20 process. And we chop it, we wash it, we chop  
21 it, we wash it, we dry it, and bag it in  
22 plastic bags, one pound and two pound bags



1 that we offer to -- to the food service and to  
2 retail grocery stores or distribution centers  
3 maybe.

4 MS. SCHMAEDICK: And you mentioned  
5 that you have been involved for quite a while  
6 with the -- the drafting process of the  
7 proposed agreement, is that correct?

8 MR. WINGARD: Yes, ma'am.

9 MS. SCHMAEDICK: Can you talk a  
10 little bit about your experience in that  
11 process?

12 MR. WINGARD: Well, we -- we -- we  
13 communicated e-mail and conference calls  
14 probably about once a month and sometimes it  
15 was once a week or every other week. But it  
16 was a very open process. We -- we would  
17 review a -- a document and make comments, get  
18 on the phone and spend an hour, a hour and a  
19 half on a conference call. I thought it was  
20 very proactive. I thought it was, you know,  
21 a lot of -- a lot of knowledgeable people from  
22 the industry involved in it.

1 MS. SCHMAEDICK: And the proponent  
2 group that you were working with, was it  
3 representative of the national industry? Were  
4 there folks from across the country involved  
5 in that?

6 MR. WINGARD: Yes, ma'am.

7 MS. SCHMAEDICK: And in your  
8 opinion, did everybody have an opportunity to  
9 -- to contribute or comment if they had  
10 concerns or something that they wanted to add  
11 to the process?

12 MR. WINGARD: Very much so. I --  
13 I don't recall any times where somebody made  
14 a comment that was not well received. And I  
15 want to point out there were a lot of  
16 questions, a lot of concerns, a lot of -- a  
17 lot of things I didn't understand and I asked  
18 a question and somebody would answer it. But  
19 yes, yes ma'am, it was a very open process and  
20 -- and as far -- as far as I know, everybody  
21 had their thoughts and concerns heard. I  
22 never saw where they didn't.

1 MS. SCHMAEDICK: Are you aware of  
2 the -- the drafting group's efforts to -- to  
3 reach out to other interest groups that --  
4 that had known concerns and wanted to  
5 potentially contribute to the process?

6 MR. WINGARD: Am I -- repeat that  
7 again, now.

8 MS. SCHMAEDICK: Are you aware of  
9 whether or not the proponent group throughout  
10 the drafting process made an effort to reach  
11 out to interest groups that could potentially  
12 want to also contribute to the drafting  
13 process?

14 MR. WINGARD: Yes, ma'am. There  
15 were -- there was a time where I spoke to some  
16 people -- people from Ohio and -- and there  
17 was some opposition there. And I brought  
18 those concerns back to the -- to the group.  
19 I've spoken to a couple of people here in  
20 North Carolina and heard their concerns and  
21 took it back to the -- to the drafting group  
22 and to the group -- the proponent group, I

1 reckon, or the drafting group. And I have  
2 heard that other people on the drafting team  
3 had reached out as well.

4 MS. SCHMAEDICK: On page 2 of your  
5 statement under the heading "This is a  
6 California driven -- this is California driven  
7 and will lead to CLM -- CLGMA metrics which  
8 will not work for me," the second page there  
9 you say the idea of one size fits all metrics  
10 is certainly not the way for the NLGMA to  
11 work. Can you expand a bit on that statement  
12 and how that topic was -- was discussed during  
13 the drafting of the proposed agreement?

14 MR. WINGARD: Well, let me expand  
15 on that statement first. I don't think that -  
16 - that there's any reasonable way that  
17 producers in the southern United States and  
18 producers in the northern United States could  
19 expect to -- to have exactly the same metrics  
20 to work by or exactly the same GAPs to produce  
21 by. The risk -- and I've never produced leafy  
22 greens in the northern United States, but I

1 would assume -- I have to believe that the  
2 risks in a -- in the -- in the -- in the  
3 northern United States, since we're using this  
4 example, are somewhat different than where  
5 we're at. And I wouldn't want to try to hold  
6 a grower's -- I wouldn't want to try to force  
7 a grower in Minnesota to do exactly what I'm  
8 doing if it doesn't work. Now, I think some  
9 things will work no matter where you're at,  
10 but not everything.

11           And what was the second part of  
12 that question? Oh, how did we discuss it on  
13 the drafting team? I think we talked about it  
14 in those same terms, that -- that we realized  
15 that -- that growers in different parts of the  
16 country have some different sets of risks and  
17 a lot of that's based on the fact that growers  
18 in one part of the country versus where I'm at  
19 have slightly different production techniques.  
20 I know that some growers bed up and use furrow  
21 irrigation. They don't put overhead  
22 irrigation on their crop. I don't bed up. I

1 plant what we call flat and I have to use  
2 overhead irrigation, so I would expect that  
3 overhead irrigation would have some different  
4 standards than non-overhead irrigation.

5 MS. SCHMAEDICK: Are there  
6 practices that vary by size of an operation?

7 MR. WINGARD: Could be, but I  
8 wouldn't -- I really wouldn't think so. I  
9 don't -- I think that no matter the size of  
10 your operation, you want to maximize your  
11 yield or profit for acre and you're going to  
12 find a production process that does that.

13 MS. SCHMAEDICK: In your opinion,  
14 was the intent of the proponent group to draft  
15 a framework that would be able to accommodate  
16 differences either in production techniques,  
17 location, or size of operation?

18 MR. WINGARD: You'll have to  
19 repeat that.

20 MS. SCHMAEDICK: Sure. In your  
21 opinion --

22 MR. WINGARD: Yes, ma'am.

1 MS. SCHMAEDICK: -- was it the  
2 proponent group's intent to draft a framework  
3 in which the size, location, or production, or  
4 handling techniques of different businesses  
5 would be taken into consideration when looking  
6 at metrics or at the implementation of the  
7 program?

8 MR. WINGARD: I believe so. Yes,  
9 ma'am.

10 MS. SCHMAEDICK: Thank you. On  
11 page 3 you speak to the issue of the term  
12 "zones." Are you aware of the ongoing  
13 discussion that this term has had over the  
14 course of the last seven -- six or seven  
15 locations?

16 MR. WINGARD: You're talking about  
17 number 5? My pages are a little different  
18 from yours. You're talking about number 5?

19 MS. SCHMAEDICK: Yes, that's  
20 correct, number 5.

21 MR. WINGARD: Okay. Yes, ma'am.  
22 I am aware of that. I've heard that from

1 growers in Ohio and North Carolina, that --  
2 that they were concerned about quote, unquote  
3 the zone or zones. Yes, ma'am.

4 MS. SCHMAEDICK: Based on your  
5 participation with the proponent group and the  
6 drafting of this proposal, can you explain why  
7 the zones were drafted the way they were?

8 MR. WINGARD: Yes, ma'am. I want  
9 to refer back to the -- to the proposal here.  
10 In 970.40, establishment and membership, that  
11 -- that sets up the administrative committee.  
12 And my understanding is is that zones only  
13 apply to the -- the makeup of the  
14 administrative committee, the way I understand  
15 it and the way I think the drafting team meant  
16 for it to be.

17 MS. SCHMAEDICK: So in the  
18 discussions of how the -- how the zones would  
19 be defined, what type of factors were taken  
20 into consideration in saying, okay, Zone 1  
21 includes these states, Zone 2 includes these  
22 states? Were you involved in that process?



1           MR. WINGARD: I was not involved  
2 in the actual writing in this, but I was  
3 involved -- we reviewed it many times. I  
4 think if you look at each zone you will find  
5 one large state that anchors that zone and I  
6 don't have the language right here in front of  
7 me, but I think Zone 1 is going to be anchored  
8 by California, Zone 2 by Arizona, Zone 3 maybe  
9 by Texas, Zone 4 by Georgia, Zone 5 by  
10 Florida, I believe. And the thought there was  
11 to not group a lot of production in one zone,  
12 but spread it out amongst the other zones as  
13 best you can.

14           MS. SCHMAEDICK: And would you  
15 personally be opposed to the reconsideration  
16 of the zones and how they're distributed?

17           MR. WINGARD: I think -- I think  
18 this marketing agreement should move forward  
19 and establish an administrative committee.  
20 And if the administrative committee thinks  
21 that the zones need to be adjusted or reset,  
22 then that's what we -- that's what the

1 industry would elect them to do. And I think  
2 there's a mechanism to do that in the  
3 agreement.

4 MS. SCHMAEDICK: That was my next  
5 question. Are you aware of language in the  
6 agreement that would allow for that?

7 MR. WINGARD: Yeah. I'm pretty  
8 sure it's in there. Yes, ma'am. I'm not real  
9 good at reading this type language. I'm a  
10 farmer. And yesterday I was on the farm;  
11 tomorrow I'm going to be on the farm,  
12 hopefully this afternoon. But -- but the way  
13 I read it, there's a mechanism there, yes,  
14 ma'am.

15 MS. SCHMAEDICK: Okay. Thank you.  
16 And do you currently have a GAP program in  
17 place on your farming operation?

18 MR. WINGARD: Yes, ma'am. We have  
19 GAPs, GMPs, SOPs, SSOPs, HACCPs, and whatever  
20 else applies --

21 MS. SCHMAEDICK: And about how  
22 long have you had these programs in place?

1                   MR. WINGARD: We've been very  
2 serious about food safety for ten or 15 years  
3 probably. I really don't know, but a long  
4 time.

5                   MS. SCHMAEDICK: Okay. Thank you.  
6 Those are my questions.

7                   JUDGE HILLSON: Other questions  
8 from the panel? Mr. Souza?

9                   MR. SOUZA: Good morning. Anthony  
10 Souza, USDA. Good morning, Mr. Wingard.

11                  MR. WINGARD: Good morning.

12                  MR. SOUZA: I have a few questions  
13 for you this morning. On the first page of  
14 your written statement you state,  
15 "Misunderstandings about the intentions of the  
16 proposal." Could you elaborate a little bit  
17 more on some of the misunderstandings you feel  
18 that are out there?

19                  MR. WINGARD: Well, I went through  
20 eight of them and I think that -- you know, I  
21 think there was a misunderstanding about --  
22 about -- and I heard this from Ohio and North

1 Carolina producers or people from Ohio and  
2 North Carolina, that they -- they thought that  
3 -- that this marketing agreement was going to  
4 have metrics in it and it was going to be  
5 California metrics. And in fact, the  
6 marketing agreement has no metrics or  
7 standards in it. It's up to the  
8 administrative committee and the technical  
9 review board to establish those after this is  
10 set up.

11           We talked about the zones there a  
12 little bit and that was a misunderstanding, I  
13 feel like. Once I explained both of those  
14 points to -- to people, they -- they felt a  
15 little better about it. I think that there's  
16 a misunderstanding that small farmers are  
17 afraid that processors are going to push this  
18 down onto them. And I think that's a  
19 misunderstanding because I think it's  
20 happening now. We see it happening from our  
21 customers down onto us. And in fact, we -- we  
22 -- we have to -- right now our food safety is

1 tailored to what the customer wants.

2 MR. SOUZA: If -- if you were a  
3 supplier to a -- to a California or an Arizona  
4 firm currently, they could apply those sets of  
5 standards to you if they wished?

6 MR. WINGARD: That's correct. And  
7 in fact, we have buyers that don't  
8 particularly want to buy from us unless we  
9 have -- unless we comply with the California  
10 standards now.

11 MR. SOUZA: You speak in your  
12 testimony, in your situation you have to  
13 comply with several different customer audits.  
14 Through a year, about how many good  
15 agricultural practice audits do you have to go  
16 through on your -- in your operation?

17 MR. WINGARD: On the farm or in  
18 the field, as we say, we have about three or  
19 four audits a year, five maybe. In our  
20 processing plants it may be 12, 13 audits a  
21 year.

22 MR. SOUZA: In your processing

1 plants, are you reviewed, audited by FDA?

2 MR. WINGARD: Yes, sir.

3 MR. SOUZA: How many times a year?

4 MR. WINGARD: I think twice.

5 MR. SOUZA: Twice a year?

6 MR. WINGARD: Yes, sir.

7 MR. SOUZA: Could you give us an  
8 overview of what those audits consist of?

9 MR. WINGARD: Not a very good one.  
10 I'm -- I do farming and we've got people in my  
11 operation that do all that, but they look at  
12 records. They want to see water tests. They  
13 want to -- they want to see if we have a -- in  
14 general terms they want to see that we have a  
15 HACCP plan in place once you get inside. And  
16 that is a plan that -- or that HACCP plan  
17 consists of identifying where your critical  
18 control points are and making sure that you  
19 have a range that that point can be in,  
20 whether it's water temperature, air  
21 temperature, product temperature, pH of the  
22 water, whatever -- whatever the particular

1 situation may be.

2           And if you get outside that range,  
3 whether it's high or low, you have to have a  
4 plan for corrective actions in place. So,  
5 yeah, basically they want to see we have a  
6 plan to prevent as many risks as we can along  
7 the way.

8           MR. SOUZA: Are you aware of --  
9 within that program, or your HACCP program,  
10 who sets the critical limits at the critical  
11 control points?

12           MR. WINGARD: I think -- I think a  
13 lot of that goes back to -- to some of the FDA  
14 guidance documents from -- from some of their  
15 publications. And some of that we have to set  
16 ourselves. There's -- some of that we have to  
17 determine ourself. And some of that is  
18 determined by the particular audit that we're  
19 going to be having, too.

20           MR. SOUZA: Do you know whether,  
21 within your processing operation, there's  
22 regulations that are in place by FDA that

1 you're required to follow?

2 MR. WINGARD: I'm sure there's  
3 some. Yes, sir. But I do the farming outside  
4 at our operation. I don't do the -- I don't  
5 do the inside work and so I can't speak to  
6 that very much.

7 MR. SOUZA: On item number 5 here  
8 you talk about the zones. And we've heard  
9 throughout the testimony regarding zones  
10 specifically on the good agricultural  
11 practices. Working in the proponent group,  
12 have there been any discussions about possibly  
13 having different matrix in the processing  
14 plants in the different zones or would you  
15 anticipate one set of metrics throughout for  
16 all processing plants?

17 MR. WINGARD: There was not a lot  
18 of discussion about that because we didn't  
19 talk about metrics very much. We were going  
20 to leave that to the administrative committee  
21 and the technical review board.

22 MR. SOUZA: No further questions.



1 Thank you.

2 MR. WINGARD: Thank you, sir.

3 JUDGE HILLSON: Thank you, sir.

4 Ms. Carter?

5 MS. CARTER: Good morning. I'm  
6 Antoinette Carter with the USDA.

7 MR. WINGARD: Good morning, ma'am.

8 MS. CARTER: You noted some --  
9 some of the specific leafy green vegetables  
10 that you grow. And I think specifically you  
11 noted collard, kale, mustard, cilantro, some  
12 of those. And I guess I'm wondering, we've  
13 heard some -- some testimony with regards to  
14 the specific vegetables that are included or  
15 defined as leafy green vegetables under the  
16 proposal. Could you explain or tell us what  
17 the thought was about including certain leafy  
18 greens versus others, specifically in your  
19 thoughts as you wrote some of these that are  
20 included in the definition as well as others  
21 that are not?

22 MR. WINGARD: Yes, ma'am. I

1 should probably add cabbage to that. I grow  
2 a little bit of cabbage as well, to that list.  
3 I apologize for omitting that earlier. The  
4 thought was that we would start with leafy  
5 greens that are most likely consumed uncooked,  
6 but the conversation also talked about the  
7 administrative committee and technical review  
8 board would have the authority or the ability  
9 to -- to modify this list as needed. So, you  
10 know, if there's reason to think that a  
11 particular green used to be on the list,  
12 that's not on the list or vice versa, then --  
13 then they could deal with it once they get set  
14 up.

15 MS. CARTER: And in your prepared  
16 statement you -- you state that it's your  
17 belief that the proposed agreement, if  
18 implemented, will increase consumer  
19 confidence. Could you expand on that?

20 MS. CARTER: Yes, ma'am. I think  
21 any time there's a food borne illness and  
22 there's a product recall or FDA warns people

1 not to consume a particular item, that  
2 consumer confidence is eroded. For example,  
3 the FDA warned people not to eat tomatoes out  
4 of the state of Florida. And in South  
5 Carolina, our state was never on the "do not  
6 eat" list or whatever the list was, the map,  
7 whatever they used, yet our tomato industry  
8 suffered.

9 I think that -- that -- I'm not  
10 sure that the spinach industry has ever fully  
11 recovered from 2006, yet it was one isolated  
12 field that was responsible for that. But --  
13 but spinach producers, and I had a little bit  
14 of spinach at that time, spinach producers all  
15 over took the hit. So I think -- I think you  
16 have to look at food safety as a  
17 characteristic of quality. And I think the  
18 more quality a product has the more confidence  
19 consumers have in it.

20 MS. CARTER: You just answered  
21 another question that I had. My final  
22 question is you talked a little bit about the

1 process for the development of metrics. Could  
2 you elaborate on how the proponents of the  
3 drafting committee envisioned that process  
4 working?

5 MR. WINGARD: We didn't talk very  
6 much about how the metrics would be developed,  
7 other than the administrative committee and  
8 the technical review board, that would be some  
9 of their -- that would be their duties, some  
10 of their duties, among others, to develop the  
11 metrics, review them, get industry input on  
12 them. That's what they -- that's their job.

13 And when those committees and  
14 boards get set up to do that, my personal  
15 vision is that -- that if the Leafy Greens  
16 Marketing Agreement goes through and there's -  
17 - there's -- it's very well known the FDA is  
18 working on a guidance document now for the  
19 production of leafy greens and that the  
20 administrative committee and technical review  
21 board would look to that guidance document for  
22 the metrics. And I think in the -- I think

1 that's how it should work, my personal  
2 opinion, I can't speak for the drafting team  
3 because we didn't talk about that.

4           And then I'm certain that food  
5 safety legislation is going to become a  
6 reality here soon, maybe not this year,  
7 perhaps not next year, but it's definitely  
8 coming. And if the Leafy Greens Marketing  
9 Agreement can -- can get through this little  
10 hurdle or can clear this and move on, then  
11 that legislation would look to this marketing  
12 agreement for much of the food safety for  
13 leafy greens. And then we would have a  
14 mechanism in place that we can adjust metrics  
15 or standards or whatever you want to call it,  
16 much easier than some kind of reform -- rule  
17 making reform. I don't trust rule making and  
18 reforms because we see what's happening with  
19 H28.

20           MS. CARTER: Did the drafting  
21 committee discuss the importance for including  
22 certain governmental entities on the technical

1 review board and -- and if so, why was that a  
2 necessary component?

3 MR. WINGARD: I will -- let me  
4 look back through this before I answer that  
5 question, ma'am. You said the technical  
6 review board?

7 MS. CARTER: Yes.

8 MR. WINGARD: Under 970.45 under  
9 proposed agreement, I'm not going to read all  
10 this, but it refers to a food safety expert  
11 from a land grant university within each zone  
12 elected by the producer and handler members  
13 from that zone. One representative from USDA  
14 Natural Resources Conservation Service  
15 appointed by the Secretary and one  
16 representative of the US Environmental  
17 Protection Agency designated by an  
18 administrator, and two representatives from  
19 FDA designated by the Commissioner. Now skip  
20 down a little ways in there there's some other  
21 -- elections ahead of that. It says the  
22 technical review board may appoint

1 subcommittees as necessary to facilitate input  
2 and review regions throughout the production  
3 area.

4           Subcommittees may consist of  
5 producers, handlers, and other interested  
6 parties as deemed appropriate by the technical  
7 review board. So there's nothing to preclude  
8 other government agencies, I don't believe,  
9 from being on there. And -- and that may need  
10 to be tweaked a little bit. I'm not sure.

11           MS. CARTER: I guess my question  
12 is what did the drafting committee envision as  
13 the value for including the specifically  
14 stated governmental entities as well as any  
15 others that would be included?

16           MR. WINGARD: Well, I think in my  
17 comments addressing concerns about the  
18 environmental work and the environmental  
19 community, I think we certainly need someone  
20 from NRCS on there because that's -- that's  
21 where the environmental concerns fall. And I  
22 think we need to reach a balance between food

1 safety and -- and environmental concerns. I'm  
2 using that as an example, but that could be a  
3 similar situation in other issues and other  
4 government agencies.

5 MS. CARTER: Thank you. That's  
6 all the questions I have.

7 MR. WINGARD: Yes, ma'am.

8 JUDGE HILLSON: Anything else from  
9 the USDA panel? Ms. Dash?

10 MS. DASH: Suzanne Dash. The  
11 Small Business Administration defines a small  
12 farm as earning \$750,000 per year gross.  
13 Would you be willing to identify yourself as  
14 a small or a large farm based upon that  
15 definition?

16 MR. WINGARD: I think probably I  
17 would be a large farm.

18 MS. DASH: And a -- their  
19 definition of a small handler is under 7  
20 million dollars in gross sales per year.  
21 Would you be willing to identify yourself as  
22 a small or large handler?



1 MR. WINGARD: What was that --  
2 what was that?

3 MS. DESKINS: 7 million dollars  
4 per year.

5 MR. WINGARD: Gross?

6 MS. DASH: Yes.

7 MR. WINGARD: I would probably be  
8 a large handler.

9 MS. DASH: Thank you. In item 6  
10 where you're talking about FDA statistics,  
11 where did you get this information?

12 MR. WINGARD: I got it from a  
13 gentleman at United Fresh Produce, Dave  
14 Gombas, he's a doctor and he specializes in  
15 food safety.

16 JUDGE HILLSON: Will you spell his  
17 last name, please?

18 MR. WINGARD: That's Dave Gombas,  
19 G-o-m-b-a-s.

20 JUDGE HILLSON: Thank you.

21 MS. DASH: And I wonder if you  
22 could talk a little more about -- so that I

1 understand, you feel the agreement will have  
2 a uniform set of GAPs, is that what like what  
3 would be like a uniform GAP for one commodity,  
4 but then metrics that could be different based  
5 on different sizes of farms or different parts  
6 of the country? Is  
7 that --

8 MR. WINGARD: Perhaps. And you're  
9 -- you're hitting on a -- you're hitting on  
10 something that's confusing for us, too. Let  
11 me explain it like this, the -- the standard  
12 should be that your irrigation water is free  
13 of bacteria, okay?

14 Now, and I'm going to use my  
15 particular situation. I have 40 -- probably  
16 40, 45 sources of irrigation water. Some deep  
17 wells, we test once a quarter because there's  
18 not very -- the risk to -- the risk of  
19 pathogens in a deep well is very low. But my  
20 surface water, which is a pond, it's open to  
21 the atmosphere, to wildlife or to whatever,  
22 it's -- I test my surface water once a month.

1 And then if I get -- I think our -- if we get  
2 a certain amount of -- a certain number of  
3 successive good samples, then we go to every  
4 other month. So the standard is you should  
5 have pathogen-free water, but the metrics are  
6 that if you're using deep wells you can test  
7 once a quarter, if you're using surface water  
8 for -- for overhead irrigation, I want to  
9 stress overhead irrigation on all of this,  
10 then you test -- if you're using surface water  
11 for overhead irrigation, then you test once a  
12 month.

13                   And if you're using deep wells for  
14 drip irrigation, which puts the water in at  
15 the root zone, you may only test once every  
16 six months. I don't know because I don't use  
17 drip irrigation. So the standard is one  
18 thing, but then how do you get -- how you get  
19 to the standard is what would be varied for  
20 different producers using different production  
21 practices and possibly in different regions of  
22 the country.

1 MS. DASH: Thank you. Do you  
2 think the proposed agreement could decrease  
3 multiple fire requirements?

4 MR. WINGARD: My goal is that it  
5 would, but even if this goes into place, and  
6 I don't care what the metrics are, there's  
7 nothing to stop a retailer from developing  
8 super metrics. And that's where we're at,  
9 with one retailer's metrics are supposed to be  
10 better than another. And so even if this goes  
11 in place, there's no guarantee we won't have  
12 super metrics later. But my goal is to have  
13 one standard be recognized by the industry, or  
14 my vision is that.

15 MS. DASH: Thank you. That's all  
16 I have.

17 MR. WINGARD: Yes, ma'am.

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

20 MS. DESKINS: Charlene Deskins,  
21 USDA. Good morning.

22 MR. WINGARD: Good morning.

1 MS. DESKINS: I wanted to clarify  
2 one thing. You were asked about zones.

3 MALE VOICE: Speak up to the  
4 microphone.

5 MS. DESKINS: Okay. You were  
6 asked about zones and there was a question  
7 about when you said you weren't opposed to  
8 having zones reconsidered, do you recall that?

9 MR. WINGARD: I do recall that  
10 conversation. Yes, ma'am.

11 MS. DESKINS: Are you proposing  
12 now an amendment to change the way the zones  
13 are restructured in the proposed agreement?

14 MR. WINGARD: No, ma'am. What I'm  
15 saying -- what I was saying and am saying is  
16 that -- that I have faith in an administrative  
17 committee to make adjustments to -- to the  
18 administration of this marketing agreement as  
19 they deem necessary, that they would -- an  
20 administrative committee would probably have  
21 more data available to them than I have here  
22 now that would suggest to modify the zones, if

1 necessary. And I would have faith in the USDA  
2 and in the administrative committee to -- to  
3 make those proposals.

4 MS. DESKINS: Thank you.

5 JUDGE HILLSON: Do we have  
6 questions from other interested parties? Step  
7 up to the mic, identify yourself, and ask your  
8 question.

9 EXAMINATION FROM THE PUBLIC:

10 MR. MCREYNOLDS: My name is Roland  
11 McReynolds with Carolina Farm Stewardship  
12 Association. Thanks very much for your  
13 testimony, Mr. Wingard. I appreciate the  
14 opportunity to ask a couple of clarifying  
15 questions here. You stated -- as you  
16 discussed at length, you were involved in the  
17 drafting committee that -- that developed the  
18 proposal, correct?

19 MR. WINGARD: That is correct.

20 MR. MCREYNOLDS: About when did  
21 that process of drafting discussions start?

22 MR. WINGARD: Gosh.

1 MR. MCREYNOLDS: Approximately.

2 MR. WINGARD: I don't know, 15  
3 months maybe ago.

4 MR. MCREYNOLDS: Okay.

5 MR. WINGARD: It's been a while.

6 MR. MCREYNOLDS: So that would be  
7 the spring of 2008?

8 MR. WINGARD: Perhaps. I don't --  
9 I can't speak to that for sure, but somewhere  
10 along in there somewhere maybe.

11 MR. MCREYNOLDS: Okay. In the  
12 process of that drafting, in the documents  
13 that you reviewed, did you take a look at the  
14 comments that had been submitted in response  
15 to the AMS advance notice and proposed rule  
16 making regarding the possibility of drafting  
17 this proposal?

18 MR. WINGARD: No. I don't recall  
19 looking at that. No, sir.

20 MR. MCREYNOLDS: Okay. Did you  
21 have -- did you work -- was that information  
22 supplied to the drafting committee or was it

1 just not -- what was, I guess, you know, there  
2 were 3500 comments that were submitted. I'm  
3 just kind of curious as to what impact that  
4 had on the drafting process?

5 MR. WINGARD: We talked about the  
6 notice and the -- I think you're talking about  
7 the notice in the federal register?

8 MR. MCREYNOLDS: That's right.

9 MR. WINGARD: We talked about that  
10 and I knew where it was at, I just never went  
11 to look at it.

12 MR. MCREYNOLDS: Okay. Was there  
13 any -- at least 30 groups, organizations  
14 submitted comments during that period and did  
15 -- did you take a look at any of those  
16 specific comments from specific organizations  
17 that had concerns about the proposal?

18 MR. WINGARD: No, sir.

19 MR. MCREYNOLDS: Was there any  
20 effort to identify those organizations by the  
21 drafting committee and make outreach to those  
22 organizations about their comments?



1           MR. WINGARD: We talked -- I  
2 talked to a few people on the drafting  
3 committee about some groups in North Carolina  
4 and Ohio and I reached out to those.

5           MR. MCREYNOLDS: Who were those  
6 groups?

7           MR. WINGARD: Well, it was  
8 individuals.

9           MR. MCREYNOLDS: Okay. Who were  
10 those individuals?

11          MR. WINGARD: It was a lady from  
12 Farm Bureau here in North Carolina and maybe  
13 a lady -- a lady maybe from NC State here in  
14 North Carolina and some -- a gentleman from  
15 Farm Bureau in Ohio --

16          MR. MCREYNOLDS: Okay.

17          MR. WINGARD: -- and a handful of  
18 growers, two or three growers from Ohio.

19          MR. MCREYNOLDS: When did those  
20 discussions take place? You were in contact  
21 with those individuals?

22          MR. WINGARD: Nine months ago,

1 some of them. Some of them four months ago,  
2 five months ago, maybe, ten months ago on some  
3 of them.

4 MR. MCREYNOLDS: Okay. So at  
5 most, four months before the draft -- before  
6 you actually petitioned USDA to approve this  
7 agreement?

8 MR. WINGARD: Maybe, yeah,  
9 somewhere -- at most, yeah.

10 MR. MCREYNOLDS: Who were the  
11 organizations or individuals on the drafting  
12 committee that were representative of the  
13 small farms, that is those below \$750,000 a  
14 year in income or small handlers with below 7  
15 million dollars in income?

16 MR. WINGARD: Well, Farm Bureau  
17 was involved in the early part of the drafting  
18 committee and they just dropped off and --

19 MR. MCREYNOLDS: American Farm  
20 Bureau?

21 MR. WINGARD: Yes, sir.

22 MR. MCREYNOLDS: Okay.

1                   MR. WINGARD:  And we lost contact  
2 with that lady until -- until we reached out  
3 to the small groups again, or until we reached  
4 out to the small groups.

5                   MR. MCREYNOLDS:  Reach out -- in  
6 other words, the conversation that you had in  
7 the last nine months with -- with a particular  
8 organization, is that what you're -- when you  
9 say contacts to small groups?

10                  MR. WINGARD:  I think that's  
11 right.  Yes, sir.

12                  MR. MCREYNOLDS:  Okay.  Did --  
13 thank you for that.  I wanted to follow up  
14 just a little bit more information about your  
15 operation.  So you've got approximately 5,000  
16 acres in production?

17                  MR. WINGARD:  No, sir.  I harvest  
18 about 5,000 acres.

19                  MR. MCREYNOLDS:  Harvest about  
20 5,000 acres?

21                  MR. WINGARD:  I cultivate about  
22 2500 acres.

1 MR. MCREYNOLDS: Okay. Of those  
2 2500 acres, is that all one field?

3 MR. WINGARD: No, sir.

4 MR. MCREYNOLDS: Multiple fields?  
5 What would be the average field size you'd  
6 guess? I'm not asking for a real specific.

7 MR. WINGARD: My plantings ranges  
8 anywhere from a quarter of an acre to 50  
9 acres.

10 MR. MCREYNOLDS: Okay.

11 MR. WINGARD: So it just depends  
12 on the crop and -- and it depends on the crop  
13 that I'm planting.

14 MR. MCREYNOLDS: Does -- does your  
15 good agricultural practice implementation in  
16 those fields involve the use of buffer zones?

17 MR. WINGARD: Yes, sir.

18 MR. MCREYNOLDS: Okay. And how do  
19 you measure? You know, is that buffer zone  
20 the same on a quarter acre field as it is on  
21 a 50 acre field?

22 MR. WINGARD: Depends on what crop

1 it is.

2 MR. MCREYNOLDS: Okay. When it's  
3 leafy greens.

4 MR. WINGARD: It depends on which  
5 leafy green it is.

6 MR. MCREYNOLDS: Okay.

7 MR. WINGARD: If I plant collards  
8 it's not uncommon for me to do some things in  
9 a big field of collards that I don't do in a  
10 small field of say mustard greens.

11 MR. MCREYNOLDS: Can you give an  
12 example?

13 MR. WINGARD: I don't want to give  
14 too much example --

15 MR. MCREYNOLDS: Sure.

16 MR. WINGARD: -- because some of  
17 that is proprietary, but I leave buffer strips  
18 periodically in some collard fields at some  
19 times of the year for -- to help harbor  
20 beneficial insects. I know that -- I know  
21 that pest pressure is going to be a lot  
22 greater in -- in August and September than

1 it's going to be in March and April.

2 MR. MCREYNOLDS: Right.

3 MR. WINGARD: So I may not do that  
4 in March and April, but I may do it in  
5 September and October or whatever months.

6 MR. MCREYNOLDS: Okay. And -- but  
7 -- and those practices also vary by crop and  
8 vary by different sorts of leafy greens as  
9 you're growing them?

10 MR. WINGARD: Yes, sir.

11 MR. MCREYNOLDS: I wanted to also  
12 follow up quickly on your comments about food  
13 safety as a quality. How do you measure food  
14 safety on your farm?

15 MR. WINGARD: I don't know that  
16 there's any way you can measure food safety on  
17 a definitive scale.

18 MR. MCREYNOLDS: Okay.

19 MR. WINGARD: How do you propose  
20 measuring it?

21 MR. MCREYNOLDS: Well, I'm not  
22 here to testify right now. I'm just here to

1 ask you questions. But -- but I think that's  
2 exactly the kind of information that I -- that  
3 I think I'm interested to find out. So -- so  
4 just to clarify, there isn't a measurement  
5 that you are using that -- to determine the  
6 safety of your food as it's -- of your crops  
7 as they're coming off the field?

8 MR. WINGARD: We can't put a  
9 number from one to ten on food safety, but  
10 what we can do is identify all the steps from  
11 start to finish, and in my case that's a lot  
12 of steps, that -- that we know there's the  
13 potential for pathogenic contamination and  
14 that each one of those steps, we make sure  
15 that our practices and procedures are such  
16 that we minimize that risk.

17 MR. MCREYNOLDS: So it's processes  
18 that you are implementing, not measurements?

19 MR. WINGARD: That is correct, but  
20 at some steps there are measurements to be  
21 taken in those processes.

22 MR. MCREYNOLDS: Such as how much

1 fluorine in test strips on the chlorine or the  
2 water tests? Those are -- the steps are  
3 involving measurements of activity in a  
4 process, not -- not the quality of the product  
5 itself?

6 MR. WINGARD: Repeat that.

7 MR. MCREYNOLDS: You stated that  
8 there are steps involved where you are --  
9 where there are measurements?

10 MR. WINGARD: Yes, sir.

11 MR. MCREYNOLDS: But that is not  
12 measurement of the -- of the quality of the  
13 crop at that time? It's a measurement of the  
14 water, a measurement of -- of -- you know, a  
15 checklist as far as sanitation practices,  
16 correct?

17 MR. WINGARD: That is correct, but  
18 along the way we -- we test our crops as well  
19 to see if we have -- to see if our  
20 preventative measures are -- are working.

21 MR. MCREYNOLDS: And that's part  
22 of your process, the verification, is random



1 testing some of your crops?

2 MR. WINGARD: That's one of our  
3 standard operating procedures.

4 MR. MCREYNOLDS: Okay. Sure.  
5 Thank you very much. I have no further  
6 questions.

7 JUDGE HILLSON: Any other  
8 questions from other interested parties?

9 MR. HAMIL: My name is George H.  
10 Hamil. I am called Harry. Do you have the  
11 spelling of my name there? It's a very simple  
12 name, but it's almost always misspelled. Mr.  
13 Wingard, I'm confused. Under point two you  
14 state every handler should adhere to uniform  
15 sets of GMP, GHP, HACCP, and other food -- and  
16 food safety standards to ensure that our  
17 consumers' health is protected to best -- to  
18 the best of our ability. You reiterate this  
19 a couple of times later in what you say, yet  
20 at the end you stress that this is a voluntary  
21 agreement.

22 If everyone is supposed to go by

1 the same standard, then why did the proponent  
2 group choose an agreement rather than an  
3 order? You had the opportunity to apply for  
4 either a marketing agreement or a marketing  
5 order. If you -- you have stated that you  
6 believe it should apply to everyone, so why  
7 did you not advocate an order so that it would  
8 apply for everyone?

9 MR. WINGARD: I can understand  
10 your confusion there, Mr. Hamil. And I think  
11 that every handler who signs up for this  
12 agreement should adhere to a uniform set of  
13 GAPs. I probably should have worded it that  
14 way.

15 MR. HAMIL: Thus you don't believe  
16 that every leafy greens producer should have  
17 exactly the same standards, but just those who  
18 are under this agreement?

19 MR. WINGARD: Well, I think every  
20 person who handles any food product for human  
21 consumption has some -- has responsibility in  
22 food safety. Now, we're talking about leafy

1 greens here so we'll just stick to that. I  
2 think that every person who grows leafy greens  
3 has responsibility for food safety when the  
4 product is in their possession or custody or  
5 in their control.

6 I think if you sign up for this  
7 agreement, then you're going to apply -- or  
8 going to comply by the same set of standards  
9 that I would if I signed up for it.

10 MR. HAMIL: Right, sir. My  
11 question remains, why an agreement rather than  
12 an order?

13 MR. WINGARD: Because if you're a  
14 leafy greens producer and you don't like the  
15 metrics set forth in the agreement, you have -  
16 - you have an automatic exemption. You don't  
17 have to -- you do not have to be a signatory  
18 and you can operate outside the agreement.

19 MR. HAMIL: But if you are  
20 concerned about the stability of the market  
21 and being injured by someone having a problem  
22 with leafy greens, then why is it that you

1 don't advocate an order versus an agreement?

2 MR. WINGARD: Because there's a  
3 lot of -- there is some opposition to this and  
4 if people don't like it, simply do not sign  
5 up.

6 MR. HAMIL: Okay. Thank you.  
7 Second question, in your analogy to large  
8 trucks and cars and in your direct testimony,  
9 you said that there should be regulation that  
10 would be -- that would vary based on size.  
11 You said something about the truck having a  
12 different set of regs. Obviously the brakes  
13 on a truck have a different standard than the  
14 brakes on a car, okay? Would you give me two  
15 examples of additional regulations that you  
16 believe are size appropriate?

17 MR. WINGARD: Let me -- let me  
18 share with you an example of a standard that  
19 is size appropriate. If there's a small  
20 farmer that has 50 acres, he's got a small  
21 packing shed with a bathroom in the packing  
22 shed, and he's got a pond in the middle of

1 that 50 acres and he irrigates his leafy  
2 greens out of that pond, he can sample --  
3 technically by a -- by a lot of different  
4 regulations, that could be up to a 100 acre  
5 size and still work. That one bathroom  
6 located in the middle of that 50 or 100 acres  
7 serves for portable toilet facilities in all  
8 of his fields. That one irrigation pond could  
9 serve, and probably does serve, as his single  
10 water source.

11 In my case, I've got 40 or 45  
12 water sources. I've got a fleet of probably  
13 20 portable toilet facilities that I've got to  
14 pay somebody to make sure they're at the right  
15 place tomorrow morning, that they were at the  
16 right place this morning, that they're clean,  
17 they have -- that the soap didn't fall off on  
18 the way to the field, that the paper towels  
19 didn't blow out, that the water didn't leak  
20 out, the potable hand washing water, and that  
21 they're completely stocked according to not  
22 only food safety regulations, but Department

1 of Labor regulations. I have to -- when I  
2 sample my water, whether it's once a month or  
3 once every two months, whatever it is, it  
4 takes somebody -- it takes two people one day  
5 to run around and get water samples to send  
6 off.

7           So in that particular case --  
8 we're talking about GAPs here, good  
9 agricultural practices. In that particular  
10 case, I think that GAPs are very much a -- I  
11 want to call it like a per acre, but the GAPs  
12 to me are no cheaper to -- to -- to enforce or  
13 implement than it would be for that small  
14 farmer.

15           MR. HAMIL: Well, sir, you've  
16 given an example of a size on a particular  
17 standard and I appreciate that. I'm still  
18 back to my basic question of does size make a  
19 difference in terms of the food safety issue?  
20 Does size itself create a problem that needs  
21 to be addressed in the metrics?

22           MR. WINGARD: Not so much size as

1 much as what you do with the product. Now, if  
2 this small farmer just grows the greens and  
3 boxes it and sells it to the local grocery  
4 store, his responsibility stops at that point.  
5 In my case I warehouse it and I've got  
6 standards to -- to deal with there. I process  
7 it and I've got a lot of standards to comply  
8 with there.

9 I truck it across state lines. It  
10 may be on a truck for 12 hours to get  
11 somewhere. I've got refrigerated trailers and  
12 I've got standards to -- to deal with there.  
13 So size -- the standards will vary much more  
14 with what you do with the product than -- than  
15 how much of the product you deal with.

16 MR. HAMIL: Thank you, sir. One  
17 final question. You pointed out the provision  
18 section 970.15 and I believe it's in 940 of  
19 where you can add leafy greens -- change the  
20 list of what is covered under this and that --  
21 that subject to the recommendation of the  
22 committee and the approval of the Secretary,

1 other aspects under this agreement can be  
2 changed. And the -- my reading of those is  
3 that that provides the committee with the  
4 approval of the Secretary, the opportunity to  
5 largely rewrite the agreement. Would you  
6 agree or disagree and if you disagree, why?

7 MR. WINGARD: Give me that section  
8 again.

9 MR. HAMIL: The first one was your  
10 -- you pointed out the leafy greens 970.15,  
11 that you said we can change the list if we  
12 find out that there needs to be change in the  
13 list.

14 MR. WINGARD: Okay. Yes, sir.  
15 The list of the greens. And what was the  
16 second section?

17 MR. HAMIL: And the second  
18 section, I believe you said it was 940 where  
19 the -- where you have the opportunity to  
20 revise the rules, the zones for example, and  
21 that sort of thing. But I may be very wrong.  
22 Yeah, I think it's 940 A, small C.



1 MR. RESNICK: That's 970.4

2 MR. HAMIL: I said 970. I'm  
3 sorry, sir. I'm slightly dyslexic. 970.4.

4 MR. WINGARD: Okay.

5 MR. HAMIL: So would you agree  
6 that this provides the opportunity to largely  
7 rewrite this agreement and extend its scope?

8 MR. WINGARD: Yes, it does provide  
9 that opportunity, but let me read C, 970.40 C.  
10 The Secretary, upon recommendation of the  
11 committee may reapportion members among zones,  
12 may change the number of members and  
13 alternates, and may change the composition by  
14 changing the ratio of members, including their  
15 alternates. In recommending any such changes,  
16 the following shall be considered: shifts in  
17 production within zones during recent years,  
18 the importance of production and its relation  
19 to existing zones, the equitable relationship  
20 between membership and zones, economics to  
21 result in promoting efficient administration  
22 due to re-zoning or reapportionate of

1 membership among the zones, and other relevant  
2 factors.

3           So yes, there is some flexibility  
4 there, but they can't just with a blank sheet  
5 of paper rewrite the agreement at will. They  
6 have to consider these factors. And I think  
7 at the end of this proposal there is a  
8 provision that -- under 970.98, a withdrawal  
9 provision, where if I sign up for it and  
10 there's some changes made that I don't like,  
11 I can withdraw from it.

12           MR. HAMIL: Right, sir. My  
13 question remains. Does it provide the  
14 committee with the approval of the secretary  
15 to materially rewrite this agreement? Because  
16 all you have stated was they have to take into  
17 account. They can take it into account based  
18 on importance. My question remains, can they  
19 materially rewrite this agreement?

20           MR. WINGARD: I think they can  
21 modify it; I don't think -- I don't think they  
22 can rewrite it, not from what I just read.

1                   MR. HAMIL: Thank you very much,  
2    sir.

3                   JUDGE HILLSON: Any other  
4    questions from other interested parties? Do  
5    you have any redirect, Mr. Resnick?

6                   MR. RESNICK: Yes, Your Honor.

7    REDIRECT EXAMINATION BY THE PROPONENTS:

8                   MR. RESNICK: Jason Resnick,  
9    Western Growers. Thank you very much for your  
10   testimony this morning. Just a few questions.  
11   You had mentioned in your -- subject to  
12   multiple audit, including being held to some  
13   California standards. Are you currently held  
14   by some of the California LGMA standards?

15                  MR. WINGARD: We're not held --  
16   we're not held to California standards by law,  
17   I reckon you'd say, but we have customers who  
18   want to see us complying with California  
19   standards. They want to see that our food  
20   safety programs measure up to the California  
21   standard.

22                  MR. RESNICK: And do you know why

1 they've selected the California standard?

2 MR. WINGARD: Well, probably  
3 because they think it's the best.

4 MR. RESNICK: Do you believe that  
5 if there were a national LGMA that your  
6 customers would hold you to that standard?

7 MR. WINGARD: That's my hope, but  
8 like I said earlier, there's nothing to  
9 prevent super metrics. And I think that a  
10 Leafy Greens Marketing Agreement has to be  
11 legitimate enough and equitable enough and  
12 fair enough to all producers to prevent the  
13 development of super metrics by other parties  
14 that aren't here today.

15 MR. RESNICK: So in the absence of  
16 a national agreement, you have customers who  
17 are holding you to so-called super metrics or  
18 California metrics, do you -- do you believe  
19 that a national standard will reduce the  
20 number of super metrics that are being  
21 propounded? I know they can do whatever they  
22 want, but do you believe the result will be a

1 reduction in the number of super metrics?

2 MR. WINGARD: I do. As long as --  
3 as long as the national standard is legitimate  
4 enough to get the job done.

5 MR. RESNICK: Do you believe that  
6 the national proposal has the legitimacy, in  
7 your opinion, to do that?

8 MR. WINGARD: I don't know what  
9 the metrics are yet, but --

10 MR. RESNICK: You believe it's  
11 based on the metrics?

12 MR. WINGARD: I think so. Yes,  
13 sir.

14 MR. RESNICK: Do you believe --

15 MR. WINGARD: Based on the  
16 standards.

17 MR. RESNICK: Do you believe that  
18 the proposal sets up a framework to develop  
19 metrics that -- that will be legitimate in the  
20 lives of your customers?

21 MR. WINGARD: I do. And I think  
22 this is a good first step. I think the most

1 important step is yet to come, but I think  
2 this is a -- this step sets up the next step  
3 to be a very -- to be a good step.

4 MR. RESNICK: In your role as --  
5 as helping the drafting committee drafting the  
6 proposed agreement, was it your specific  
7 function to reach out to other groups who have  
8 raised concerns or did that fall under the  
9 purview of the association -- the associations  
10 that we're dealing with?

11 MR. WINGARD: I think it fell a  
12 little bit more under the purview of those  
13 people, the association -- the associations  
14 that were involve in it. But we did reach  
15 out, I did and I think some others on the  
16 drafting committee reached out to -- to some  
17 of these groups to try to explain what was in  
18 it, you know, try to explain zones, try to  
19 explain the fact that there's no metrics in  
20 this and -- and that there's -- that there's -  
21 - you know, trying to hear their concerns and  
22 answer their concerns.

1           MR. RESNICK:  And were you aware  
2   that the association staff that was involved  
3   in preparing the -- the proposal reviewed the  
4   comments and the advanced -- that resulted  
5   from the advanced notice proposed rule making?

6           MR. WINGARD:  There was a little  
7   discussion of that and they made some comment  
8   about where we could go look at it, but -- but  
9   we didn't spend a lot of time on that.  We  
10  spent a lot of time on trying to develop  
11  something that was good for the industry.

12          MR. RESNICK:  When you say we  
13  didn't do that, are you saying you  
14  specifically that -- or that there were others  
15  within the proponent group that may have done  
16  that?

17          MR. WINGARD:  Well, we meaning  
18  myself and couple of people that -- spent a  
19  lot of time reading the proposed draft to see  
20  if we -- you know, to see what -- to tweak it  
21  and give our input back on that.

22          MR. RESNICK:  So you left the

1 reviewing of the 3500 comments to the -- to  
2 others?

3 MR. WINGARD: Yes, sir. I still  
4 farm for a living and I don't have time to  
5 read 3500 comments.

6 MR. RESNICK: Understood. I  
7 appreciate that. That's all I have. Thank  
8 you.

9 MR. WINGARD: I have three small  
10 kids on top of that.

11 MR. RESNICK: Thank you.

12 JUDGE HILLSON: Anything else from  
13 the proponent's panel?

14 MR. HALL: Mr. Wingard, you said -  
15 -

16 JUDGE HILLSON: You've got to say  
17 who you are.

18 MR. HALL: I'm sorry. Charles  
19 Hall, Georgia Fruit and Vegetable Grower's  
20 Association. You said your company started  
21 food safety work ten to 15 years ago?

22 MR. WINGARD: Yeah. We've always



1 done a little bit many years ago, but things  
2 aren't like they used to be. And, yeah, it  
3 was back in probably the mid-nineties --  
4 probably the mid-nineties we started getting  
5 pretty serious about food safety and -- and  
6 even back then we wondered if we could afford  
7 food safety. And now we know that we can't  
8 afford not to have food safety.

9 MR. HALL: And as a part of the  
10 process of your cost analysis, have you given  
11 any cost idea as far as what the efforts  
12 you're going to on the farm for food safety  
13 efforts, the efforts?

14 MR. WINGARD: Yeah. We figured  
15 that -- that food safety is about a 20 to 25  
16 cent per box expenditure for us. And that  
17 would be a 20 pound box of collards or greens  
18 or whatever, it could be green onions. Excuse  
19 me. And I would -- I would probably speculate  
20 -- I would have to say that about 10 cent --  
21 10 to 12 cent of that is in the packing house  
22 and 8 to 10, about 10 cent of that is on the

1 farm in the field.

2 MR. HALL: Thank you.

3 JUDGE HILLSON: Any further  
4 questions for Mr. Wingard? Okay, thanks. You  
5 may step down. And without further ado, you  
6 can call your next witness, Mr. Resnick.

7 MR. RESNICK: Can we request a  
8 brief break at this point?

9 JUDGE HILLSON: You want to take  
10 the morning break now? There's only one, so  
11 I'm going to give it to you now. It's five  
12 minutes until ten. We'll take a ten minute  
13 break and then I want to go straight through  
14 to lunch after that. Once again, anyone who  
15 came in who needs to be -- who needs to  
16 testify sooner rather than later, let me know.  
17 Off the record.

18 (WHEREUPON, a brief recess was  
19 observed.)

20 JUDGE HILLSON: Okay. Let's go  
21 back on the record and Mr. Resnick, please  
22 call your next witness.

1 MR. RESNICK: Thank you, Your  
2 Honor. The proponent group calls Adam Lytch.

3 JUDGE HILLSON: I'm marking Mr.  
4 Lytch's written statement as Exhibit 129.

5 (WHEREUPON, Exhibit Number 129 was  
6 marked for identification.)

7 ADAM LYTCH, being first duly  
8 sworn, was examined and testified as follows:

9 JUDGE HILLSON: Please state your  
10 name and spell it for the record.

11 THE WITNESS: Adam Lytch, A-d-a-m,  
12 L-y-t-c-h.

13 JUDGE HILLSON: And do you have a  
14 statement you'd like to read?

15 THE WITNESS: Yes, sir.

16 JUDGE HILLSON: Proceed.

17 MR. LYTCH: Good morning and thank  
18 you for the opportunity to present my  
19 testimony today. My name is Adam Lytch. I'm  
20 the production and growing development manager  
21 for Eastern Vegetables and Melons for L&M  
22 Companies. Founded in 1964, L&M Companies is

1 headquartered in Raleigh, North Carolina and  
2 is a produce and marketing sales arm for the  
3 L&M Family of Companies.

4           The L&M Family of Companies  
5 consists of other entities including our  
6 farming, which is L&M Farms, and our  
7 warehouse, which is Ag Warehouse and Packing  
8 Operations. L&M Farms has operations in  
9 Florida and Georgia, where we grow over 5,000  
10 acres at seven different farming locations,  
11 which include mixed vegetables, melons, and  
12 potatoes. Cabbage is the only core item we  
13 grow, pack, and ship that would be included  
14 under this agreement, which represents about  
15 750 acres of our total production.

16           At L&M food safety and security  
17 are an integral part of our entire operation.  
18 Our comprehensive program includes good  
19 agricultural practices for farming or other  
20 growing and harvesting operations and good  
21 manufacturing practices for our packing and  
22 cooling, warehousing and distribution

1 operations. Our program also includes non-  
2 production items such as internal auditing of  
3 these GAP and GMP programs and employee  
4 training programs used in customized training  
5 materials. Our industry has come together  
6 with a unified proposal brought forth by many  
7 agricultural groups from across the country,  
8 which have collectively approached the United  
9 States Department of Agriculture in favor of  
10 creating a National Leafy Greens Marketing  
11 Agreement.

12           This agreement will provide a food  
13 quality enhancement program that will consist  
14 of a framework with uniform, auditable, and  
15 scientific based metrics, which will still  
16 allow for regional variance. This agreement  
17 will be applicable across the board for all  
18 leafy greens producers with the needed  
19 regional variances, which will recognize the  
20 differences in growing conditions across the  
21 country. The proposed National Leafy Greens  
22 Marketing Agreement would provide a vehicle

1 that would enable leafy green handlers to  
2 organize and become consistent, enhance the  
3 overall quality of fresh, leafy green  
4 vegetable products that are available in the  
5 marketplace through the application of good  
6 agricultural production and handling  
7 practices, empower industry representatives to  
8 proactively connect with the USDA and FDA to  
9 develop the best practices and/or metrics for  
10 production and handling practices, encourage  
11 greater collaboration with local, state, and  
12 federal regulatory agencies, improve overall  
13 consumer confidence in fresh leafy greens, and  
14 most importantly, this National Leafy Greens  
15 Marketing Agreement will be a means of  
16 protecting public health.

17           The members of the National Leafy  
18 Green Marketing Agreement will be handlers of  
19 leafy greens that are fully committed to sell  
20 only those leafy greens that are grown,  
21 handled, and packed under the practices  
22 defined in the agreement. The National Leafy

1 Greens Marketing Agreement will not determine  
2 these practices by imposing top down  
3 regulations, but rather through an  
4 administrative committee whose members will be  
5 appointed by the USDA secretary.

6 All volunteer members of the  
7 National Leafy Greens Marketing Agreement will  
8 be subjected to and financially liable for  
9 mandatory audits and program verification  
10 processes that will mitigate the risk of  
11 microbial contamination through processes  
12 developed based on the best scientific -- best  
13 available scientific methods.

14 Without this type of nationally  
15 orchestrated marketing agreement, our  
16 customers, both retail, wholesale, and food  
17 service, third-party auditing companies, and  
18 different state organizations will continue to  
19 develop and implement their own food safety  
20 standards for producers and handlers.

21 Many audits are being developed  
22 independently and are being used as a

1 marketing tool to create competitive  
2 advantages rather than the needed synergies to  
3 ensure a consistent, effective food safety  
4 program.

5 I believe by creating the National  
6 Leafy Greens Marketing Agreement, that even  
7 with the imposed assessments, growers like us  
8 will actually benefit by having to perform  
9 fewer audits and having improved consumer  
10 confidence in our products. Under the Leafy  
11 Greens Marketing Agreement in California, it  
12 is my understanding that some retailers are  
13 now accepting the Leafy Greens Marketing  
14 Agreement audit rather than requiring their  
15 own preferred audit to be performed. This is  
16 great news and will be beneficial for  
17 producers like us outside of the California  
18 and Arizona Leafy Greens Marketing Agreement  
19 area, that would benefit not only for a more  
20 streamlined process, but also more -- but also  
21 a more consistent and more scientific based  
22 method.



1           The uniformity of such a program  
2 would not only benefit the producer, but also  
3 the customers/distributors that currently have  
4 to deal with a multitude of programs. The  
5 National Leafy Greens Marketing Agreement  
6 includes proponent groups from various  
7 industry trade associations including the  
8 United Fresh Produce Association, the Arizona  
9 Farm Bureau Federation, the California Farm  
10 Bureau Federation, the California Leafy Green  
11 Handler Marketing Agreement, the Texas Fresh  
12 Vegetable Association, the Grower-Shipper  
13 Association of Central California, Western  
14 Growers, Imperial Valley Vegetable Growers  
15 Association, the Produce Marketing  
16 Association, the Georgia Fruit and Vegetable  
17 Growers Association, and the Georgia Farm  
18 Bureau.

19           My testimony today is in support  
20 of the Leafy Greens Marketing Agreement and I  
21 strongly urge other growers, regardless of  
22 size, to embrace this agreement as well to

1 ensure its success in bringing a consistent  
2 and science based set of metrics to our  
3 industry. I believe by following this  
4 program, we will improve consumer confidence  
5 in fresh leafy green -- in fresh leafy greens  
6 and ultimately protect public health. Thank  
7 you for holding this hearing and allowing me  
8 the opportunity to share my thoughts and  
9 support of the National Leafy Greens Marketing  
10 Agreement.

11 JUDGE HILLSON: Okay. Thanks, Mr.  
12 Lytch. I'm going to receive your written  
13 testimony into evidence, Exhibit 129. I'm  
14 going to ask Mr. Resnick if he has any further  
15 direct at this time?

16 (WHEREUPON, Exhibit 129 was  
17 submitted into evidence.)

18 MR. RESNICK: Not at this time.

19 JUDGE HILLSON: Then I will ask  
20 the USDA -- questions for Mr. Lytch. Ms.  
21 Schmaedick?

22 CROSS-EXAMINATION BY THE USDA:

1 MS. SCHMAEDICK: Melissa  
2 Schmaedick, USDA. Good morning, Mr. Lytch.

3 MR. LYTCH: Good morning.

4 MS. SCHMAEDICK: In your statement  
5 you -- you're representing L&M Company, is  
6 that correct?

7 MR. LYTCH: Yes, ma'am.

8 MS. SCHMAEDICK: And if I  
9 understand correctly, that's both a grower and  
10 a handler operation?

11 MR. LYTCH: Well, the way we have  
12 our family of companies, we call it, set up is  
13 L&M is our -- what we call L&M, which is  
14 technically L&M Companies, Inc., is our sales  
15 and marketing arm. L&M Farms is our farming  
16 arm, and AG Warehouse and Packing is our  
17 packing facility. So we have them set up as  
18 different business entities.

19 MS. SCHMAEDICK: Okay. So within  
20 that -- that -- companies, involved in  
21 production activities as well as handling  
22 activities, is that correct?

1 MR. LYTCH: Correct. Yes, ma'am.

2 MS. SCHMAEDICK: I'd like to ask  
3 you a question about safety. And on page two,  
4 the first paragraph following the bullet  
5 point, the last sentence reads, "All volunteer  
6 members of the NLGMA will be subjected to and  
7 financially liable for mandatory audits and  
8 program verification processes." And then it  
9 continues. Can you explain a bit more about  
10 that and the mechanism of how this program  
11 would -- how the audits that are conducted  
12 under this program would be paid for.

13 MR. LYTCH: Are you talking about  
14 through the assessments now or in the  
15 individual audits or what we're currently  
16 doing? You're talking about what --

17 MS. SCHMAEDICK: If this program  
18 were implemented, how would --

19 MR. LYTCH: Well, it's my  
20 understanding that based on the metrics that  
21 are put together by the administrative  
22 committee, the audits would be paid for. The

1 actual -- the actual GMP, GAP audits. Also,  
2 the follow-up, the check, the USDA check on it  
3 would be paid through an assessment that would  
4 be based on -- I'm not really sure, but I'm  
5 just assuming based on, you know, volume or  
6 size or something like that.

7 MS. SCHMAEDICK: So would it be  
8 correct to say then the cost of the audit  
9 verification, that this would be paid through  
10 the handler assessments that are collected  
11 under the proposed program?

12 MR. LYTCH: Well, correct. Also  
13 the -- the producer would -- would --  
14 currently the producer -- in our situation,  
15 currently the producer pays for the audit. So  
16 I would imagine that it would have to be some  
17 of both. I mean, it can't be -- it depends on  
18 the -- it depends on the situation. But  
19 through the -- the handler assessments would  
20 pay for the checks and the actual, you know,  
21 individual audit and it would pay for the  
22 support roles and support personnel. The --

1 the audits would be paid on a per each basis,  
2 I'm assuming. I'm really not sure.

3 MS. SCHMAEDICK: Okay. Thank you.  
4 I have no further questions.

5 JUDGE HILLSON: Other questions  
6 from the USDA panel? Ms. Dash?

7 MS. DASH: Suzanne Dash. Would  
8 you be willing to identify your farm as small  
9 or large based on the FDA definition?

10 MR. LYTCH: It would be a large  
11 farm.

12 MS. DASH: And as a handler?

13 MR. LYTCH: Large handler as well,  
14 Yes, ma'am.

15 MS. DASH: Thank you. On page 2  
16 where you talk about enhancing the overall  
17 quality of fresh leafy green vegetable  
18 products, do you mean that you think that more  
19 leafy -- that there will be more volume of  
20 leafy green vegetables or do you think -- or  
21 because you think that the standards would  
22 improve the quality?

1                   MR. LYTCH: No. I just think that  
2 food safety is part of quality. And part of  
3 the marketability of a product along with how  
4 fresh it is and how it's packed and harvested  
5 and the appearance of it, which the USDA  
6 currently recognizes quality and condition in  
7 their current inspection system, but food  
8 safety is also another part of quality and  
9 there's a -- there's a marketable part of it.  
10 So I wasn't talking about necessarily volume  
11 increasing, but just the overall quality by  
12 adding the food safety aspect to it.

13                   MS. DASH: Thank you. That's all  
14 the questions I have.

15                   JUDGE HILLSON: Anything else from  
16 the USDA panel? Other questions from -- any  
17 questions from other interested parties? Do  
18 you have any redirect?

19                   MR. RESNICK: No, Your Honor.

20                   JUDGE HILLSON: Okay. Thank you  
21 for your testimony, Mr. Lytch. You may step  
22 down. Mr. Resnick, you may call your next

1 witness.

2 MR. RESNICK: Thank you, Your  
3 Honor. The proponent group calls Charles  
4 Hall.

5 JUDGE HILLSON: Correct me if I'm  
6 wrong, but Mr. Hall testified already once,  
7 didn't he?

8 MR. RESNICK: He gave testimony.  
9 This is to introduce some proposed changes.

10 JUDGE HILLSON: Okay. All right.  
11 That's fine. I just was testing my memory.  
12 Do you have anything written to be passed out?  
13 Is this going to be -- I've been handed  
14 several documents, what appear to be several  
15 documents put together. Do you want to do  
16 this as one exhibit or do you want them marked  
17 separately, Mr. Resnick?

18 MR. RESNICK: It's a package of  
19 exhibits. It would probably be appropriate to  
20 have one number and then A, B, C, D, et  
21 cetera.

22 JUDGE HILLSON: Should I have Mr.



1 Hall's written statement be -- I'm going to  
2 mark Mr. Hall's written statement as Exhibit  
3 130. I'm just trying to keep this all in  
4 order. It will be faster. Should I have  
5 these as 130A, B, C, D or do you have any  
6 preference? Is there any preference from the  
7 USDA as to how I number these things since  
8 you're the ones that have to sort through them  
9 later on?

10 MS. DASH: 130A, B, C.

11 JUDGE HILLSON: Okay. So it looks  
12 like there are --

13 MR. HALL: Actually, the written  
14 statement does not have reference to the  
15 forms. The forms would be introduced --

16 JUDGE HILLSON: That's fine.  
17 Okay. And by the way, I don't have to swear  
18 you in again, Mr. Hall, because you've already  
19 been sworn in earlier in this proceeding.

20 MR. HALL: Yes, sir.

21 JUDGE HILLSON: But let me just --  
22 there are five -- six -- six attachments that

1 you have there? I just want to make sure I  
2 have this right.

3 MR. HALL: There were seven.

4 JUDGE HILLSON: Each time --  
5 another -- I can't tell if it's a staple that  
6 came out or what.

7 MR. RESNICK: That's one page.

8 JUDGE HILLSON: Okay. Here's what  
9 I have.

10 MR. HALL: There's actually seven  
11 forms.

12 JUDGE HILLSON: Okay. I'm marking  
13 your written statement, your two page written  
14 statement, I guess it's not two, it's three,  
15 as Exhibit 130. I'm going to mark your -- an  
16 attachment that basically says Marketing  
17 Agreement Regulating the Handling of Leafy  
18 Green Vegetables, which is a two page  
19 document, as Exhibit 130A. I'm going to mark  
20 another -- the next document. It's a -- it  
21 says Certificate of Resolution Corporation --  
22 I'm going to mark that as Exhibit 130B. The

1 next one says Official Handler Nomination  
2 Form, zone number -- it's a blank form and  
3 I'll call that Exhibit 130C.

4           And the next one is Ballot  
5 Material, zone number -- form. I'm going to  
6 call that Exhibit 130D. And the next one is  
7 a Producer Nomination Form, and that's Exhibit  
8 130E. And the next one is the Official Ballot  
9 Material, I presume it's different than the  
10 other one that says Ballot Material. It's  
11 official -- this one says Ballot -- one -- the  
12 earlier one, 130D said Handler Ballot  
13 Material; this just says Official Ballot  
14 Material and I'm going to call that Exhibit  
15 130F. And finally, Exhibit 130G looks like  
16 it's a Confidential Member Alternate  
17 Qualification and Acceptance Statement.  
18 These, I assume, are all draft documents that  
19 you want the agency to consider?

20           (WHEREUPON, Exhibit Numbers 130A-G  
21           were marked for identification.)

22           MR. HALL: That's correct.

1                   JUDGE HILLSON: Okay. So I have  
2 130, your written statement, and 130A through  
3 G is -- are the attachments.

4                   CHARLES HALL, having been already  
5 sworn, was examined and testified as follows:

6                   JUDGE HILLSON: Okay. Mr. Hall,  
7 why don't you just state your name one time  
8 and then spell it, although it's already in  
9 the record, and just read your written  
10 statements.

11                   MR. HALL: My name is Charles  
12 Hall, C-h-a-r-l-e-s, Hall, H-a-l-l. I'm the  
13 executive director of the Georgia Fruit and  
14 Vegetable Growers Association and our  
15 organization is a member of the proponent  
16 group. On behalf of the proponents, we  
17 certainly appreciate the time and effort USDA  
18 has spent on this series of hearings across  
19 the US. And as we've heard the testimony  
20 given over the last seven weeks, we do  
21 recommend -- we have a few changes or  
22 additions to the proposed agreement that I

1 wish to submit to the record today. The first  
2 would be an addition in the definition  
3 section, would be an addition 970.23A, which  
4 would define region. Our proposal would be  
5 that region means a growing area distinguished  
6 by common environmental or growing conditions  
7 including but not limited to -- that should be  
8 geography, it's a typo, it should be  
9 geography, climate, production practices,  
10 water sources, and distribution systems or  
11 wildlife. Regions are not synonymous with  
12 zones.

13           This definition throughout the  
14 hearings have been brought into question as to  
15 what the definition of a region is and how a  
16 region is defined, what makes up a region.  
17 It's our desire that this definition would  
18 clearly define region under the marketing  
19 agreement. We also would like to make changes  
20 to section 970.45, the technical review board,  
21 as it is established there. The following  
22 changes in the language would expand that

1 board to broaden the makeup of that body. And  
2 I'll read the proposal and then explain the  
3 changes from what was originally in the  
4 proponent's marketing agreement proposal.

5           A technical review board is hereby  
6 established for the purpose of assisting the  
7 committee in developing audit matrix in 970.67  
8 and any further function that the committee  
9 may recommend and the Secretary approve. The  
10 technical review board shall consist of 21  
11 members as follows: one handler  
12 representative and one producer representative  
13 from each zone who are elected by the  
14 committee, handler, and producer members from  
15 that corresponding zone, one producer  
16 representative considered a small farmer under  
17 SPA guidelines, and one USDA certified organic  
18 producer who are elected by all producer and  
19 handler members on the committee, one produce  
20 food safety expert from a land grant  
21 university within each zone elected by the  
22 producer and handler members from the

1 corresponding zone, one representative from  
2 USDA Natural Resources Conservation Service  
3 appointed by the secretary, one representative  
4 of the US Environmental Protection Agency  
5 designated by the administrator, and two  
6 representatives from FDA designated by the  
7 commissioner.

8           The technical review board shall  
9 appoint subcommittees as necessary to  
10 facilitate input and review from regions  
11 throughout the production area. Subcommittees  
12 may consist of producers, handlers, academic  
13 and other interested parties as deemed  
14 appropriate by the technical review board.

15 The technical review board shall seek input  
16 from other governmental agencies including but  
17 not limited to US Fishing and Wildlife  
18 Service, USDA Animal/Plant Health and  
19 Inspection Wildlife Service, National  
20 Oceanographic and Atmospheric Administration,  
21 National Marine Fisheries.

22           The changes being proposed in this

1 language includes one, it increases the  
2 members of this technical review board from 13  
3 to 21, it adds a small producer as defined by  
4 the SPA, it adds a USDA certified organic  
5 grower, it requires the technical review board  
6 to appoint subcommittees to facilitate input  
7 and review from regions throughout the  
8 production area, the original draft stated the  
9 board may appoint subcommittees, the new  
10 language is shall appoint subcommittees. A  
11 new sentence was added that requires the board  
12 -- that requires the board to seek input for  
13 several -- from several governmental agencies,  
14 as the matrixes are developed. These changes  
15 are being added based on testimony we have  
16 heard over the past six weeks of testimony.

17           And finally, a new paragraph is  
18 requested, 970.6097 to outline a sign-up  
19 period and subsequent paragraphs will be  
20 renumbered to allow this paragraph to be -- to  
21 be inserted. The paragraph would read an  
22 initial sign-up period is established



1 beginning with formal approval of a leafy  
2 green vegetable Marketing Agreement, handlers  
3 who become signatories during this initial  
4 sign-up period and their corresponding  
5 producers will be eligible for service on the  
6 administrative committee.

7           A, the committee shall establish a  
8 second sign up period that shall be held for  
9 45 days following the establishment of GAP,  
10 GHP, and MPA -- and M -- GMP audit metrics and  
11 B, thereafter the committee shall establish an  
12 annual sign-up period to correspond with the  
13 marketing agreement crop year. This  
14 establishes a sign-up authorization and  
15 subsequent operations for handlers to sign up  
16 to their marketing agreement.

17           The forms that we're also being  
18 asked to be introduced into the record are  
19 sample forms that we're proposing be used as  
20 a part of the sign-up period and subsequent  
21 nomination as the judge outlined. The exhibit  
22 marked A would be the marketing agreement that

1 the handler would sign that would agree to the  
2 regulations of the agreement. B would be a  
3 certificate of resolution for corporations  
4 only that would basically say the person  
5 signing the A agreement is authorized to do  
6 that on behalf of the -- on behalf of the  
7 corporation.

8 C would be a -- an official  
9 nomination form for handlers to be on the  
10 administrative committee. This could be done  
11 based on the guidelines within the agreement,  
12 either in a written form or at committee  
13 meetings or it could be a link on the  
14 Internet, but this is a -- a generic form that  
15 could be utilized by the department from this  
16 standpoint. D is an official ballot that  
17 would be used for the vote by handlers within  
18 that particular zone to elect handlers to go  
19 onto the administrative committee.

20 E would be the producer nomination  
21 form for producers to be nominated from the  
22 individual zones. F is the ballot for the

1 handlers. It does not say -- it should be  
2 Official Handler Ballot Material. And then G  
3 is the agreement that the people elected to  
4 the administrative committee would sign  
5 basically saying they are eligible to serve,  
6 they are producing, and they understand  
7 they've been -- a certification statement is  
8 on page 2 of that.

9           These are entered into the record  
10 for convenience of the department so that they  
11 are in the record. And certainly the  
12 department would have every right to make  
13 changes or whatever from that standpoint so --

14           In closing, let me just thank the  
15 USDA again, other panel members that have been  
16 involved with this series of hearings. It's  
17 our goal to put this agreement to work for the  
18 US consumer as soon as possible. We  
19 appreciate the opportunity to submit these  
20 changes, submit the proposed forms and I'll be  
21 glad to answer any questions, Your Honor.

22           JUDGE HILLSON: Okay. Thanks, Mr.

1 Hall. I will receive your written testimony  
2 into evidence as Exhibit 130 and I'll receive  
3 the attachments Exhibit 130A through G into  
4 evidence as well. I'm going to ask Mr.  
5 Resnick if he has any further direct before I  
6 turn it over to the panel.

7 (WHEREUPON, Exhibit Numbers 130A-G  
8 were submitted into evidence.)

9 MR. RESNICK: Yes, Your Honor.

10 MR. ETKA: Your Honor, I have a  
11 procedural question and possible objection.

12 JUDGE HILLSON: Okay. Mr. Etka?

13 MR. ETKA: My understanding is  
14 that the proponent group is proposing to  
15 change its proposal materially by these  
16 changes. USDA has put forward this proposal,  
17 the original proposal on behalf of the  
18 proponent group for the public to read it,  
19 analyze it, and come to these hearings and  
20 make comments. What is the process here  
21 whereby the proponents are changing their  
22 proposal power with USDA than let the public

1 known about this change and then go through  
2 the process of reaching out to the public for  
3 -- for notice and comment to this process  
4 because it is now functionally a new proposal?

5 JUDGE HILLSON: Ms. Deskins, do  
6 you want to address that one?

7 MR. HALL: Certainly. The purpose  
8 of the public hearing -- well, let me correct  
9 one thing. You said the proposal was put out  
10 by USDA. It was actually put out by the  
11 proponents and published in the federal  
12 register.

13 MR. ETKA: By USDA, correct?

14 MS. DESKINS: Well, it was  
15 published by -- it was the proponent's  
16 proposal. At these hearings people can  
17 propose amendments to it or alternate  
18 proposals or oppose it. This is on the  
19 record. They can make whatever changes to the  
20 proposal they want to or anyone else can make  
21 proposed changes. And the notice is -- it is  
22 a public hearing and people were giving notice

1 in the federal register that was considered  
2 the proposals or any amendments to it.

3 JUDGE HILLSON: All right. I  
4 would think -- I'm not the final decider here,  
5 but -- well, I am terms of admitting it, but  
6 I've already admitted them into the record,  
7 but in terms of what the secretary wants to  
8 do, that if it's a proposal and during the  
9 course of these really lengthy hearings they  
10 hear -- they hear criticisms they think they  
11 can address by making some changes, I think  
12 they're entitled to at least put that forward.  
13 I mean, I'll ask Mr. Resnick if he has  
14 anything he wants to add. MR. RESNICK: Thank  
15 you, Your Honor. I mean, we've put the  
16 proposal out for notice and comment and the  
17 opportunity, I think for this hearing I think  
18 is to hear -- we've heard some excellent  
19 suggestions for improving the proposal and we  
20 tried to incorporate some of those  
21 suggestions, which in no way I don't think  
22 materially change the proposal, but for

1 example, adding, you know, a shall create  
2 subcommittees as opposed to make subcommittees  
3 takes away that discretion and takes away that  
4 concern others have raised that what if those  
5 sub committee, for example, are electing not  
6 to go forward. This ensure that it does.

7           So I think it is in keeping with  
8 what the proponent groups have been advocating  
9 all along, which is an open, transparent, and  
10 inclusive process and these changes are  
11 intended to improve the proposal in that way.

12           JUDGE HILLSON: My ruling is that  
13 I'm going to allow the documents into  
14 evidence. At the conclusion of today's  
15 hearing we're going to set a briefing schedule  
16 and among the things that can be added in the  
17 briefing is that I should allow documents in  
18 or should disallow documents in. You'll have  
19 a full opportunity to address those issues.  
20 But -- and I understand your point, but this  
21 is a -- it's a continuing hearing until it's  
22 over basically, which it will be today. And

1 I'm going -- I will allow those attachments  
2 into evidence.

3 MR. ETKA: Then my dilemma is what  
4 are we commenting on now? Are we commenting  
5 on the new -- the proposal as modified or are  
6 we commenting on the original proposal as put  
7 forward by USDA?

8 JUDGE HILLSON: I would think  
9 you're doing -- commenting on the whole  
10 package. And you're free to comment to say  
11 that I shouldn't have allowed these documents  
12 in and that you want to focus in on the  
13 original as well, but just it appears that a  
14 lot of these attachments are based on what --  
15 on a lot of testimony and trying to  
16 accommodate some of the testimony that the  
17 proponents are -- opposition basically.

18 MR. ETKA: Are there copies of  
19 those attachments we can have?

20 JUDGE HILLSON: I'm hoping you can  
21 make some copies available. They certainly  
22 should have that.



1 MR. RESNICK: Certainly.

2 JUDGE HILLSON: And we're going to  
3 have some -- I mean, in terms of the briefing  
4 schedule, we're going to have -- you're going  
5 to have some time to take a look at everything  
6 that's in the record. I note your objection.  
7 I'm just not going to -- I'm just going to  
8 allow these documents.

9 MR. ETKA: Thank you.

10 JUDGE HILLSON: Thank you. Before  
11 Mr. Etk's objection, I was just to turn it  
12 over to the USDA panel. MR. RESNICK: Actually  
13 --

14 JUDGE HILLSON: No, I was asking  
15 Mr. Etk -- I asked Mr. Resnick if he had any  
16 further direct.

17 MR. RESNICK: And I do. Thank  
18 you, Your Honor.

19 DIRECT EXAMINATION BY THE PROPONENTS:

20 MR. RESNICK: Just one point of  
21 clarification, Mr. Hall, would you just look  
22 at 130F, the second to last form that you

1 introduced. Does it say Official Ballot  
2 Material?

3 MR. HALL: That's correct.

4 MR. RESNICK: Okay. Is that  
5 official -- should that be Official Producer  
6 Ballot Material?

7 MR. HALL: Yes, sir. It is.

8 MR. RESNICK: So the point of  
9 clarification is you introduced it as a -- as  
10 a handler ballot form.

11 MR. HALL: I apologize. It's  
12 Official Producer Ballot Material, yes.

13 I want to correct that. Thank  
14 you.

15 JUDGE HILLSON: Do you want the  
16 word "producer" inserted in between the words  
17 "official" and "ballot"?

18 MR. RESNICK: I think that would  
19 be appropriate.

20 JUDGE HILLSON: I will -- I'm  
21 going to insert that word in there then. You  
22 did say handler, is that correct, not

1 producer, handler, based on what you said so  
2 that's a good way to clarify that. Any other?

3 MR. RESNICK: That's all.

4 JUDGE HILLSON: The USDA panel,  
5 who has questions? Ms. Schmaedick, you ready?  
6 Go right ahead.

7 CROSS-EXAMINATION BY THE USDA:

8 MS. SCHMAEDICK: Melissa  
9 Schmaedick, USDA. Thank you, Mr. Hall, for  
10 your testimony. Let's just begin with some  
11 questions about the proposed definition for  
12 region. Can you explain to us --

13 MALE VOICE: Speak up a little  
14 bit, please. Speak up a little bit, please.

15 MS. SCHMAEDICK: The proposed  
16 definition for region, can you explain how the  
17 definition was crafted and why the components  
18 that are outlined are important?

19 MR. HALL: How it's crafted was in  
20 looking at what we felt and had tried to  
21 provide answer to questions with regard to  
22 what a region is. And generally within a

1 production area, these are areas that's going  
2 to be those conditions areas that would affect  
3 a production area within a region, so that's  
4 how that's -- that's how that definition was  
5 arrived at.

6 I think it clarifies how most of  
7 our growing production areas would -- would  
8 differ. It's either going to be by  
9 production. It's going to be by geography or  
10 climate. There will be -- you know, and we  
11 may have some regions that will cross and  
12 that's why we wanted to make sure that the  
13 definition included the sense that it was not  
14 contiguous or synonymous with zones.

15 MS. SCHMAEDICK: Okay. So just to  
16 clarify, a region could -- a different type of  
17 production region could exist in two zones or  
18 cross the dividing line between two zones?

19 MR. HALL: That's correct.

20 MS. SCHMAEDICK: And how would the  
21 term "region" apply to product that was  
22 produced outside of the United States and

1 handled by a signatory --

2 MR. HALL: I'm sorry. I didn't  
3 hear the end of that question.

4 MS. SCHMAEDICK: How would the  
5 term "region" apply to a production -- to  
6 production that is outside of the United  
7 States and is being handled by a signatory of  
8 the agreement?

9 MR. HALL: The -- I don't have a  
10 definite answer on that. I would -- I would  
11 assume, because I'm not familiar with  
12 production in a foreign country. But I would  
13 assume that similar production areas or  
14 regions exist, whether it's Mexico or South  
15 America, that we have in the US. So you have  
16 some similar types of production standards,  
17 production practices, climate that will --  
18 that will control that. So you may have a  
19 region in Mexico that would be identified as  
20 a specific region from that standpoint so --

21 MS. SCHMAEDICK: Thank you. Under  
22 the technical review board, you state that --

1 you're proposing that the board increase from  
2 13 to 21 members?

3 MR. HALL: That's correct.

4 MS. SCHMAEDICK: In your opinion,  
5 would there be alternate members for these  
6 board members?

7 MR. HALL: Yes, possibly. We're  
8 not -- did not include alternates in this  
9 language, but there certainly could be  
10 alternates from that standpoint.

11 MS. SCHMAEDICK: And what is the  
12 purpose of -- a proficient or certified  
13 organic grower?

14 MR. HALL: Because of the concern  
15 that's been voiced at the hearings that --  
16 that possibly organic is not being considered  
17 or organic had different production standards  
18 or metrics that traditional production would  
19 have. And this would be -- this would be to  
20 guarantee that there would be someone from the  
21 organic community sitting at the table from  
22 that standpoint so it was an effort to make

1 sure we were being inclusive, transparent in  
2 all those -- all those activities.

3 MS. SCHMAEDICK: Could you speak  
4 to the addition of a seat on the board for a  
5 small producer as defined by the FDA  
6 definition?

7 MR. HALL: It's the same purpose.  
8 There's been concern expressed in hearings  
9 that small growers have a different standard  
10 or there should be some consideration made for  
11 small growers within the food safety  
12 guidelines. And again, from a transparent and  
13 conclusive standpoint, having -- requiring a  
14 small grower to be on the technical review  
15 board would -- felt -- we felt that that would  
16 be good to make sure we were being inclusive  
17 in all discussions.

18 MS. SCHMAEDICK: Are you aware of  
19 some testimony that's been offered throughout  
20 this process that the FDA's definition may not  
21 accurately describe small producer for this  
22 particular industry?

1           MR. HALL: I have not reviewed all  
2 the testimony that's been presented, so I'm  
3 not aware that there -- that that testimony  
4 has been presented.

5           MS. SCHMAEDICK: Okay. Could you  
6 explain, on page 3 of your statement, how the  
7 new paragraph 970.97 would work? Could you  
8 elaborate? There are two different phases, if  
9 you will, an initial planning period and the  
10 subsequent. Can you explain?

11           MR. HALL: As anyone is aware  
12 that's familiar with the agreement, part of  
13 the agreement, initial activity of the  
14 administrative committee and the technical  
15 review board will be to set up the metrics.  
16 That will be the initial activity from the  
17 committee and from the technical review board.

18           So there may -- some growers may  
19 have -- or some handlers, excuse me, may have  
20 concerns about signing on to the agreement  
21 without knowing what the metrics are going to  
22 be. Obviously to establish the administrative



1 committee and the technical review board, they  
2 have to agree to the -- to the metrics or to  
3 the agreement. So after -- we did not want to  
4 wait an extended period of time. Once the  
5 metrics were established, we did not want to  
6 wait another year or 12 months to make sure  
7 that the agreement was open for further sign-  
8 up -- for sign-up.

9           So this was again, from the  
10 standpoint of making sure that people were  
11 being inclusive -- included in the sign-up.  
12 Once the metrics were agreed to or determined,  
13 this would allow a sign-up to take place at  
14 that point so we could broaden that agreement.

15           MS. SCHMAEDICK: And based on your  
16 understanding of the proposed agreement, when  
17 would -- if the agreement were put into place,  
18 when would the regulation actually begin?

19           MR. HALL: I would assume the  
20 regulation would begin when the agreement was  
21 in place. I mean, at the point the secretary  
22 says the agreement begins, it would begin at

1 that point. There would have to be a sign-up  
2 period, of course, for handlers to sign on to  
3 the agreement and from the group of handlers  
4 that signed on, then the administrative  
5 committees the technical review boards would  
6 begin to be established and there would be a  
7 period of time initially where the agreement  
8 would be functioning as I guess an  
9 administrative tool so those metrics could be  
10 set up. It would actually not be -- there  
11 would be no metrics to enforce until -- until  
12 that first process took place.

13 MS. SCHMAEDICK: Okay. To  
14 clarify, if I understand you correctly, if  
15 this agreement were adopted, there would be an  
16 initial period of time where the  
17 administrative committee and the technical  
18 review board will be functional, but because  
19 the metrics -- metrics had not been developed  
20 yet, there would essentially not be any  
21 enforceable regulation?

22 MR. HALL: That's correct. What

1 that period of time would be, certainly I  
2 think from the proponent group, we would hope  
3 that that period of time would be short.  
4 Obviously, it's going to realistically a three  
5 to six month period in developing metrics, I  
6 would think.

7 MS. SCHMAEDICK: Okay. Are you  
8 prepared to speak today on the -- the proposed  
9 process of how administrative committee  
10 members would be identified, nominated, and  
11 eventually appointed?

12 MR. HALL: I think the agreement  
13 as it's put forth allows the nomination  
14 process for handlers and producers to take  
15 place. And again, I'm not a lawyer, so I'm  
16 expressing what I understand the language to  
17 be in the agreement. Once the initial sign-up  
18 period was in place, we have handlers that  
19 have agreed to that sign-up and they have  
20 identified their producers that will fall  
21 under this agreement. At that point there  
22 would be a pool of people that would be

1 available to be appointed or to be nominated,  
2 excuse me, to the administrative committee.

3           And that's why we introduced the  
4 forms because they could be done with forms  
5 such as this. There could be meetings held at  
6 each zone for informational purposes and to  
7 accept nominations at some type of  
8 handler/grower type meeting or it could be  
9 done by the web. So there's a number of  
10 different ways. This information could be  
11 mailed to all the handlers that had agreed or  
12 signed on to the agreement and asked for  
13 either self nomination or nomination of other  
14 people that are -- you know, that have agreed  
15 or signed on to the agreement.

16           So there are several different  
17 ways. Both the producer and the handler  
18 nominations could take place. And then based  
19 on the forms submitted, there would be  
20 probably, I would assume, a mail ballot for  
21 once the nominations have been submitted, it  
22 would be a mail ballot to all of the handlers

1 in that -- and producers in that region from  
2 a vote standpoint.

3 MS. SCHMAEDICK: And how would it  
4 -- how would the determination be made in  
5 terms of identifying nominees for each  
6 committee member seat?

7 MR. HALL: I'm not sure I  
8 understand the question.

9 MS. SCHMAEDICK: Well, if you --  
10 if you have 500 ballots come in, are the seats  
11 for that particular region allocated to the  
12 top three names receiving the highest number  
13 of ballots or how does -- how does that  
14 process work?

15 MR. HALL: That's a very good  
16 question. I do not know.

17 MS. SCHMAEDICK: Okay. In the  
18 event that you -- that there is an entity that  
19 is both a grower and a handler, would they be  
20 able to vote or nominate as both a grower or  
21 handler or would they have to select?

22 MR. HALL: Again, my opinion, and

1 the language in the agreement may be different  
2 than what I'm expressing because I have  
3 refreshed my memory on the -- on the agreement  
4 in this particular area in the last few days.  
5 I would assume that if a -- if an individual  
6 or an operation was both a producer and a  
7 handler, they would have to decide what  
8 function they're going to sign on to the  
9 agreement as.

10           They could, if they are a handler,  
11 they could sign on to the agreement as a  
12 handler because that's the only people that  
13 actually have that. They may decide not to do  
14 that and basically remain as a producer. And  
15 if they're producing for someone or a company  
16 that's actually a handler, then they would be  
17 -- they would move into that agreement from --  
18 under that auspice. I think they would -- a  
19 producer and handler would actually -- I think  
20 would have the option of deciding which way  
21 they wanted to move their operation, either as  
22 a part of the agreement as a handler or as a

1 producer.

2 MS. SCHMAEDICK: And if this  
3 entity has production or handling facilities  
4 in more than one zone, would they be required  
5 to elect only in one zone or would they have  
6 the ability to elect representation in more  
7 than one zone?

8 MR. HALL: Again, a very good  
9 question. I don't have -- I don't have the  
10 answer to it based on the agreement as it's  
11 currently written. It would -- again, my  
12 opinion would be that they would elect which  
13 zone they would be -- if they are a handler,  
14 if they're going to be, they're signing onto  
15 the agreement under -- as a handler, they  
16 would decide which zone they're signing onto.

17 And I would assume it's probably  
18 where their headquarter's office is, whether  
19 if they're, for instance, Georgia, Florida --  
20 Florida is in zone 4 -- no, excuse me -- zone  
21 5; Georgia is in zone 4. We have operations  
22 that cross over the state. I would assume

1 that probably a handler in Georgia is going to  
2 sign on as a handler for zone 4, where even  
3 though they may have operations in Florida.

4 MS. SCHMAEDICK: So if the  
5 proposed agreement functions as you've just  
6 described, is it possible that a large  
7 producer/handler entity that operates in  
8 multiple states, potentially multiple zones,  
9 would have eventually -- would have the choice  
10 of representing themselves as a grower or a  
11 handler for a specific region and would that  
12 put them on the same footing as a smaller  
13 operation that only operated in one location?  
14 I don't know if I'm asking the question very  
15 clearly, but --

16 MR. HALL: I don't know whether  
17 that dynamic is spelled out specifically in  
18 the agreement, however I would think that the  
19 handler would decide which zone they're going  
20 to be operating in even if they operated in  
21 multiple zones. And in that case then they  
22 would have the same vote as a small grower



1 that it only in one zone or a grower that is  
2 only in one zone.

3 MS. SCHMAEDICK: So would it be  
4 fair to say that regardless of the size or  
5 number of locations, at the end of the day,  
6 each entity is given one vote?

7 MR. HALL: That would be my  
8 understanding, yes.

9 MS. SCHMAEDICK: Thank you. Those  
10 are my questions. Thank you.

11 JUDGE HILLSON: Any other  
12 questions from the panel? Mr. Souza?

13 MR. SOUZA: Anthony Souza, USDA.  
14 Good morning, Mr. Hall.

15 MR. HALL: Good morning.

16 MR. SOUZA: A couple questions  
17 just for clarification purposes. Under your  
18 new proposed language 70.23 you use the  
19 terminology "production practices" and  
20 "distribution systems." Could you give some  
21 examples or the proponent group's description  
22 of what you believe those entail?

1                   MR. HALL:  There may be different  
2  production practices.  Mr. Wingard mentioned  
3  this morning a farm in Michigan having six  
4  months of cold wether may have a different  
5  production practice than a farm in South  
6  Carolina that has nine to -- that only has  
7  maybe two months of cold weather.  So the  
8  production practices may be different with  
9  regard as management in other areas from that  
10 standpoint.  So that -- from production  
11 practices, that would be our irrigation, how  
12 one region may handle irrigation differently  
13 than another region.

14                   Distribution systems would be  
15 similar from the standpoint of how the product  
16 may be transferred from the field to the  
17 packing facility or onto a food service area.  
18 So I don't know if I can give you a specific  
19 example on distribution systems.  I'm much  
20 more familiar with our production systems than  
21 I am distribution so --

22                   MR. SOUZA:  So it would be

1 possible to have two, three, four different  
2 regions within a close proximity?

3 MR. HALL: I'm sorry. Repeat  
4 that.

5 MR. SOUZA: It would be possible  
6 to have two, three, four different regions  
7 within a close proximity? There would be no  
8 linear definition or lines drawn anywhere?

9 MR. HALL: There could be. My  
10 impression of our production practices though  
11 at this point is going to be somewhat  
12 geographic to the United States more than it  
13 would be where we may have a southeastern area  
14 that is handling production differently than  
15 a Midwest or a California type production, but  
16 yeah.

17 MR. SOUZA: And it would also be  
18 possible for value added plants to receive  
19 product from several different regions  
20 throughout the country and process that at one  
21 given time?

22 MR. HALL: Yes, sir.

1                   MR. SOUZA: Thank you. No further  
2 questions.

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

5                   MS. DESKINS: Mr. Hall -- Mr.  
6 Hall, I did have a question about the  
7 representation of a technical board.

8                   MR. HALL: Yes, ma'am.

9                   MS. DESKINS: -- representative  
10 from the EPA and also from FDA. And my  
11 question to you is what happens if let's say  
12 the administrator for EPA doesn't appoint  
13 anyone?

14                  MR. HALL: I would assume that's  
15 just an unfilled seat on the technical review  
16 board. The board then would need to reach out  
17 as best they could to have someone within EPA  
18 for input-wise from that standpoint. I would  
19 hope the administrator would support the  
20 agreement with someone serving on the review  
21 board.

22                  MS. DESKINS: Okay. So the

1 intent, for whatever reason those two entities  
2 don't appoint anyone, then those seats would  
3 just be vacant?

4 MR. HALL: Yes, ma'am.

5 MS. DESKINS: Thank you.

6 JUDGE HILLSON: Anything else from  
7 the panel? Let me ask -- open up the  
8 questions from other parties. Mr. Etko, you  
9 have some questions?

10 EXAMINATION BY THE ORGANIC COALITION:

11 MR. ETKO: Steve Etko with  
12 National Organic Coalition. I do have a few  
13 questions. In the proposed modifications to  
14 the agreement, on page 1 of your  
15 testimony --

16 MR. HALL: Yes, sir.

17 MR. ETKO: -- the section about  
18 regions, you talk about regions being your  
19 growing area distinguished by common  
20 environmental or growing conditions including,  
21 but not limited to topography, climate,  
22 production practices, water sources, and

1 distribution systems for wildlife. Regions  
2 are not synonymous with zones. My question is  
3 did you hear the testimony by Mr. Wingard  
4 earlier?

5 MR. HALL: Yes, sir. I did.

6 MR. ETKA: Did you hear a  
7 statement and -- for his testimony be with  
8 regard to metrics, he made the statement  
9 variances should be based on production  
10 practices more so than other -- excuse me --  
11 more so than on geographical boundaries. Do  
12 you view the proponent's group modification  
13 for region -- the language for region to be  
14 consistent and compatible with Mr. Wingard's  
15 statement there?

16 MR. HALL: Yes, sir, I do.

17 Because generally a production practice is  
18 going to be dictated by geography. So, you  
19 know, if you have a particular geographic  
20 area, the production practice will generally  
21 be tied in with that. There may be  
22 exceptions. I'm not familiar at this point

1 with what might be an exception to that -- to  
2 that point. But generally you're going to be  
3 farming based on what geography your farm is  
4 located in.

5 MR. ETKA: I think my question is  
6 would it be limited by geography? His  
7 statement seems to be suggesting that  
8 production practice may be the commonality  
9 more so than geography. Does your proposed  
10 language --

11 MR. HALL: Well, in saying that  
12 it's included and not limited to, broaden it  
13 to all those areas; although I think  
14 production practices are going to be one of  
15 the -- one of the -- one of the most  
16 distinguishing components of that  
17 differentiation on regions.

18 MR. ETKA: Thank you. In your  
19 proposed modification to the proposed  
20 agreement, under the technical review board  
21 language on page 2 of your testimony --

22 MR. ETKA: Yes, sir.

1           MR. HALL:  -- you stated in your  
2  testimony that these modifications were made  
3  based on suggestions that you all heard from  
4  previous testimony in previous locations.  A  
5  couple questions about some of the  
6  modifications.  What are you basing your use  
7  of the SPA guidelines?  Why are you using that  
8  definition for determining whether it's a  
9  small or a large producer for purposes of the  
10 technical review board?

11           MR. HALL:  It is a defined  
12 governmental definition of a small farm.  It  
13 has been asked throughout the testimony, "Are  
14 you a small grower under SPA guidelines?"  So  
15 we felt like that would be an accepted  
16 guideline for that.  I did not realize there  
17 had been other testimony given, you know, in -  
18 - for other definitions.  I don't think the  
19 proponent group would be opposed to another  
20 definition other than the SPA guideline for  
21 the definition of a small farm.  It seems to  
22 be fairly consistent throughout most -- you



1 know, most of the testimony so --

2 MR. HALL: So you're not aware of  
3 the other testimony at other hearings  
4 suggesting that that guideline is not  
5 particularly meaningful for some regions of  
6 the country?

7 MR. HALL: I'm not aware of that.  
8 No, sir.

9 MR. ETKA: The proponent group  
10 would be open to another modification to this  
11 modification to the proposal?

12 MR. HALL: I believe we would be.  
13 Yes, sir.

14 MR. ETKA: With regard to the  
15 modification under the technical review board  
16 that you all are proposing, it appears that  
17 you are -- the proponent group is continuing  
18 the structure that makes the technical review  
19 board merely advisory to the administrative  
20 committee and that the administrative  
21 committee can still reject or accept the  
22 proposal -- before it is moved along to the

1 secretary, is that accurate?

2 MR. HALL: Yes, sir. Under the  
3 structure that's outlined it would be,  
4 although the individuals on the technical  
5 review board and subcommittees that would be  
6 involved with this, we'd be hopeful that the  
7 documents coming from the technical review  
8 board would be -- would be very -- very  
9 adequate from a food safety guideline  
10 standpoint.

11 MR. ETKA: Are you aware of  
12 testimony in previous hearings where concerns  
13 were raised that the food safety experts that  
14 are to serve on this board are very limited by  
15 the fact that they're chosen by the producer  
16 and handlers of the board, the administrative  
17 committee and that they have to be from land  
18 grant universities?

19 MR. HALL: I'm not aware of that  
20 testimony. No, sir.

21 MR. ETKA: Was there any  
22 discussion about addressing that concern among

1 the proponent groups when --

2 MR. HALL: I think that language  
3 is original to the -- to the -- it's a part of  
4 this proposal, but I think it's original to  
5 the original agreement.

6 MR. ETKA: So based on the fact  
7 that you testified that the intent of this  
8 modification was to address concerns raised by  
9 proponents, is it fair to conclude that the  
10 arguments made about the need to have a broad  
11 group of food safety experts were not deemed  
12 valid for purposes of making --

13 MR. HALL: No, sir, because if  
14 you'll note the language was changed from may  
15 to shall in subcommittees. So the technical  
16 review board is -- where originally we said  
17 may set up subcommittees to review zones and  
18 other -- facilitate input and review from  
19 regions, you know, consist of producers,  
20 academic, other interested parties. It was  
21 changed from they may do that to they shall do  
22 that, so we make sure that we do have input

1 from other -- other regions, other areas,  
2 other academic thoughts from that standpoint.

3 MR. ETKA: But in terms of the  
4 technical review board, you all would still  
5 require the food safety experts only be from  
6 land grants and only be -- producer/handlers  
7 of the committee, correct?

8 MR. HALL: At this point, yes,  
9 sir.

10 MR. ETKA: Thank you. I did have  
11 a question about the change made under the  
12 proposed 970.97 on page 3 of your testimony.

13 MR. HALL: Yes, sir.

14 MR. ETKA: If I'm reading this  
15 correctly, you must -- as a grower, you can  
16 not be on the administrative committee unless  
17 your handler is a signatory to the agreement,  
18 is that correct?

19 MR. HALL: Yes, sir.

20 MR. ETKA: And do you believe that  
21 the growers are able to decide whether or not  
22 their handlers sign to that to that ultimate -

1 -

2 MR. HALL: The handler will make  
3 that decision whether they sign onto the  
4 agreement or not. And then the -- if a grower  
5 is using ABC Company as their handler, then  
6 the grower is going to know either their  
7 handler is a signatory of that agreement or  
8 they'll -- if they don't want to participate  
9 in the agreement, then they'll go and find  
10 another handler that's not a signatory.

11 MR. ETKA: So if there were  
12 growers that were independent and wanted to be  
13 part of this agreement for purposes of making  
14 their points about problems they see with the  
15 LGMA, how would they have any role in this  
16 process?

17 MR. HALL: Good question. I'm not  
18 sure I have an answer to that right off the  
19 top of my head, other -- I mean --

20 MR. ETKA: Thank you. Does it not  
21 suggest that only growers who are tied to  
22 handlers -- scratch that. I think you've

1 answered my question on that. Two more  
2 questions. Is it your understand that  
3 handlers that sign on to this agreement as it  
4 was put forward by USDA would collectively  
5 agree to work together to not accept or to not  
6 buy produce from growers who did not follow  
7 these practices?

8 MR. HALL: I'm sorry?

9 MR. ETKA: It was a convoluted  
10 question. I apologize. Let me rephrase that.  
11 Is it your understanding that a handler that  
12 signs onto this agreement must only source  
13 their product from growers that follow the  
14 LGMA as mentioned?

15 MR. HALL: Yes, sir. That's my  
16 understanding.

17 MR. ETKA: So is it your further  
18 understanding that handlers who collectively  
19 sign on to this agreement would be agreeing  
20 collectively to only source their product from  
21 growers that follow these metrics?

22 MR. HALL: I'm not sure I

1 understand your collective, but any -- any  
2 handler that signs on to the agreement is  
3 agreeing to source their product from growers  
4 that are following the metrics of the  
5 agreement.

6 MR. ETKA: And they agree together  
7 to follow those rules?

8 MR. HALL: And individually. Yes,  
9 sir.

10 MR. ETKA: Thank you. The last  
11 question, were there any discussions with USDA  
12 staff off the record about this proposed  
13 modification to the agreement prior to its  
14 altering?

15 MR. HALL: Not to my knowledge,  
16 no, sir.

17 MR. ETKA: Okay. Thank you very  
18 much.

19 EXAMINATION BY THE PUBLIC:

20 MR. HAMIL: My name is George  
21 Hamil. Thank you, Mr. Hall, for your  
22 testimony. I am trying to understand better

1 what it is -- what the entire agreement about.

2 I've studied it, but that doesn't mean --

3 MR. HALL: Yes, sir.

4 MR. HAMIL: -- that I understand  
5 it. And what I'm -- I would like to focus on  
6 is two things, okay? The first is the issue  
7 of how the committee is made up. Okay, I read  
8 the listing and I see 13 members of the  
9 committee are handlers, clearly articulated.  
10 In the other list it kind of gets a little  
11 confusing as to who is a producer and who  
12 isn't a producer for me. And then it says  
13 that within the producers, a majority must not  
14 be also handlers. Okay. So can you give me  
15 an understanding of the total number of seats  
16 on the committee that could have the entity in  
17 it be a handler? It's not 13 obviously, but  
18 what is the maximum number?

19 MR. HALL: I don't -- I'll need to  
20 look at the agreement. I don't have a copy  
21 with me. Thank you. Well, the intent is that  
22 those 13 people are representing the handler



1 community. Okay. There could be others that  
2 -- producers that are also handlers that could  
3 be on the -- on the committee also, but their  
4 role, if they're on the committee as a  
5 producer, they should be -- they should be  
6 representing the producer community, not  
7 necessarily the handler community.

8 MR. HAMIL: Right. But I'm saying  
9 how many entities could actually have the  
10 joint interest of being a handler and a  
11 producer? How many have the interest of being  
12 a handler? So it appears that there are seven  
13 clear producers, okay, on it and -- I'm sorry,  
14 six clear producers on it so that two of those  
15 producers could also be handlers so that the  
16 interest of -- they would have a double  
17 interest. They're supposed to do this, but  
18 they would have a conflict of interest. So  
19 I'm just trying to come up with the total  
20 number of people who would have in their  
21 business interest the possibility of the  
22 interest of being a handler, that would make

1 the total 15.

2 MR. HALL: Yeah. Also the 13  
3 handlers could be producers.

4 MR. HAMIL: Okay.

5 MR. HALL: So --

6 MR. HAMIL: I agree, I agree.

7 MR. HALL: So --

8 MR. HAMIL: It's a difficult  
9 thing.

10 MR. HALL: Yes, sir.

11 MR. HAMIL: That's why I'm trying  
12 to understand exactly how that works because  
13 we all know that conflicts of interest are  
14 difficult to handle.

15 MR. HALL: Right.

16 MR. HAMIL: And how I can just  
17 kind of close myself to one side. And the  
18 reason that I'm asking this, I'm trying to  
19 understand this issue of voluntary, okay?

20 MR. HALL: Uh-huh.

21 MR. HAMIL: Now, as a retailer,  
22 okay, I clearly can not be in any way, shape,

1 or form a signatory of this agreement?

2 MR. HALL: Correct.

3 MR. HAMIL: All right? So I'm --

4 I don't have the opportunity to voluntarily  
5 participate if all of the product that is made  
6 available to me comes from handlers who are  
7 signatories to this, then I am involuntarily  
8 required to purchase. Now, then I go back  
9 over to the producer side, okay, and if, as I  
10 understand has occurred, and I may be wrong  
11 about this, in California essentially 100  
12 percent of the handlers have signed on, then  
13 a producer has no choice because if they're  
14 going to sell in the wholesale market, you got  
15 to have handlers, by the definitions of this.

16 So is it -- how is it voluntary in  
17 reality? Is it -- I just don't understand how  
18 it is voluntary for all of those who are  
19 actually constrained by it. Can you explain  
20 that?

21 MR. HALL: It's voluntary from the  
22 handler. I mean, the handler is the

1 signatory.

2 MR. HAMIL: Uh-huh.

3 MR. HALL: They have the -- they  
4 are -- it's voluntary for them whether they  
5 sign the agreement or not. I don't know  
6 whether your statement with regard to all of  
7 California is -- all the handlers in  
8 California --

9 MR. HAMIL: Accurate.

10 MR. HALL: -- is 100 percent. I  
11 don't think it is. Certainly, the numbers --  
12 I mean, I think -- I think it's in the high  
13 nineties --

14 MR. HAMIL: Yeah.

15 MR. HALL: -- or in the 90 percent  
16 area anyway. So but again, it would -- it's  
17 the handler that has -- is the voluntary  
18 there. If a handler signs on as a voluntary  
19 signatory, then they are saying and their  
20 growers that are growing for that handler  
21 would then either be a party to this agreement  
22 or they would find another handler that was

1 not a signatory.

2 MR. HAMIL: Okay. I think I  
3 understand that better. Thank you very much.  
4 I have a second question, okay? Do you  
5 anticipate -- when -- what crop year do you  
6 anticipate this agreement first impacting?

7 MR. HALL: That's a good question.  
8 We've asked that same -- we've asked that same  
9 question among the proponent group. I think  
10 we're -- we are optimistically looking at  
11 somewhere during 2011 of being -- when the  
12 final agreement would be finalized because of  
13 the process, it has to go through rule making  
14 and then, as I said earlier, three to six  
15 months of metrics being -- being put in place.  
16 So we probably are not seeing a final  
17 agreement, fully operational, until some time  
18 during 2011, possibly late 2011.

19 MR. HAMIL: I agree with you  
20 wholeheartedly, sir. Because I read the term  
21 that a person serves and it begins on April 1.

22 MR. HALL: Uh-huh.

1           MR. HAMIL: So the initial people,  
2 if it's going to start on April 1 of 2010,  
3 then it's kind of hard to have it apply  
4 instantly on that day and everything. So I  
5 appreciate that we have the same --

6           MR. HALL: Yeah.

7           MR. HAMIL: -- understanding of  
8 this thing. So now I want to go back to this  
9 issue of voluntary, all right?

10          MR. HALL: Yes, sir.

11          MR. HAMIL: And I'm basically  
12 asking you the same question that I asked Mr.  
13 Wingard.

14          MR. HALL: Okay.

15          MR. HAMIL: Okay? Clearly I, as a  
16 retailer, okay, can be constrained by this  
17 agreement. There's no ifs, ands, or buts  
18 about it, that I can be constrained in terms  
19 of if everybody agrees that it's a great idea,  
20 then my purchasing options are limited. Okay.  
21 All right. So I continue to wonder why your  
22 organization advocates a quote, unquote

1 voluntary agreement when it clearly has  
2 involuntary implications for others, okay,  
3 involved that are not consumers, because all  
4 marketing agreements have an involuntary  
5 aspect in terms of consumers, okay? And why  
6 do you not advocate an order versus a  
7 voluntary agreement?

8 MR. HALL: Well, as we went  
9 through the process of all the way back to  
10 when USDA put out the advanced notice of  
11 proposed rule making, there was opposition to  
12 such a marketing agreement so -- from that  
13 standpoint. We felt like, in looking at this,  
14 the -- a marketing order as such would be one,  
15 difficult to pass because it would require  
16 everybody in the whole United States to vote  
17 in favor or opposed to that marketing order.

18 Although there was a number -- a  
19 strong support within the industry of having  
20 some type of national food safety guideline  
21 order because we knew that FDA was going to be  
22 moving in this direction and we wanted --

1 actually from an industry standpoint, we  
2 wanted to get ahead of that curve so that we  
3 were at the table when those guidelines and  
4 those metrics were being set by our government  
5 so that we had some input from that  
6 standpoint.

7           So it was determined that an  
8 agreement would be a better vehicle to move  
9 forward with because it was voluntary. It did  
10 not require everybody to be signing on to the  
11 order to that -- being a signatory. It was  
12 much stronger than that. This came from, you  
13 know, a multitude of organizations and, you  
14 know, we made the decision that an agreement  
15 was a better vehicle to move forward with and  
16 be able to put down overall food safety  
17 guidance and direction than going to an order.

18           MR. HAMIL: So let me make sure  
19 I've understood you, okay? So I understand it  
20 that if it were an order, okay, it would have  
21 had to go through a long process where every  
22 entity that was impacted by that order



1 directly would have had the right to vote?

2 MR. HALL: Yes, sir.

3 MR. HAMIL: Okay. Now, would they  
4 have been able to vote based on size or would  
5 they have been able to vote based upon  
6 existence?

7 MR. HALL: I don't know. I know  
8 how it would be in Georgia, if we were talking  
9 about a marketing order in Georgia, it would  
10 be existence. There's no marketing order in  
11 Georgia that would give us a vote based on  
12 size, but federal marketing orders, I'm not  
13 familiar enough with them to know whether --  
14 I don't think -- I think it's one vote per  
15 organization.

16 MR. HAMIL: That's what I  
17 understand it to be and I assume USDA would  
18 correct me right now if I'm wrong about this,  
19 okay? The reason that I'm asking this is  
20 quite simple. I live in the mountains of  
21 North Carolina. We have here today one of our  
22 large producers. They own ten or 12 acres?

1 MALE VOICE: 12

2 MR. HALL: -- okay, 12 acres.

3 JUDGE HILLSON: You're here to ask  
4 questions of this witness, not to get  
5 testimony from the audience.

6 MR. HAMIL: I understand that.  
7 I'm trying to understand this, sir. And that  
8 is so it would mean that we would all have a  
9 vote, okay, therefore the probability, would  
10 you say it would be probable that size  
11 wouldn't matter and therefore the number of  
12 people necessary for an order would be much  
13 more difficult to obtain?

14 MR. HALL: It would be more  
15 difficult to obtain from the procedural  
16 standpoint because being able to collect the  
17 names of the individual -- I mean, the  
18 companies that would be eligible to vote time-  
19 wise -- the process might be a three or four  
20 year process rather than maybe a two year  
21 process.

22 MR. HAMIL: Okay. So what I'm

1 hearing is the facility is one of the key  
2 elements of why you're trying to make it  
3 voluntary. Thank you very much. I understand  
4 it much better, sir.

5 JUDGE HILLSON: Are there any  
6 other questions from other interested parties?

7 MR. MARTIN: Joe Martin, Zydeco  
8 Moon Farms, North Carolina. In your proposed  
9 970.97 you use the term "corresponding  
10 producers" and I don't see that term defined  
11 in either the California Leafy Green or the  
12 proposal. Can you tell me what that means?

13 MR. HALL: I'm sorry. Which?

14 MR. MARTIN: It's in your -- your  
15 document here produced this morning.

16 MR. HALL: Yes.

17 MR. MARTIN: Your amended 970.97,  
18 the sign-up period.

19 MR. HALL: Okay.

20 MR. MARTIN: You use the term  
21 "corresponding producers" and I don't see that  
22 term defined anywhere. What does it mean?

1           MR. HALL: It probably -- it means  
2 the producers that would be producing for the  
3 handler that's a -- excuse me. The producers  
4 that were actually producing for the handler  
5 that is the signatory.

6           MR. MARTIN: And in 970.41 only  
7 handlers are required to be signatories to the  
8 agreement in order to serve on the  
9 administrative committee, is that correct?

10          MR. HALL: Yes, sir.

11          MR. MARTIN: Producers were not  
12 originally required to be corresponding  
13 producers with a signatory, correct?

14          MR. HALL: Originally --

15          MR. MARTIN: Your amendment  
16 changes that.

17          MR. HALL: If my handler is a  
18 signatory of that agreement and I'm a  
19 producer, then I'm going to have to -- if I'm  
20 going to market my products through that  
21 handler, then I'm going to have to follow the  
22 guidance of that -- of that guideline.

1           MR. MARTIN: My question is about  
2 the administrative committee.

3           MR. HALL: Right.

4           MR. MARTIN: If you are not  
5 dealing with the signatory and handler, you  
6 can't serve on the administrative committee as  
7 a producer?

8           MR. HALL: Yes, sir. I think that  
9 would be correct.

10          MR. MARTIN: That's all the  
11 questions. Thank you very much.

12          JUDGE HILLSON: Any other  
13 questions before we turn it over back to Mr.  
14 Resnick? Do you have any redirect for Mr.  
15 Hall?

16          MR. RESNICK: Yes, Your Honor.

17 REDIRECT EXAMINATION BY THE PROPONENTS:

18          MR. GICLAS: Hank Giclas, Western  
19 Growers. Thank you, Mr. Hall, for your  
20 testimony. I wanted to ask some questions  
21 about the proposed language for the technical  
22 review board.

1 MR. HALL: Yes, sir.

2 MR. GICLAS: Sorry. I keep  
3 turning away from the microphone. It's hard  
4 to have papers and a mic. The total number of  
5 representatives on that technical review board  
6 just from what I think was corrected --  
7 corrected from 14 to 21, so there's an  
8 additional seven members of the technical  
9 review board that are now required as part of  
10 this board. Do you -- do you know what -- I  
11 mean, can you characterize those -- those new  
12 seven members? Are they -- I mean, are they  
13 handlers? Are they producers? Are  
14 they --

15 MR. HALL: I think if my  
16 arithmetic is correct, they would be primarily  
17 producers.

18 MR. GICLAS: Okay.

19 MR. HALL: I don't have the -- I  
20 need to look at the original -- original  
21 technical review board.

22 MR. GICLAS: Okay. Let me -- let

1 me just walk you through your written  
2 statement.

3 MR. HALL: Okay.

4 MR. GICLAS: If you look at the  
5 second line, technical review board consists  
6 of 21 members as follows, one handler  
7 representative, one producer representative  
8 from each zone. Were producer representatives  
9 required in the previous version of the  
10 technical review board?

11 MR. HALL: That's what I'm trying  
12 to find. I don't believe they were. Again,  
13 my memory is --

14 MR. GICLAS: I'll give you a  
15 moment.

16 MR. HALL: No, sir. They were  
17 not. That's what I thought. I didn't know  
18 exactly -- remember exactly how the verbiage  
19 was, but the -- the original technical review  
20 board said that it would consist of 13  
21 members, one representative from each zone who  
22 is elected by the committee, producer, and

1 handler members from that particular zone. So  
2 it did not specify whether it was a handler or  
3 a producer.

4 MR. GICLAS: So would it be fair  
5 to say that producers are more broadly  
6 represented on the technical review board?

7 MR. HALL: Yes, sir.

8 MR. GICLAS: Okay. I also wanted  
9 to ask you, there was a question earlier about  
10 growers who are not included by signatories  
11 participating on the technical review board.  
12 If you look down to the second, you know, part  
13 of the technical review board amendment here  
14 where it says they shall appoint subcommittees  
15 as necessary to facilitate input and review  
16 from regions throughout the production area,  
17 subcommittees may consist of producers,  
18 handlers, academic, and other interested  
19 parties as deemed appropriate, would you --  
20 would you say that it's fair to suggest that  
21 that language would allow latitude for growers  
22 who are not participating with voluntary



1 signatories to participate in the technical  
2 review board?

3 MR. HALL: Yes, sir. I would  
4 think -- it does not specify that the people  
5 on the subcommittees have to be a part of the  
6 signatory nor grower from that standpoint. It  
7 gives the technical review board full latitude  
8 as far as how they're going -- what type of  
9 input and how they're going to secure that  
10 input.

11 MR. GICLAS: I also wanted to --  
12 in that same section there was a question  
13 raised about food safety experts. And this  
14 will be a tough one. You're going to have to  
15 go back and forth between the documents again.  
16 But that line reread the technical review  
17 board shall appoint subcommittees as necessary  
18 to facilitate input and review from regions  
19 throughout the production area. Subcommittees  
20 may consist of producers, handlers, academic,  
21 and other interested parties. Can I ask you  
22 to look for that same sentence in 97.45 in the

1 original draft?

2 MR. HALL: That the amendment or  
3 proposed change in the technical review board  
4 broadens significantly the technical review  
5 board requirement as far as acquiring  
6 additional output. The original statement on  
7 the technical review board was the technical  
8 review board may appoint subcommittees as  
9 necessary to facilitate input and review from  
10 regions throughout the production areas.  
11 Subcommittees may -- may consist of producers,  
12 handlers, and other interested parties as  
13 deemed appropriate by the technical review  
14 board.

15 So in the -- in the agreement, or  
16 in the proposed change in the technical review  
17 board certainly academic and other -- academic  
18 specifically were added from that standpoint,  
19 I believe, yeah, the specific addition plus  
20 the addition of the technical review board  
21 seeking input from other government agencies  
22 including, but not limited to US Fish and

1 Wildlife Service, USDA Animal and Plant Health  
2 and Inspection, Wildlife Services, National  
3 Oceanic and Atmospheric Administration,  
4 National Marine Fisheries.

5 MR. GICLAS: So, you know, with  
6 that language, do you think there's sufficient  
7 flexibility to add other food safety experts  
8 besides those that are designated from land  
9 grant universities?

10 MR. HALL: I would think if there  
11 are other experts in that particular zone  
12 where that subcommittee is being created, that  
13 certainly the input would be available. You  
14 know, the subcommittees and the technical  
15 review board has the latitude to pull out --  
16 pull from people or include people in that  
17 discussion.

18 MR. GICLAS: Okay, thank you. Are  
19 you aware of any recommendation by any party  
20 in previous testimony for an alternate  
21 definition of small business?

22 MR. HALL: I'm not. I've not

1 reviewed all the testimony though.

2 MR. GICLAS: Thank you. I guess  
3 my final question is, your understanding, who  
4 bears the expense of the marketing agreement?

5 MR. HALL: The handler would bear  
6 the expense from the -- from the payment of  
7 the assessment as specified in the agreement,  
8 the five cents -- up to five cents per -- per  
9 box, I believe.

10 MR. GICLAS: Okay. And who do you  
11 think is liable for compliance with the  
12 marketing agreement or compliance with the  
13 regulations associated with the marketing  
14 agreement?

15 MR. HALL: The signatory would  
16 have to be. Again, I'm not a lawyer, but I  
17 would assume it's the signatory that's liable.

18 MR. GICLAS: And the signatory is?

19 MR. HALL: The handler.

20 MR. GICLAS: So -- so it would --  
21 it's fair to say that the marketing agreement  
22 directly regulates handlers?

1 MR. HALL: Yes, sir.

2 MR. GICLAS: Do you think that  
3 it's appropriate in that kind of a regulation  
4 to give, you know, handlers, you know, a  
5 definitive say in the administrative committee  
6 and the technical review board as has been  
7 proposed?

8 MR. HALL: I would think they  
9 certainly would need to have a very strong  
10 voice in the administrative committee, which  
11 as the administrative committee has outlined,  
12 the handlers would have a voice, a strong  
13 voice in the committee.

14 MR. GICLAS: And are you aware of,  
15 you know, the comments that came in during the  
16 course of the advanced notice of proposed  
17 rule-making?

18 MR. HALL: Yes, sir. I've looked  
19 at a number of them.

20 MR. GICLAS: And Georgia Fruit and  
21 Vegetable Growers Association made comments in  
22 that ANPR as well?

1 MR. HALL: Yes, we did.

2 MR. GICLAS: Do you know what, you  
3 know, some of the principal -- well, let's  
4 just narrow it to your concerns. What were  
5 your organizational concerns with -- or  
6 comments in relation to the ANPR?

7 MR. HALL: The primary thrust of  
8 Georgia Fruit and Vegetable Growers  
9 Association's comments on the advanced notice  
10 of rule-making was to have grower input. The  
11 original proposed rule-making was to be -- it  
12 would be a handler's agreement. The handlers  
13 would vote on it. The handlers would decide  
14 what would be done. And I could see very  
15 little grower input in -- in that.

16 If you read a number of the other  
17 letters that were submitted similar, it was  
18 overall in my opinion a very strong thrust of  
19 the comments were that the growers were  
20 disenfranchised under the proposed rule-making  
21 and that there needed to be additional or  
22 whatever type of agreement was developed

1 needed to have grower input and involvement  
2 from that standpoint.

3           There were I think this morning  
4 they said 3500, 3200 comments made. Quite a  
5 number of those comments even I would -- I  
6 would estimate, you know, over 1,000 if not  
7 half the comments were form letters that were  
8 sent in from that standpoint. But in looking  
9 at the -- the bulk of the comments, it was  
10 very -- very strong comments with regard to --  
11 to grower input. That's why Georgia Fruit and  
12 Vegetable got involved with the proponent  
13 group and the drafting of this.

14           And I quite honestly feel like the  
15 -- you know, the growers are well represented  
16 within the framework we have on the agreement.  
17 I think the US is well represented from the  
18 standpoint is that the administrative  
19 committee is not one zone. Zone 1 can't  
20 control the votes on the administrative  
21 committee. And that was a goal of ours  
22 anyway, to make sure it was as fair a

1 document, you know, as possible as we put it  
2 together.

3 MR. GICLAS: Okay. Thank you. I  
4 think you answered my next question in your  
5 statement there, so thank you.

6 JUDGE HILLSON: Any other -- any  
7 other redirect?

8 MR. GUENTHER: Yes. My name is  
9 Robert Guenther with United Fresh Produce.  
10 Mr. Hall, I have just a few questions for you.  
11 Based on your experience, do you believe that  
12 every handler in the country will sign up for  
13 this marketing agreement immediately or do you  
14 think some will take a wait and see attitude,  
15 kind of see how it evolves?

16 MR. HALL: I think a number will  
17 take a wait and see attitude and see how it  
18 evolves. I don't think, you know, ten years  
19 down the road we're going to have 100 percent  
20 of the handlers sign on to this agreement.

21 MR. GUENTHER: Thank you. My  
22 other question, you're representatives of



1 growers, shippers, and handlers, I believe you  
2 have in your membership with Georgia Fruit and  
3 Vegetable Growers Association?

4 MR. HALL: Yes.

5 MR. GUENTHER: Is it your belief  
6 that you think handlers, you know, based on  
7 the questions that have been asked today, do  
8 you believe that they will spend -- I think  
9 the -- amount of time with their growers  
10 talking about whether they should be signing  
11 this agreement and what it means to them  
12 because -- a relationship?

13 MR. HALL: I think they will. A  
14 lot of our growers, I can only speak for our  
15 organization, our producer/handler  
16 individuals, they're going to be the handler  
17 or certainly the shipper relationship there.  
18 So for those growers -- excuse me -- for those  
19 handlers that are maybe only representing  
20 producers, I would think that they would be --  
21 there's going to be conversations going on  
22 from that standpoint.

1           MR. GUENTHER: So they will obtain  
2 input from growers based on how this agreement  
3 would work from your perspective in kind of  
4 making those decisions?

5           MR. HALL: I think they will. I  
6 think the other thing you have to realize is  
7 currently many of the -- many of the handlers  
8 and certainly when you get up to the customer  
9 level at the retail and food service, the  
10 metrics that we're talking about being a part  
11 of this agreement has already been done. If  
12 someone is shipping produce within the  
13 commercial chain -- or the commercial channel,  
14 they're already doing a lot of the food safety  
15 guidelines that Mr. Wingard and Mr. Lytch  
16 mentioned this morning. They're already  
17 involved with that.

18           MR. GUENTHER: I have one question  
19 -- one more question, it's a follow-up from  
20 Mr. Giclas's question on the comments that  
21 were part of the comments that were part of  
22 the ANPR -- comments.

1 MR. HALL: Yes.

2 MR. GUENTHER: I know you read a  
3 number of them. You said you went through a  
4 lot of the -- a lot of associations who were  
5 involved with this did. Could you describe --  
6 you mentioned form letters. But also, can you  
7 describe some of the characteristics of some  
8 of these comments that were made? I mean,  
9 were there -- were the vast majority of them  
10 for the agreement or was it a mixed review?

11 MR. HALL: I don't know that I can  
12 definitively say it was a mix. I mean, for or  
13 against, it doesn't -- there was a number of -  
14 - I think the majority, if I were to classify  
15 it would be the majority were in favor of some  
16 type of agreement concerning leafy greens so  
17 that we -- let's just say doing something so  
18 that we can reestablish consumer confidence in  
19 our leafy green industry in the US. So I  
20 can't really -- I don't remember, you know,  
21 was it for or against, but --

22 MR. GUENTHER: But you do agree

1 that there were some comments definitely  
2 against this agreement -- ANPR?

3 MR. HALL: Absolutely, yeah.

4 MR. GUENTHER: And do you believe  
5 that that was part of the proponent group's  
6 kind of thought process in deciding between a  
7 marketing order and marketing agreement, of  
8 making the marketing agreement voluntary  
9 because there was this concern that people  
10 just didn't want to participate?

11 MR. HALL: As I answered the  
12 question before, I -- there is -- the  
13 proponent group and the -- as we worked on the  
14 drafting agreement, we didn't feel like an  
15 order would be the right direction to go  
16 because there was opposition there. And the  
17 agreement would give those that wanted to  
18 volunteer and participate in such an agreement  
19 that opportunity, those that did not want to  
20 participate, they didn't -- they didn't have  
21 to.

22 Thank you.

1 JUDGE HILLSON: Any more redirect?

2 MR. RESNICK: Yes, Your Honor.

3 Jason Resnick. Just a couple of questions.

4 Mr. Hall, are you aware of retailers that have  
5 direct buying relationships with growers  
6 directly and skip handlers?

7 MR. HALL: There probably is,  
8 particularly on small retailers. Your larger  
9 retailers are going -- the grower may be the  
10 half of it, but they're going to be going  
11 through some type of, you know, handling  
12 agreement.

13 MR. RESNICK: If the retailer  
14 wants to have a direct relationship with a  
15 grower, they're not precluded from doing so by  
16 your testimony, correct?

17 MR. HALL: That's correct. That's  
18 correct.

19 MR. RESNICK: I wanted to ask you  
20 about whether your points that you made  
21 relative to the change to the technical review  
22 board, you indicated that the technical review

1 board would be increased from 14 to 21, of  
2 which you testified that seven additional  
3 members would be producer members. What was  
4 the proponent group's reasoning for adding  
5 those seven members and why are they all  
6 producer members?

7 MR. HALL: In the original  
8 technical review board, those members -- those  
9 five members that were elected by the producer  
10 and handler, representatives from each zone  
11 were not specified as to whether they were  
12 handler or producer. It would just say the  
13 individual representing that zone. In the  
14 change we're recommending that we have a  
15 producer representative and a handler  
16 representative.

17 So, you know, maybe the assumption  
18 was made that that person representing that  
19 particular zone was a -- was going to be a  
20 handler in the original document, in the  
21 original proposal. It wouldn't necessarily be  
22 that it was a handler, but -- but definitely

1 specifying it as a handler and a producer from  
2 each zone, I think it broadens the -- the  
3 input from producers.

4 MR. RESNICK: Thank you. I have  
5 nothing else.

6 JUDGE HILLSON: Any further  
7 questions? Ms. Schmaedick?

8 RECROSS-EXAMINATION BY USDA:

9 MS. SCHMAEDICK: Melissa  
10 Schmaedick, USDA. Mr. Hall, I'd like to  
11 direct your attention to 970.20 in the notice  
12 of hearing publication, 970.20 --

13 MR. HALL: Yes, ma'am.

14 MS. SCHMAEDICK: 970.20 is the  
15 proposed definition for producer that was  
16 originally included in the Federal Registry  
17 notice of Hearing. Could you read that  
18 definition for me?

19 MR. HALL: Yes, ma'am. Producer  
20 is synonymous with grower and means any person  
21 engaged in a proprietary capacity in the  
22 production of leafy green vegetable for sale

1 with delivery to a signatory of this  
2 agreement.

3 MS. SCHMAEDICK: So going back to  
4 the question asked earlier, is the requirement  
5 that a producer would be delivering to a  
6 signatory handler, is that new?

7 MR. HALL: I'm sorry?

8 MS. SCHMAEDICK: Is that a new  
9 requirement, that the producer be delivering  
10 to signatory handler?

11 MR. HALL: That's -- that's how I  
12 read this, is that the producer would be  
13 delivering to a signatory.

14 MS. SCHMAEDICK: And that's been  
15 the case of the publishing on the notice of  
16 hearing?

17 MR. HALL: Yes, ma'am.

18 MS. SCHMAEDICK: I'd like to ask  
19 you a question about small producer/handler  
20 entities. Based on your experience and in  
21 your opinion, are most producers that produce  
22 for a CSA or a farmer's market, are they also



1 handling their products?

2 MR. HALL: I would not say --  
3 under the definition we have here as a handler  
4 they would not be. They're going to be  
5 producing and taking it straight to a farmer's  
6 market type operation.

7 MS. SCHMAEDICK: And in the  
8 proposed agreement, the definition of handle,  
9 if I understand it correctly, would include a  
10 person that takes their product to market, is  
11 that your understanding?

12 MR. HALL: I'm reading handle on  
13 the guideline here. That is correct, that  
14 they would be -- that the handler does take  
15 the product to market. However, the -- in the  
16 case of the examples you clarified with the  
17 CSA or farmer's market type, generally there  
18 is not an official handler in that chain of  
19 distribution. It's coming straight from the  
20 farm and CSA -- certainly many times the  
21 produce is picked up at the farm from that  
22 standpoint, so or the roadside market may be

1 on the farm.

2           So the definition we have here of  
3 handler, I would -- what it says, to receive,  
4 acquire, sell, process, ship, or distribute,  
5 I think we're -- we're a couple of steps above  
6 what a CSA or a farmer's market would actually  
7 be doing with that producer that's on the  
8 farm.

9           MS. SCHMAEDICK: If the proposed  
10 definition of handle would require a producer  
11 that sold their product to a farmer's market  
12 to be considered a handler, under the terms  
13 that are outlined under 970.40, that requires  
14 a majority of producer/handlers to essentially  
15 be pure producers, would those producers then  
16 not be eligible to qualify because of the fact  
17 under the proposed definition of handle they  
18 would be producer/handlers?

19           MR. HALL: Yes, ma'am. I think  
20 you could look at it from that standpoint.  
21 I'm not sure that the individuals -- I'm  
22 speaking for growers and I may not have that

1 authority to speak for them, but those growers  
2 that are producing for a farmer's market or  
3 for a CSA, I'm not sure they'd want to be  
4 considered handlers.

5 MS. SCHMAEDICK: Based on your  
6 knowledge and your participation with the  
7 proponent group, once the Notice of Hearing  
8 was published, did ex parte come into effect?

9 MR. HALL: That's my  
10 understanding, yes, ma'am.

11 MS. SCHMAEDICK: Can you explain  
12 to me what that means?

13 MR. HALL: My understanding of ex  
14 parte is that a proponent group or opponent  
15 group, there's no discussion input with USDA  
16 officials at that point as far as comments or,  
17 you know, any discussion with regard to the --  
18 to this agreement.

19 MS. SCHMAEDICK: And to your  
20 knowledge --

21 MR. HALL: And I may not be saying  
22 it exactly right, but it's essentially -- we

1 can't talk to you.

2 MS. SCHMAEDICK: And to your  
3 knowledge, has that been followed?

4 MR. HALL: In my case it has. And  
5 I'm not aware of any other situations where  
6 it's been violated.

7 MS. SCHMAEDICK: With regard to  
8 the changes that you've submitted today, were  
9 these submitted in any shape or form previous  
10 to your testimony to USDA?

11 MR. HALL: No, ma'am. Not to my  
12 knowledge. I did not.

13 MS. SCHMAEDICK: Based on -- based  
14 on your understanding of the difference  
15 between marketing order and marketing  
16 agreement, in the case of a marketing order,  
17 if a marketing order were passed, would those  
18 who were not in favor of a marketing order  
19 still be required to participate in the  
20 program?

21 MR. HALL: Absolutely.

22 MS. SCHMAEDICK: Are you familiar

1 with the Agricultural Marketing Agreement Act  
2 of 1937?

3 MR. HALL: I'm sorry?

4 MS. SCHMAEDICK: Are you familiar  
5 with Agricultural Marketing Agreement Act of  
6 1937?

7 MR. HALL: Not in great detail,  
8 but --

9 MS. SCHMAEDICK: Okay. Thank you.  
10 That concludes my questions.

11 JUDGE HILLSON: Anything else? I  
12 assume no one -- I do see someone. Mr. Etko?

13 FURTHER EXAMINATION BY THE ORGANIC COALITION:

14 MR. ETKO: Steve Etko, National  
15 Organic Coalition. I apologize for putting  
16 you through this. I know these definitions  
17 are very convoluted, but following up on Ms.  
18 Schmaedick's question about the section  
19 970.420, about the definition of producer?

20 MR. HALL: Yes, sir.

21 MR. ETKO: It says producer is  
22 synonymous with grower and means any person

1 engaged in the proprietary capacity in  
2 production of leafy green vegetables for sale  
3 or to delivery to a signatory -- this  
4 agreement, so based on that, is it your  
5 understanding that every reference in this  
6 document, including your proposed  
7 modifications to this document, every  
8 reference to producer means a producer selling  
9 product to a signatory handler?

10 MR. HALL: Yes, sir.

11 MR. ETKA: So your -- your  
12 previous dialogues with some of the proponent  
13 questioners about the subcommittees under your  
14 new proposed language for the technical review  
15 board --

16 MR. HALL: Yes.

17 MR. ETKA: -- allowing for  
18 producers that are not selling to signatory  
19 handlers, is that not internally inconsistent  
20 with this definition? And I apologize,  
21 circular definitions.

22 MR. HALL: The language of -- of

1 the technical review board in the area that  
2 we're referring to, it says the technical  
3 review board shall appoint subcommittees as  
4 necessary to facilitate input and review for  
5 regions throughout production areas.

6 Subcommittees may consist of -- and here again  
7 it says producers, academic, and other  
8 interested parties. If a producer is a  
9 signatory or they're in disagreement under  
10 that definition of 970.20, they would fall  
11 under that definition of producer there.

12 A grower that wants to participate  
13 and have a part in a technical review board  
14 process would be another interested party, in  
15 my opinion.

16 MR. ETKA: Okay. Thank you very  
17 much.

18 JUDGE HILLSON: Any other  
19 questions? Mr. Hamil?

20 FURTHER EXAMINATION BY THE PUBLIC:

21 MR. HAMIL: George Hamil. I'm  
22 concerned about potential unintended

1 consequences.

2 MR. HALL: Yes.

3 MR. HAMIL: And I'm not trying to  
4 say y'all intended this in any way,  
5 understanding. But I'm wondering if you  
6 requested or was there any involvement in this  
7 process that was driven by insurance?

8 MR. HALL: No.

9 MR. HAMIL: Products liability,  
10 this sort of thing?

11 MR. HALL: Not to my knowledge,  
12 no, sir.

13 MR. HAMIL: There was not any  
14 problem that growers were being faced with as  
15 a result of the -- the impact of recalls and  
16 this sort of thing?

17 MR. HALL: Not to my knowledge.

18 MR. HAMIL: Okay. Was there any  
19 request --

20 MR. HALL: From an insurance  
21 standpoint?

22 MR. HAMIL: Right, right.



1 MR. HALL: Okay.

2 MR. HAMIL: Right. From -- was  
3 there any request by the proponent's group of  
4 people in the insurance -- on the insurance  
5 company side for input into how this would  
6 impact the issue of product liability  
7 insurance?

8 MR. HALL: Not to my knowledge at  
9 all. No, sir. In fact, this is the first  
10 time I've heard insurance mentioned in any  
11 discussions of the Leafy Green Marketing  
12 Agreement.

13 MR. HAMIL: That's what I thought  
14 you would say, sir. Thank you.

15 MR. HALL: Okay.

16 JUDGE HILLSON: Anything else?  
17 Okay. Mr. Hall, you may step down.

18 MR. HALL: Thank you.

19 JUDGE HILLSON: You didn't have  
20 any other witnesses, if I'm correct, Mr.  
21 Resnick?

22 MR. RESNICK: We do not, no.

1                   JUDGE HILLSON:  Okay.  Well, I  
2  guess it's in -- I guess the next group of  
3  witnesses is going to be called by Mr. Etkka.  
4  It's just about noon though so --

5                   MR. RESNICK:  Can we have a number?

6                   JUDGE HILLSON:  I beg your pardon?

7                   MR. RESNICK:  How many witnesses  
8  will we have for the day, walk in or  
9  otherwise?

10                  JUDGE HILLSON:  How many do you  
11  have, Mr. Etkka?

12                  MR. ETKA:  I think I have five and  
13  perhaps six, but your question was to the  
14  total number.

15                  MR. RESNICK:  Total.

16                  JUDGE HILLSON:  I would have to  
17  check on the way out if there's any other  
18  walk-ins that aren't included in this --

19                  MR. RESNICK:  And I'm only asking  
20  the question because -- because of the limited  
21  amount of time we have.

22                  JUDGE HILLSON:  We have until

1 midnight. The hearing has to end by midnight.  
2 So we'll go until we're done. I mean, as I  
3 said before, this is a public hearing. Any  
4 member of the public who has an opinion and  
5 wants to share it and wants it on the record  
6 has the right to testify. So I'm not going to  
7 shut anybody down. I mean, if five people  
8 have to testimony in a certain hour, that's  
9 not going to work, but we have all day if  
10 necessary.

11           So we're going to take a lunch  
12 break and we'll come back at one o'clock.  
13 I've been asked to tell you, I think there's  
14 a sheet outside, that there's a -- there's a  
15 lunch buffet offered at the -- at the  
16 restaurant over here. I know there's four or  
17 five other places that are pretty close by.  
18 So let's come back at one. Off the record.

19           (WHEREUPON, a brief recess was  
20 observed.)

21           JUDGE HILLSON: Okay. Let's go  
22 back on the record. Okay. We're ready for

1 our afternoon session. I saw a total of I  
2 think it was ten names on the list of people  
3 who wanted to testify. Mr. Etkka gave me a  
4 list of five people that -- and I'm going to  
5 let him call the next five witnesses unless  
6 there is somebody who's not on Mr. Etkka's list  
7 who wants to testify and has to get out of  
8 here earlier, please let me know. Otherwise  
9 I'll just -- I'll let Mr. Etkka call the five  
10 witnesses. We'll -- we'll call the rest of  
11 the witnesses afterwards. So Mr. Etkka, you  
12 want to call your first witness?

13 MR. ETKKA: Yes, we'd call Joseph  
14 Martin.

15 JUDGE HILLSON: Do you have a  
16 written statement for me?

17 THE WITNESS: Your Honor, I do.  
18 Mr. Etkka has about ten copies. He was going  
19 to distribute them for me.

20 JUDGE HILLSON: Did you know that,  
21 Mr. Etkka? You looked very surprised when he  
22 said that. And I'm going to mark -- I'm going

1 to mark Mr. Martin's statement as Exhibit 131.

2 (WHEREUPON, Exhibit Number 131 was  
3 marked for identification.)

4 JOSEPH RANDALL MARTIN, being first  
5 duly sworn, was examined and testified as  
6 follows:

7 JUDGE HILLSON: Okay. Could you  
8 please state your name and spell it for the  
9 record?

10 THE WITNESS: My name is Joseph,  
11 middle name Randall, Martin. And it's J-o-s-  
12 e-p-h, R-a-n-d-a-l-l, M-a-r-t-i-n.

13 JUDGE HILLSON: Okay. Mr. Martin,  
14 and I have what appears to be a written  
15 statement, which I presume you want to read,  
16 is that correct?

17 MR. MARTIN: Your Honor, if you  
18 don't mind, for time's sake, I will summarize  
19 from this -- this written statement and I will  
20 be happy to answer any questions directly from  
21 it from either the proponents --

22 JUDGE HILLSON: That's your call.

1 Either way I'll take the statement and I'll --  
2 after you're done.

3 MR. MARTIN: Okay. Thank you. As  
4 I said, my name is Joseph Martin. I am -- my  
5 wife Sally and I own and operate Zydeco Moon  
6 Farm in the western high country of North  
7 Carolina. To get right to the chase on one of  
8 the questions from the USDA panel, we are  
9 clearly a small farm, although in some circles  
10 we sell at the Watauga County Farmer's Market  
11 and we're one of the largest farmers there.  
12 We have six acres in production of vegetable  
13 production. Our total farm is about 51 acres,  
14 the six acres are the ones that are flat  
15 enough to farm on without risking your life on  
16 a tractor or something like that.

17 We grow -- we're also members and  
18 we both happen to be officers this year of New  
19 River Organic Growers, which is an association  
20 co-op of growers, all certified organic or in  
21 transition to become organic. There's about  
22 18 growers now. We're actively recruiting

1 more growers. We have a refrigerated truck so  
2 New River Organic Growers actually falls under  
3 the definition of a handler and it would be a  
4 small handler under the Small Business  
5 Administration definition.

6           We sell directly -- we sell  
7 several varieties of leafy greens: chard,  
8 Swiss chard, about four or five varieties of  
9 romaine lettuce, arugula, basil, some  
10 cilantro. So it's a good part of our -- our  
11 income. And this year we've put in a high  
12 tunnel hoop house to extend our season  
13 hopefully through the winter to be selling  
14 these greens, mostly -- mostly we'll be  
15 selling these directly.

16           We are second career farmers.  
17 Sally and I both come from different  
18 backgrounds in prior lives, but we started  
19 farming four years ago, became certified  
20 organic in our first year of farming, and are  
21 really having the best time of our lives doing  
22 this. We enjoy it. The membership of New

1 River Organic Growers did vote Monday night to  
2 let me testify on their behalf too. So I do -  
3 - I am here testifying for 18 certified  
4 organic growers in the western North Carolina  
5 area. Actually, we have one in Tennessee now.

6 I want to go through my written  
7 testimony, but I'll basically summarize it.  
8 As I got involved in this, I took a look at  
9 the Agricultural Marketing Agreement of 1937  
10 and took a look at some of the other testimony  
11 and other positions of some of the groups.  
12 And I do agree with them. I do not believe  
13 that the US Department of Agriculture or  
14 Agricultural Marketing Service has the  
15 statutory authority to approve the proposed  
16 Leafy Green Marketing Agreement. It looks to  
17 me like the marketing agreements envisioned by  
18 the Agricultural Marketing Agreement Act of  
19 '37 envisioned the USDA setting quality  
20 standards which would involve things like  
21 appearance of a vegetable, sugar content,  
22 size, you know, what we would typically go and



1 see into a grocery store as a grade A  
2 something. I don't believe that the USDA is  
3 responsible for food safety when it comes to  
4 fruits and vegetables.

5           One of my -- one of my big  
6 problems with the whole process of this Leafy  
7 Green Marketing Agreement is to me it seems to  
8 miss the boat on where the true sources of the  
9 pathogens that caused the recent food illness  
10 outbreaks are. It's -- when you take a look  
11 at the concentrated animal feed operation and  
12 you see literally, and I'm -- and I'm -- I'm  
13 sure these -- these topics have come up in  
14 this context in here before, I don't mean to  
15 offend anybody by the language, but they  
16 generate mountains of manure and lagoons of  
17 urine. They just do. They do it in an  
18 extremely unnatural fashion and it's  
19 concentrated.

20           I grew up as a boy working on my  
21 uncle's farm and he had about 4 to 500 head of  
22 cattle on 1,000 acres in east Texas. Manure

1 was not a problem. Manure was part of the  
2 natural ecosystem. He rotationally grazed the  
3 cattle and rotationally grew crops, mainly  
4 forage for the cattle on that farm. Simply  
5 not a problem. It's part of the ecosystem.  
6 Immediately after the cow deposits, you know,  
7 a cow paddy bugs start working on it and it is  
8 biodegraded into the soil, worked back into  
9 the soil by the cows walking. And they are  
10 not walking around knee deep in their own  
11 waste for a good portion of their life.

12           The flies that are attracted to  
13 even just -- you know, a small cattle  
14 operation are astounding. I've driven by some  
15 of those big feed operations. There's  
16 literally cow clouds, billions of flies on  
17 them. And I really don't think you have to  
18 look too much further for the source of  
19 contamination. If anybody has any kind of  
20 operation that's growing another food product  
21 close to a feed operation, it's going to be  
22 transmitted by the flies due to runoff. So

1 it's just -- and it's obvious to anybody  
2 that's ever seen the things.

3           So this -- this proposed Leafy  
4 Green Marketing Agreement just ignores the  
5 source of it, but also pretty much -- it  
6 doesn't ignore it, but I do think that it  
7 focuses a lot of its resources in the handling  
8 area. And again, that's where a lot of the  
9 pathogens are getting introduced to our food  
10 supply and particularly in bagged ready to eat  
11 leafy greens, spinach and lettuce mix, salad  
12 mix.

13           And they kind of looked at it. I  
14 think some of the organic farmers early on in  
15 maybe the late seventies, early eighties were  
16 the first pioneers of selling pre-mixed salad  
17 -- salad mix, prepackaged salad mix. So we  
18 started it. We're sorry for that, but it  
19 really -- that's one of the things that any  
20 kind of regulation ought to look at is -- is  
21 limiting the ability for handlers and  
22 processors to prepackage that. They're even

1 using modified atmosphere packaging these  
2 days, which extends shelf life, which also  
3 extends the time period within which those  
4 pathogens can multiply and get to toxic  
5 levels.

6           On our farm we have to go through  
7 an annual inspection. It costs us roughly  
8 about \$800 to be certified under the National  
9 Organic program. Under any metric system  
10 imposed, and again, I take a look at the only  
11 thing I have to go by and the only thing most  
12 of us have to go by, is the California Leafy  
13 Green Marketing Agreement. It specifically  
14 references water tests done to EPA standards.  
15 Those tests can run several thousand dollars.  
16 And again, we're a small business. A several  
17 thousand dollar test that we had to do twice  
18 a year, at least twice a year -- and again,  
19 just to differentiate between what Mr. Wingard  
20 does, he's got 5,000 acres and he had, I  
21 didn't count them, five or six crops. We have  
22 six acres in production and about 15 crops

1 that we do.

2           So we are constantly planting.

3 For the first three to four months of the year  
4 there's not a week that goes by that we're not  
5 planting something. And then later in the  
6 season there's not a week or almost a day that  
7 goes by that we're not harvesting. A lot of  
8 these metrics seem to require audits at pre-  
9 harvest and harvest. And then we have a  
10 packing shed so we could be looking at also  
11 some sort of inspection at our packing shed.  
12 I just did a quick and dirty calculation using  
13 a \$92 per hour figure that I got off I think  
14 the US Department of Agriculture website. For  
15 an inspector, we'd be looking at, with our  
16 organic certification and that, to be about  
17 \$2,800 minimum just for inspections, not the  
18 water tests, not anything else.

19           And I do realize that those costs  
20 are extensively imposed on the handlers under  
21 the Leafy Green Marketing Agreement, but I  
22 also know that I've dealt with handlers and I

1 know what's going to happen to that cost.  
2 They know what their margin is on the retail  
3 end. They know what their margin is on their  
4 wholesale end. And where I might have gotten  
5 last year \$24 for a box of broccoli, you can  
6 book it that after they have to pay those  
7 costs, I'm going to get \$17 or thereabouts for  
8 the same box of broccoli. Those costs are  
9 going to get passed down to me. If anybody  
10 thinks differently, they really don't --  
11 haven't been out in the marketplace to see how  
12 it works.

13 I did see that at least the  
14 technical advisory committee has been expanded  
15 to 21 members, but again, it's a real closed  
16 club. No producer who is not a signatory to  
17 the Leafy Green Marketing Agreement will be  
18 serving either on the advisory committee or  
19 the technical committee. I forgot to look at  
20 the marketing committee. I don't know if we'd  
21 get to serve on that, but I doubt it. If the  
22 word "producer" is used, it means somebody

1 that's selling to a signatory of the group.  
2 So I think any producer that's not selling to  
3 a signatory to the marketing agreement is  
4 going to be shut out from any kind of input or  
5 any kind of influence on what goes on with  
6 this -- this agreement.

7           The animal exclusion provisions  
8 that, again, appear in the California  
9 Marketing Agreement, but they also appear in  
10 the FDA's good -- good agriculture practices,  
11 very similar animal exclusion provisions.  
12 Now, it's just simply impossible to exclude  
13 the animals, any kind of -- because it doesn't  
14 differentiate between birds. Now it does  
15 mention animals of significant risk and among  
16 which are included deer.

17           The studies I've looked at -- you  
18 know, some of the recent California Wildlife  
19 Commission found less than one half of 1  
20 percent of wild animals including deer  
21 harbored E. coli 0157:H7. There are other  
22 studies that show a much higher percentage.

1 I took a closer look at that one and the  
2 hunters that harvested the deer were actually  
3 collecting the samples so who knows -- I don't  
4 know if they were using any good safety --  
5 good food safety practices and washing their  
6 hands before collecting those samples.

7           If I have evidence of deer  
8 intrusion, I've got to call a food safety  
9 professional. I Googled that term yesterday  
10 and I get -- I popped up all these on-line  
11 universities that are certifying food safety  
12 professionals. So the young man that went to  
13 college, couldn't get a job, went to work  
14 driving a Pizza Hut delivery car next year may  
15 pull that sign off and put a food safety  
16 professional, that he just got certified to  
17 do, to come out to my farm and tell me,  
18 "You've got a disk under this field of leafy  
19 greens or tomatoes," because tomatoes are  
20 going to be subject to the same animal  
21 exclusion provisions.

22           It's an unrealistic and frankly I



1 think very dangerous tendency that some of the  
2 food safety provisions we're looking at. They  
3 are clearly, and I think some of the super  
4 metrics will bear that out and go even  
5 further. They're looking for a sterile farm.  
6 A sterile farm is, number one, unattainable,  
7 and number two, dangerous. We have a huge,  
8 huge biodiverse system on our farm. Those  
9 beneficial bacteria are the first line of  
10 defense against pathogens. They're very, very  
11 effective in making for safe food product that  
12 we take off our farm.

13           The more we go towards diminishing  
14 that, then the more we open ourselves up to  
15 super bugs, MRSA, multi-cillin resistant  
16 staphylococcus, developed in the operating  
17 rooms of hospitals. You can't get any more  
18 sterile than that environment. They learn to  
19 live there. Now that bacteria is out in the  
20 environment.

21           0157:H7 is kind of the same thing.  
22 It came -- it's now acid tolerant so it lives

1 in the stomach of a ruminant that's eating  
2 corn, gets out into the environment and we  
3 have an acidic digestive system. That's why  
4 it's a problem for us because it lives in our  
5 digestive system where it used to not live  
6 there.

7 I think it's shortsighted and  
8 dangerous to the entire population to try to  
9 regulate that much cleanliness on anything.  
10 And make no mistake about it, I'm not against  
11 food safety. I'm attending right now a -- a  
12 food safety class so we can get certified in  
13 the good agricultural practices. It's  
14 voluntary at this point. We will not  
15 voluntarily comply with all the animal  
16 exclusion things. I don't agree with them.  
17 I think they're based on at best shaky science  
18 and at worst no science and they're dangerous  
19 for us.

20 So I would urge the US Department  
21 of Agriculture to not go forward with this  
22 proposed marketing agreement. And I thank you

1 for your time. And I do understand that this,  
2 maybe the one in New Jersey, this hearing and  
3 this one was added to get some more input and  
4 I do appreciate you -- you folks coming here  
5 and getting the input from us because you're  
6 going to get way more small farmers here in  
7 North Carolina than anywhere else. Thank you.

8 JUDGE HILLSON: Thank you, Mr.  
9 Martin. I'm going to receive your written  
10 statement as Exhibit 131.

11 (WHEREUPON, Exhibit 131 was  
12 submitted into evidence.)

13 JUDGE HILLSON: Mr. Etkka, do you  
14 have any other -- any direct questions you  
15 want to ask him at this time? Any further --

16 MR. ETKA: Not at this time.

17 JUDGE HILLSON: Okay. Let me turn  
18 it over to the USDA panel. Questions of Mr.  
19 Martin? Ms. Schmaedick? No? Anyone have  
20 questions for Mr. Martin? Ms. Deskins?

21 CROSS-EXAMINATION BY THE USDA:

22 MS. DESKINS: Good afternoon.

1 MR. MARTIN: Yes, good afternoon.

2 MS. DESKINS: In looking through  
3 your testimony I had a question for you. You  
4 put in the beginning about the purposes under  
5 the AMAA of having a marketing agreement?

6 MR. MARTIN: If my memory serves  
7 me correct, that's section 608C6 --

8 MS. DESKINS: Okay.

9 MR. MARTIN: -- of the -- of the  
10 1937 act.

11 MS. DESKINS: Okay.

12 MR. MARTIN: And that is not  
13 verbatim. That's kind of a summary of -- it  
14 had like 11 or 12.

15 MS. DESKINS: Okay.

16 MR. MARTIN: And I kind of  
17 summarized.

18 MS. DESKINS: Okay. It's a  
19 summary of your understanding then?

20 MR. MARTIN: That's correct.

21 MS. DESKINS: Okay. The reason  
22 I'm asking this question, I notice on page 2

1 you refer to here that food borne illness is  
2 traced to leafy greens?

3 MR. MARTIN: Yes.

4 MS. DESKINS: Are you familiar  
5 with some of the testimony here about how with  
6 spinach and I think some other leafy greens  
7 that food borne illness scares affect the  
8 market for leafy greens? Have you heard any  
9 of that testimony?

10 MR. MARTIN: Oh, yeah. I've heard  
11 that after the spinach scare, you know, came  
12 out of the Salinas Valley and that the  
13 packaged leafy green market has not recovered  
14 from that.

15 MS. DESKINS: Okay. Because I'm  
16 trying to understand your position here then  
17 that such scares don't impact the leafy green  
18 industry?

19 MR. MARTIN: What?

20 MS. DESKINS: I'm trying to  
21 understand your position. Is your position  
22 then that these food -- food borne illness

1 scares that relate to leafy greens, that they  
2 don't impact the leafy green market?

3 MR. MARTIN: No. They certainly  
4 do impact the leafy green market. Whether  
5 that is an area subject to regulation by the  
6 USDA, I don't agree it is under a marketing  
7 agreement.

8 MS. DESKINS: All right. Thank  
9 you.

10 MR. MARTIN: Yeah.

11 JUDGE HILLSON: Ms. Carter?

12 MS. CARTER: Good afternoon.  
13 Antoinette Carter with USDA.

14 MR. MARTIN: Good afternoon.

15 MS. CARTER: I just have a few  
16 questions for you. On page 2 of your prepared  
17 statement --

18 MR. MARTIN: Yes.

19 MS. CARTER: -- you referred --  
20 you note that your review of the California  
21 Leafy Green Marketing Agreement indicates that  
22 you could be required to have as many as 30

1 inspections. You noted I think you stated  
2 water testing. What other inspections are you  
3 referencing here?

4 MR. MARTIN: The water testing  
5 would be simply one -- one piece of  
6 documentation that I would have on hand for  
7 any inspector that was auditing me to ensure  
8 compliance with any sort of metrics, whether  
9 it the was the Leafy Green Marketing Agreement  
10 or good agricultural practices, or just like  
11 my organic inspector does now. I'm only  
12 required to have one, but these seem to be  
13 requiring inspections pre-harvest or at  
14 planting, then a certain time pre-harvest and  
15 then actually at harvest. So that's three.  
16 You take my crop plan, which is not all leafy  
17 greens, so it's about 15. That could amount  
18 to a lot of inspections. It's almost like I  
19 would have to have one move in with me.

20 MS. CARTER: So are you stating  
21 that in addition to what would possibly be  
22 incorporated in the metrics under a national

1 program, that there are other inspections  
2 outside of that that are included in here?

3 MR. MARTIN: Well, clearly -- and  
4 I delineated that. I said -- I did include my  
5 organics inspection, which is one per year.  
6 But the metrics that I've seen and can only  
7 assume that some of that stuff is going to  
8 work its way into any national -- national  
9 Leafy Green Marketing Agreement, is going to  
10 recall -- require more than one inspections  
11 per year. They seem to require inspections at  
12 planting, certain time period pre-harvest and  
13 then at harvest.

14 MS. CARTER: You also note high  
15 tunnel house. What -- could you explain what  
16 that is? That you had to build a high tunnel  
17 hoop house for extending growing,  
18 what --

19 MR. MARTIN: It's basically an  
20 unheated greenhouse. It's a metal hoop  
21 structure and you grow directly in the ground  
22 under that, whereas in a greenhouse you



1 usually have a heat source that keeps the  
2 environment inside at a warm temperature, and  
3 you plant in some kind of trays that are up on  
4 tables of some sort. This is just -- you just  
5 cover a big -- it's 16 feet wide by 93 feet  
6 long. I made several rows in it, Sally  
7 planted them, and so it maintains about ten  
8 degrees above the frost area.

9           So it gives you about ten degrees  
10 of protection, which in our area of North  
11 Carolina, we're hoping will give us about a  
12 month at the end of the season and a month at  
13 the beginning of the season to extend our  
14 season and increase our revenue and hopefully  
15 we'll get past that small business in there to  
16 the big ones. I've also designed it where you  
17 can move it from one end of the field to the  
18 other, haven't done it yet. We'll see.  
19 People are kind of speculating. I'm going to  
20 sell tickets to let them see if I can do it.

21           MS. CARTER: Let's see. And I  
22 guess on page 3 of your statement you state

1 that I support and incorporate herein the  
2 opposition of the Carolina Farm Stewardship  
3 Association?

4 MR. MARTIN: Correct. And Mr.  
5 McReynolds is going to be testifying shortly  
6 and he will do that. But I've seen the draft  
7 of it and I agree with it.

8 MS. CARTER: Okay. All right.  
9 Thank you.

10 MR. MARTIN: Thank you.

11 JUDGE HILLSON: Mr. Souza?

12 MR. SOUZA: Good afternoon.  
13 Anthony Souza, USDA. Just one quick question,  
14 as a producer and possible handler, could you  
15 explain if the Leafy Green proposal became --  
16 the Leafy Green -- the National Leafy Green  
17 Marketing Agreement, how it would affect you  
18 and your production that you have currently?

19 MR. MARTIN: It would probably,  
20 unless we agreed to sign on and deal with a  
21 handler, but what we have dealt with so far in  
22 the market is dealing with grocery store

1 change -- chains that require -- at this point  
2 they accept an organic certification and sell  
3 produce as organic. And we do -- have sold  
4 through Eastern Carolina Organics in  
5 Pittsboro, North Carolina. Some of our  
6 produce has actually wound up in a Whole Foods  
7 market maybe as far away as Atlanta.

8           But when they start requiring  
9 these -- these -- these metrics, then we -- we  
10 have to make a decision, are we going to  
11 comply? Are we going to get certified under  
12 this and incur these costs or are we going to  
13 give up that market? And we haven't fully  
14 decided yet whether we do it. We're leaning  
15 towards we'll just give up that market, which  
16 would be a significant change in our business  
17 plan for our small farm. We try to keep three  
18 sources, two direct markets and one wholesale.  
19 We may not be able to maintain a wholesale  
20 outlet for our produce.

21           MR. SOUZA: Thank you.

22           JUDGE HILLSON: Anything else from

1 the USDA panel? Ms. Dash?

2 MS. DASH: Suzanne Dash. Are  
3 there practices other than animal exclusion  
4 that you feel are not helpful for leafy green  
5 growers or are not -- are harmful for leafy  
6 green growers, in particular small growers?

7 MR. MARTIN: And again, you know,  
8 I look at the California Leafy Green Marketing  
9 Agreement, and if you read through it, it  
10 doesn't say use chlorine, but one of the  
11 metrics that you always see in there is you  
12 shouldn't have over this many parts per  
13 million of chlorine in your fresh produce  
14 wash. And again, that will eliminate a  
15 colony. No matter what you do, you're going  
16 to have bacteria, whether it's your hands or  
17 anything, bacteria are ubiquitous in the  
18 environment.

19 So you will -- you will get rid  
20 of, and that's what we've learned in many  
21 phases of agriculture, if you use an  
22 insecticide, and I was wondering how Mr.

1 Wingard kept from killing all the beneficial  
2 insects because I'm sure he's conventional,  
3 but you get rid of beneficial organisms when  
4 you use a pesticide or an insecticide, or in  
5 the case of like chlorine, that's an  
6 antiseptic. You're going to get rid of every  
7 beneficial organism that's on that leafy green  
8 as well as any -- any unwanted pathogen. But  
9 if you don't get rid of every single unwanted  
10 pathogen, then you give that pathogen an  
11 environment in which it gets to run free and  
12 multiply without any competition for any of  
13 its nutrients.

14 MS. DASH: Thank you. Do you  
15 consider yourself a small farmer or a large  
16 farmer on whatever basis you would like to  
17 declare yourself?

18 MR. MARTIN: We are clearly under  
19 the \$75,000 -- \$750,000 gross revenue  
20 definition of the Small Business  
21 Administration of Small Business. We have a  
22 goal of getting 20 to \$25,000 an acre from our

1 acres in production. We're not there yet, but  
2 we're working on that and that's one of the  
3 reasons for the high tunnel is that's part of  
4 our stewardship with the land, is to take care  
5 of it and so that it then takes care of us.  
6 But that's our goal of gross revenue per acre  
7 on our farm. And we're working towards it.  
8 We're not there.

9 MS. DASH: Thank you. That's all  
10 the questions I have.

11 JUDGE HILLSON: Okay. Anything  
12 else from the USDA panel? Ms. Deskins?

13 MS. DESKINS: I just saw something  
14 else in the statement I wanted to clarify.  
15 You said your president of the Watauga -- am  
16 I saying that right?

17 MR. MARTIN: You're not from  
18 around here, are you?

19 MS. DESKINS: No.

20 MR. MARTIN: It's the Watauga.

21 MS. DESKINS: Watauga.

22 MR. MARTIN: The Watauga County

1 Farmer's Market.

2 MS. DESKINS: Okay. Do you know -  
3 - well, if you could estimate, how many small  
4 farmers as defined by the Small Business  
5 Administration would come to that market?

6 MR. MARTIN: We presently have 126  
7 registered vendors. Of that amount probably  
8 80 to 85 are produce growers. We also have  
9 crafts at that farmer's market so there are  
10 several crafters who don't grow anything.  
11 There's several crafters who do grow things  
12 and several growers who make some crafts. So  
13 total, there's about 85 vegetable growers.  
14 And almost all of them grow some form of leafy  
15 green.

16 MS. DESKINS: Okay. And you're  
17 familiar with the definition of leafy green in  
18 the proposed agreement?

19 MR. MARTIN: I am.

20 MS. DESKINS: Okay. Would they  
21 grow all of the items that are listed there,  
22 just to your knowledge?

1                   MR. MARTIN: I don't know anybody  
2 that grows the tok choy. I think almost every  
3 other one. Mizuna -- people we've grown  
4 mizuna ourselves. I think almost every other  
5 one we would grow, one of our vendors would  
6 grow. If you know much about farmer's  
7 markets, you try to figure out what the guy  
8 down the road is going to make -- going to  
9 grow next year and grow something else so  
10 you'll have something to offer. So we have a  
11 wide variety.

12                   MS. DESKINS: Okay. All right.  
13 Thank you.

14                   JUDGE HILLSON: Anything else from  
15 the panel? How about the proponents, do you  
16 have any questions at this time? Mr. Giclas,  
17 you have a question?

18                   MR. GICLAS: Yes, Your Honor.  
19 Thank you.

20 CROSS-EXAMINATION BY THE PROPONENTS:

21                   MR. GICLAS: Hank Giclas, Western  
22 Growers. Mr. Martin, thank you for your



1 testimony this afternoon. I just have a  
2 couple of questions. My first question is are  
3 you aware of any marketing agreements that are  
4 currently enforced that deal with pathogens or  
5 food safety issues?

6 MR. MARTIN: The California Leafy  
7 Green Marketing Agreement seems to, yes.

8 MR. GICLAS: Okay. Thank you.  
9 Are you aware of any marketing agreements or  
10 orders established under federal authority,  
11 that's established under state authority, that  
12 currently deal with food safety or pathogen  
13 control?

14 MR. MARTIN: No.

15 MR. GICLAS: Okay.

16 MR. MARTIN: Not existing, no.

17 MR. GICLAS: Okay. I wanted to  
18 ask you, in --

19 MR. MARTIN: You qualify that as  
20 mandatory because the FDA did publish what is  
21 referred to as the good agriculture practices,  
22 but they're not mandatory.

1                   MR. GICLAS: Well, I'm asking  
2 about marketing agreements, not about FDA  
3 authority so --

4                   MR. MARTIN: Okay. None  
5 whatsoever.

6                   MR. GICLAS: That you're aware of?

7                   MR. MARTIN: That I'm aware of.

8                   MR. GICLAS: Okay. I wanted to  
9 ask you to focus in on the section that you  
10 have in your written testimony about costs  
11 just for a second. Because I'm -- I want to  
12 walk through this to make sure I understand  
13 it. You say these costs are estimated based  
14 on a review of the California Leafy Greens  
15 Marketing Agreement?

16                   MR. MARTIN: Yes, and also the  
17 Good Agriculture Practices.

18                   MR. GICLAS: Okay. And it says in  
19 the written testimony here you're required to  
20 have an inspection at each planting and at  
21 each harvest. Is that your understanding of  
22 how the California Marketing Agreement works?

1                   MR. MARTIN: The way I read it,  
2 and I don't have a lot of understanding of how  
3 it works because I haven't been audited under  
4 it, but in reading it, it appears to require  
5 an audit at the time of around the planting,  
6 shortly before harvest, and then actually  
7 during harvest. Now, that's just my reading  
8 of it because I haven't been audited under it.

9                   MR. GICLAS: Okay. In your  
10 written testimony you're calling it an  
11 inspection and in your response to my question  
12 right now you're calling it an audit. Are  
13 there --

14                   MR. MARTIN: I'm using it  
15 interchangeably.

16                   MR. GICLAS: Okay. Do you know,  
17 is that a USDA inspection? In other words, is  
18 that an inspection that's being paid for  
19 through an assessment -- assessments  
20 associated with the California program?

21                   MR. MARTIN: As I understand the  
22 way the California Leafy Green Marketing

1 Agreement works, there's an assessment and  
2 those are paid for under that assessment, self  
3 taxed.

4 MR. GICLAS: Right. But these  
5 individual inspections at planting, pre-  
6 planting, and harvest, do you know if those  
7 are conducted by the USDA or if they're  
8 conducted by the individual signatory  
9 operations?

10 MR. MARTIN: As I recall from the  
11 California Leafy Green, it may be conducted by  
12 the California Department of Agriculture  
13 people or private organizations that contract  
14 with them to audit to the leafy green market.

15 MR. GICLAS: Okay. So, all right,  
16 well, okay, I'll just ask another question  
17 here then. I wanted to ask also about the  
18 animal exclusion provisions. You're a grower  
19 -- or a producer. Do you think it's possible  
20 to exclude animals from a farm environment,  
21 production environment?

22 MR. MARTIN: The question, is it

1 possible?

2 MR. GICLAS: Yeah.

3 MR. MARTIN: Yes, it is possible.

4 MR. GICLAS: Okay.

5 MR. MARTIN: Would you like to  
6 know how you do it?

7 MR. GICLAS: Sure. Is it prudent?

8 MR. MARTIN: It's not prudent.

9 You'd have to build a tent, a relatively  
10 airtight tent over a field that would exclude  
11 all larger organisms, ones that can walk  
12 around and get around, then you'd have to  
13 fumigate that to -- to -- to eliminate the  
14 organisms that live in the soil, in other  
15 words. So it is possible to obtain a sterile  
16 environment on a farm operation. It's not  
17 prudent, cost effective, or advisable, but it  
18 is possible.

19 MR. GICLAS: And you don't try to  
20 do it on your farm, do you?

21 MR. MARTIN: No.

22 MR. GICLAS: So if --

1 MR. MARTIN: I shoot ground hogs.

2 MR. GICLAS: Well, I was going to  
3 ask you, if you have an animal intrusion, what  
4 do you do?

5 MR. MARTIN: We have a three wire  
6 offset electrified deer fence over -- we have  
7 essentially two areas. We -- on your regions,  
8 the definition of regions, we have two regions  
9 on our farm. We have four and a half or so  
10 acres on top of the ridge, then we have four  
11 fields, acres down on a creek bottom. So  
12 that's a radically different region than from  
13 the deal. We have a three wire deer fence all  
14 the way around the four acres.

15 And it's actually been quite  
16 effective. It kept out, to the best I could  
17 tell, a hundred percent of the deer for about  
18 a year and a half. As it goes with deer,  
19 there's a couple of them that have learned to  
20 get in and what you do with that is I've built  
21 a deer stand and I might be up there tonight  
22 looking for them. But you get the ones that

1 learn how to get in the fence. And it's been  
2 very, very effective.

3 MR. GICLAS: What do you do with  
4 the crop that is impacted by deer that manage  
5 to get in?

6 MR. MARTIN: At this point we  
7 don't do anything with it. For one thing, our  
8 tomatoes, we do not wash our tomatoes ever and  
9 do not refrigerate our tomatoes ever. So that  
10 was primarily what was up there this year is  
11 the -- is the tomatoes and also sugar snap  
12 peas which grew off the ground and, in my  
13 opinion, wouldn't have been affected by any  
14 deer scat that was left in the field.

15 So to answer your question, we  
16 harvest the deer, keep them out to the best we  
17 can, but we do not exclude the crop from where  
18 I've seen the deer track go through.

19 MR. GICLAS: Okay. And would you  
20 say the same for fecal material, deer pellets,  
21 et cetera, on crop or in crop?

22 MR. MARTIN: Correct. If they're

1 on crop, then no, we throw that crop away.

2 MR. GICLAS: Okay. Do you think  
3 that, you know, with relation to animals,  
4 rather than attempting to, you know, have an  
5 outright exclusion, that steps like you're  
6 taking, you know, to address incidences of  
7 intrusion and mitigate that risk are more  
8 appropriate than -- than a blanket, you know,  
9 keep animals out?

10 MR. MARTIN: I believe they're far  
11 more appropriate.

12 MR. GICLAS: Okay. And do you  
13 think the marketing agreement as it's been  
14 proposed allows, you know, the technical  
15 review board and the administrative committee  
16 and others the flexibility necessary to  
17 approach wildlife that way?

18 MR. MARTIN: If you read the  
19 comments, and we have heard one member of the  
20 drafting committee say he just didn't read the  
21 comments and one member of the drafting  
22 committee, Mr. Hall over there, said he did.



1 And that's probably the most troubling thing  
2 I've heard going on today or even read some of  
3 this is that, you know, a member of the  
4 drafting committee didn't read 3,500 comments.  
5 Yes. I think they have the ability to  
6 consider those things if they will, in fact,  
7 do it and if they will not just knee jerk and  
8 say get the animal out.

9 MR. GICLAS: Okay.

10 MR. MARTIN: That's the easy way.

11 MR. GICLAS: Thank you. That's  
12 all my questions.

13 JUDGE HILLSON: Mr. Guenther?

14 MR. GUENTHER: Robert Guenther,  
15 United Fresh Produce. You mentioned you're in  
16 a -- you're in a current GAP certification  
17 program right now or you're going --

18 MR. MARTIN: I'm going through an  
19 educational course put on by the North  
20 Carolina Extension Service that will result in  
21 me getting a certificate that says I've been  
22 through this -- this course.

1                   MR. GUENTHER:  And why did you  
2  feel that was necessary?

3                   MR. MARTIN:  Mainly because  
4  something is coming.  You know, and I think  
5  it's going to be a train wreck one way or the  
6  other for small growers like my wife and I.  
7  And I'm going to be the safety officer because  
8  she won't go.  She feels real strongly about  
9  it.  So you're looking at the safety officer  
10  for Zydeco Moon Farm here.  I'll be the one  
11  that -- you know, that's available 24 hours a  
12  day for the call from the grocery store or  
13  whoever this is.

14                   But yeah, I think the FDA is going  
15  to wind up regulating.  No offense to the  
16  USDA, but I think they're the ones with the  
17  food safety handler and they're the ones with  
18  the legislation that's passed out to the  
19  committee working its way through the  
20  committee.  And the FDA is going to be the  
21  one.  And I'd rather have you guys that at  
22  least work for a farm agency doing it than the

1 FDA, but it's coming.

2 MR. GUENTHER: Prior to this  
3 education program you're going through, did  
4 you -- were you doing other food safety  
5 practices you felt were enhancing food safety  
6 related to your farm? Like the animal  
7 encroachment or the fencing --

8 MR. MARTIN: Yes, absolutely. I  
9 think we have probably done what most people  
10 would -- would view as common sense. Like one  
11 of the slides at the class the night before  
12 last was don't empty the port-a-potty in the  
13 field. Well, duh, come on. No, I'm not going  
14 to empty -- if I have to have a port-a-potty,  
15 I'm not going to dump it in the harvest field.  
16 You know, so -- but that's the kind of thing  
17 you get. And this one is a good program.

18 MR. GUENTHER: One last question.  
19 I mean, based on the -- based on the course  
20 that you're going through now, do you see a  
21 vast difference in what you were doing versus  
22 what the course is teaching you in terms of

1 food safety practices?

2 MR. MARTIN: No.

3 MR. GUENTHER: So you feel you can  
4 been certified, GAP certified basically right  
5 now what you're --

6 MR. MARTIN: The water test would  
7 be a problem and the -- the -- I think the  
8 animal exclusion provisions would be a  
9 problem.

10 MR. GUENTHER: Most challenge?

11 MR. MARTIN: Yeah.

12 MR. GUENTHER: Where your location  
13 of your farm is and things like that or just  
14 in general?

15 MR. MARTIN: Well, in general. We  
16 have two sources, all drip irrigation. We do  
17 irrigate from surface water, which is a  
18 delayed harvest trout stream and we irrigate  
19 from a deep well.

20 MR. GUENTHER: Thank you, Mr.  
21 Martin.

22 JUDGE HILLSON: Anything else from

1 the proponents?

2 MR. RESNICK: Yes, Your Honor.

3 Jason Resnick for Western Growers. Thank you  
4 very much for your testimony today, Mr.  
5 Martin. Just a few questions for you. Along  
6 the same lines that my colleagues were asking  
7 about your current food safety program, can  
8 you kind of describe some of the elements of  
9 your food safety program?

10 MR. MARTIN: Well, the -- and I'll  
11 get a lot of disagreement from a lot of people  
12 on this, not just -- not just folks here. I  
13 think the organic farming method is a food  
14 safety measure. I think it promotes -- we're  
15 regulated as to harvest times between  
16 application of manures and harvest of the  
17 product from that field. I think the  
18 biodiversity that exists on our farm and the  
19 buffers -- I used to call them weeds, but the  
20 extension agent told me those are -- those are  
21 buffers now so, you know, I get to hang up the  
22 Weed Eater, which I thought was a great deal.

1 They filter -- they filter pathogens out, both  
2 from water borne and air borne. So that's  
3 clearly a food safety measure.

4           We wash our hands, you know, and  
5 the bathroom is -- we don't use the bathroom  
6 in the field. There's we're lucky, we  
7 probably would meet all the parameters for  
8 having a bathroom close enough to the fields.  
9 Sally and I do all the work so we don't have  
10 a workforce. So that measure, just limiting  
11 the number of people that are in our field and  
12 handling our produce is a food safety measure.

13           You know, and one of the things  
14 I'll be doing is writing that up and calling  
15 it a plan and having some corrective actions  
16 that if we get our hands dirty or have a  
17 leaking piece of equipment, then we do it, but  
18 I wash the equipment between fields now. So  
19 we're doing a great many things that you would  
20 look at and say, "Well, that's good food  
21 safety practices."

22           MR. RESNICK: Yeah. I agree with

1 that. Thank you. And could you quantify what  
2 your food safety costs are today for your  
3 program?

4 MR. MARTIN: It would be a matter  
5 of allocating some portion of our organic  
6 certification to a food safety aspect, adding  
7 up what we spend on soaps. We can't use  
8 chlorine, that's restricted -- that's a  
9 restricted substance under -- under the  
10 National Organic Program. We can use hydrogen  
11 peroxide. Ballpark figure on what we do, say  
12 let's allocate one-fourth of our cost for  
13 certification. That's 200 bucks. Probably 5  
14 to \$600 on total things that you could label  
15 food safety.

16 MR. RESNICK: And would you  
17 include your fencing as part of that?

18 MR. MARTIN: If you added in the  
19 fencing, that would easily triple or quadruple  
20 that.

21 MR. RESNICK: That was a one time  
22 expenditure? You've already --

1 MR. MARTIN: Correct.

2 MR. RESNICK: -- committed to that  
3 cost?

4 MR. MARTIN: Yeah. So you would -  
5 - like any other expenditure, you could  
6 allocate that over a certain period of years  
7 and allocate that as some food safety expense.  
8 So that would -- that was probably my first  
9 reaction was quadruple that because I would  
10 expense that over a number of years. So 5,  
11 \$600.

12 MR. RESNICK: And the fencing to  
13 keep out the deer, was that done on your own  
14 initiative or was that a requirement by a  
15 buyer? How did you come to that decision?

16 MR. MARTIN: It was a requirement.

17 MR. RESNICK: By who?

18 MR. MARTIN: Sally.

19 MR. RESNICK: Your wife?

20 MR. MARTIN: Yes. And you don't  
21 argue with that, you know.

22 MR. RESNICK: I understand. What



1 was her rationale for the fence?

2 MR. MARTIN: Deer were eating  
3 crop. This has been devastating. We've had  
4 one grower lost about 15 acres of broccoli,  
5 he's the biggest grower at New River Organic  
6 Growers, and that's probably two whole  
7 plantings of organic broccoli.

8 MR. RESNICK: So for farmers that  
9 have deer in their geographic area or regions,  
10 is that -- is that a common concern or is that  
11 unique to your farm?

12 MR. MARTIN: No. That's -- that's  
13 -- deer, and they haven't been so much I would  
14 say not a food safety concern; they've been a  
15 food elimination concern. Because they eat a  
16 lot of crop. They -- and we also have fenced  
17 one of the fields down in the creek now  
18 because that was a lettuce field and the deer  
19 went through there and just ate an entire  
20 crop, one whole plant.

21 MR. RESNICK: So the motivation  
22 for putting up the fencing was to save your

1 crops from being eaten by deer?

2 MR. MARTIN: Correct.

3 MR. RESNICK: And then apart from  
4 that, you also now would take the benefit of  
5 the food safety aspects of that?

6 MR. MARTIN: Correct.

7 MR. RESNICK: I wanted to ask you  
8 about a portion of your testimony where you  
9 say you believe that the national agreement  
10 proposed inappropriately shifts the cost to  
11 small farmers and does not work. Tell me why  
12 you believe that the LMGA would shift the  
13 costs to small farmers.

14 MR. MARTIN: I think that if you  
15 deal with a signatory handler to that, the  
16 costs that they are assessed and pay are going  
17 to get shifted down to the -- the farmer. I  
18 think it was John Kennedy who said, "The  
19 farmer is the only man in the economy that  
20 pays retail for everything he buys, sells  
21 everything at wholesale, and pays the --," so  
22 the farmer is going to wind up paying this,

1 make no mistake about it.

2 MR. RESNICK: That's your opinion?

3 MR. MARTIN: That's -- that's my  
4 opinion.

5 MR. RESNICK: And you're certainly  
6 entitled to your opinion. I'm just wondering  
7 if you have any evidence to back up that  
8 opinion, based on the NLGMA?

9 MR. MARTIN: Every -- every input  
10 that I buy for the farm, when they have a  
11 price increase on whatever fertilizer it is,  
12 Sarane, you name it. Every input that goes to  
13 the farm when there's a price increase on it,  
14 it gets passed down to me. Now, I can pass  
15 some of that on to my consumers, but I don't  
16 see any different -- you know, you call an off  
17 farm or some kind of farm input, but it's  
18 going to be an expense on my farm. And it's  
19 my opinion that that's going to get passed  
20 down to me sooner or later in some form or  
21 fashion.

22 MR. RESNICK: That expense would

1 be an expense that's passed to you by a  
2 handler that you deal with?

3 MR. MARTIN: Correct.

4 MR. RESNICK: Do you deal with  
5 handlers?

6 MR. MARTIN: I deal with one  
7 handler now, which is New River Organic  
8 Growers.

9 MR. RESNICK: And then the rest of  
10 your --

11 MR. MARTIN: Two. Excuse me. And  
12 Eastern Carolina Organic.

13 MR. RESNICK: What percentage of  
14 your leafy greens is handled through handlers?

15 MR. MARTIN: This year it was  
16 probably somewhere between 25 and 30 percent  
17 because we sold through New River Organic  
18 Growers to a large CSA.

19 MR. RESNICK: So 70 to 75 percent  
20 of your product is -- your leafy greens goes  
21 through the CSAs or farmers' markets?

22 MR. MARTIN: Yes.

1                   MR. RESNICK:  And you understand  
2   that they would not be and could not be  
3   signatories to the agreement?

4                   MR. MARTIN:  That's correct.  I  
5   understand that.

6                   MR. RESNICK:  Thank you.  I have  
7   no further questions.

8                   JUDGE HILLSON:  Do we have any  
9   questions from other interested parties?  Or  
10  do have any direct, Mr. Etkka?

11                  MR. ETKA:  No.

12                  JUDGE HILLSON:  Well, Mr. Martin,  
13  thank you very much for testifying.

14                  MR. MARTIN:  Thank you very much.  
15  I appreciate it.

16                  JUDGE HILLSON:  You're all set.  
17  Step down.  Mr. Etkka, you can call your next  
18  witness.

19                  MR. ETKA:  Next we call Gary  
20  Scott.

21                  JUDGE HILLSON:  I'm going to mark  
22  Mr. Scott's written testimony as Exhibit 132.

1 (WHEREUPON, Exhibit Number 132 was  
2 marked for identification.)

3 GARY SCOTT, having been first duly  
4 sworn, was examined and testified as follows:

5 JUDGE HILLSON: Could you please  
6 state your name and spell it for the record?

7 MR. SCOTT: Gary Scott, first name  
8 G-a-r-y, last name, S-c-o-t-t.

9 JUDGE HILLSON: Okay. Do you want  
10 to read your written statement, I take it?

11 MR. SCOTT: Yes, sir.

12 JUDGE HILLSON: Go right ahead.

13 MR. SCOTT: First of all, I'd like  
14 -- I appreciate having the opportunity to  
15 comment today on the proposed National Leafy  
16 Greens Marketing Agreement. As I said  
17 earlier, my name is Gary Scott. I own a small  
18 diversified 76 acre farm in Nelson County,  
19 Virginia, which is a bedroom county of  
20 Charlottesville, Virginia. To give you some  
21 idea of the size of my farm, I have about 300  
22 blueberry bushes, I grow about 2,000

1 strawberries, then I grow a lot of leafy  
2 greens and other produce, which I'll get into.

3 I am also the president of the  
4 Virginia Association of Biological Farming,  
5 which has been in existence for over 30 years.  
6 At our last convention we had about 420 people  
7 in Richmond. We have many successful small to  
8 mid-sized -- of course, today, I guess my  
9 testimony, I should have taken the mid-sized  
10 out from listening to the SPA definition of  
11 farms, but we have a lot of small to mid-sized  
12 growers in our organization. They grow leafy  
13 greens. And most of those growers grow those  
14 greens on an annual basis.

15 At least 38 agencies representing  
16 small, diversified and organic agriculture  
17 interests including the Virginia Association  
18 of Biological Farming have submitted comments  
19 opposing the proposed agreement or made  
20 recommendations for is that were ignored by  
21 the proponents. There is no evidence that the  
22 proponents made any contact or outreach to

1 those agencies prior to petitioning AMS on  
2 June 10th, 2009 to adopt the Leafy Greens  
3 Marketing Agreement.

4           One point I want to make is most  
5 of the growers that I know that are members of  
6 an organization or that are providing local  
7 produce in my area fall into a revenue range  
8 of about 50,000 to 300 and 400,000 in total  
9 farm revenue. I grow lettuce year round and  
10 I use unheated high tunnels and smaller row  
11 tunnels during fall to early spring. I grow  
12 lettuce, spinach, arugula, mustard greens,  
13 kale, and other Asian greens.

14           I take food safety very seriously  
15 and I use sanitation methods which I have  
16 implemented based on my own research, reading  
17 some of the GAP certification guidelines,  
18 advice from other growers, food professionals,  
19 and also my father, who retired from the state  
20 of Virginia as a food safety inspector.

21           Like the gentleman who spoke  
22 before me, I'm also considering taking a GAP



1 certification course because I believe  
2 regulations are just on the horizon and you  
3 just need to be prepared to react. I have  
4 read the National Leafy Greens Marketing  
5 Agreement proposed rules and the California  
6 Leafy Greens Marketing Agreement audit  
7 checklist, which is why I took the time to  
8 drive down here last night to be here today.  
9 And like most growers, I made the time; I  
10 don't really have the time.

11 In my opinion, authority for  
12 ensuring product safety is the jurisdiction of  
13 the Food and Drug Administration. According  
14 to the FDA, 99.5 percent of all fresh produce  
15 contamination incidents between '96 and 2006  
16 came from non-farm sources, namely processes  
17 in handling facilities. FDA data shows that  
18 since 1999, all 14 confirmed incidents of E.  
19 coli 0157:H7 outbreaks in leafy greens have  
20 been in product shipped in sealed plastic  
21 bags. I, as a grower, don't ship in sealed  
22 plastic bags.

1           I realize that the audit checklist  
2 guidelines that were implemented as part of  
3 the California Leafy Greens Marketing  
4 Agreement have not been accepted as a national  
5 audit metric standard; however, I'm just  
6 concerned that those standards would be based  
7 on the current California Leafy Greens  
8 Marketing Agreement audit checklist.

9           The implementation reporting  
10 requirements of something similar to those  
11 audit checklists would be burdensome for me  
12 and other small growers to accomplish with the  
13 size operations and number of growers that we  
14 employ. And for my farm I have one full-time  
15 employee and I have several part-time  
16 employees that may come in and work from one  
17 day or two days and occasionally I will even  
18 hire H-2A workers to work on say a Sunday  
19 afternoon. So that gives you an idea of the  
20 kind of labor I'm talking about for myself.

21           The audit checklists provides  
22 compliance guidelines such as sections GR02A

1 for water and GR02B for soil amendments would  
2 require a significant amount of testing  
3 reporting. The time requirements, and again,  
4 this is just my personal opinion, to comply is  
5 costly and unwarranted for small growers. The  
6 proposed National Leafy Greens Marketing  
7 Agreement also does nothing to address other  
8 produce such as broccoli. A lot of the  
9 broccoli that is consumed is also consumed in  
10 its raw form.

11           Some of the things that I've done  
12 on my farm which are not in my testimony, not  
13 in my official comments here or my printed  
14 comments, I like -- I also have installed deer  
15 fencing around all of my growing areas. And  
16 this deer fencing is 600 pounds per square  
17 inch tensile strength. It's quite expensive,  
18 but it works. I have not had any deer  
19 intrusions where I've put up the deer fencing.  
20 It's also stapled, if you will, to the ground  
21 so I don't have any problem with small rodents  
22 or other varmints, if I can use that term,

1 getting into the fence area.

2 I also have tested my water  
3 sources, but I'm not currently doing that on  
4 a quarterly or a regular basis just because  
5 it's cost-prohibitive for me. I sell direct  
6 through CSA, farm markets, and I also sell  
7 wholesale. In this part on wholesale is one  
8 of the -- the area that I'm most concerned  
9 with. My wholesale customers are very  
10 diverse. They include the Jefferson Area  
11 Board of the Aging, which is sourcing about  
12 265 percent meals for the elderly from local  
13 growers. I also sell to chefs and the local -  
14 - and the Local Food Hub. They all want the  
15 same fresh quality locally produced leafy  
16 greens.

17 The Local Food Hub is a nonprofit  
18 service organization with a mission to  
19 strengthen and secure the future of the  
20 healthy regional food supply by providing  
21 small local farmers with services that support  
22 and advance their economic viability and

1 promote stewardship of the land. Excuse me.

2           There were I don't remember how  
3 many growers, but most of the small growers  
4 that were -- helped start the Local Food Hub  
5 had had challenges working with other local or  
6 regional distributors, and I think that's an  
7 important point. I see the Local Food Hub as  
8 being treated as a handler. And there has  
9 been discussions about GAP certification and,  
10 of course, you know, what's coming down the  
11 pipe, such as this -- this particular  
12 marketing agreement.

13           The Food Hub is now delivering  
14 fruits and vegetables to the Charlottesville  
15 city schools and Albemarle County schools  
16 through a USDA Fresh Fruits and Vegetable  
17 program. This past week over 1300 students in  
18 those two school systems had nutritious snacks  
19 that were available through them through this  
20 joint effort. My farm provided fresh broccoli  
21 for the first delivery. The only requirements  
22 currently for participation in this USDA

1 federally funded program was that the food had  
2 to demonstrate that it had proof of a 3  
3 million dollar liability policy. I personally  
4 have a 1 million dollar liability policy on my  
5 farm, that the Food Hub's facilities have been  
6 inspected by the Virginia Department of  
7 Agriculture and Consumer Services, and that  
8 the produce be delivered in refrigerated  
9 trucks.

10           The art of land doctrine is being  
11 practiced with vigor, but the science of land  
12 health is yet to be born. That is a quote  
13 from Aldo Leopold written in 1949. I'm not  
14 going to get into, you know, healthy soil and  
15 the debate over pathogens, except to say that  
16 sustainable biological farming is  
17 scientifically and environmentally sound.

18           If the shoe fits, wear it. In my  
19 opinion, the NLGMA shoe does not fit small to  
20 mid-sized growers. USDA's fruits and  
21 vegetable program is a good example of a  
22 program that is helping to put locally

1 produced nutrition back into our school  
2 system. Let's not saddle small, mid-sized  
3 growers with unwarranted regulations.

4           Again, I want to stress that I'm  
5 not opposed to food safety. I take it very  
6 seriously. And I have implemented on my farm  
7 a lot of things that would fall under GAP  
8 certification guidelines, such as the workers  
9 that do work for me, as myself, have access to  
10 toilet facilities that are sanitized probably  
11 as well as the Marriott's bathroom. I use  
12 hand sanitations. I'm very serious about  
13 inspecting fields and if there is an intrusion  
14 of some other animal, I take that seriously.

15           But there's no way to 100 percent  
16 stop -- I mean, how about the geese flying  
17 over? I can't stop the geese from flying over  
18 my farm. It would be kind of hard to also  
19 make sure that 100 percent of any touch,  
20 whether it be from an animal getting into my  
21 farm or it be a bird flying over is kind of  
22 hard to do.

1 I thank you for consideration on  
2 behalf of small growers and that's all I have  
3 for my testimony. I'd welcome to take  
4 questions.

5 JUDGE HILLSON: Thank you, Mr.  
6 Scott. I'm going to receive your -- your  
7 written testimony into evidence as Exhibit  
8 132.

9 (WHEREUPON, Exhibit Number 132 was  
10 submitted into evidence.)

11 JUDGE HILLSON: Mr. Etko, do you  
12 have any redirect for this witness at all --  
13 I mean, direct for this witness?

14 MR. ETKO: Not at this time.

15 JUDGE HILLSON: Okay. Let me turn  
16 it over to the USDA panel. Do we have any  
17 questions from the USDA panel? Ms.  
18 Schmaedick?

19 CROSS-EXAMINATION BY THE USDA:

20 MS. SCHMAEDICK: Melissa  
21 Schmaedick, USDA. Good afternoon.

22 MR. SCOTT: Good afternoon.



1 MS. SCHMAEDICK: Good afternoon  
2 and thank you for your statement. My only  
3 question for you is are you speaking today as  
4 the president of the Virginia Association of  
5 Biological Farming or are you representing  
6 your individual farm?

7 MR. SCOTT: That's a good  
8 question. I'm speaking as a farmer and also  
9 representing growers from VABF.

10 MS. SCHMAEDICK: Okay. Thank you.

11 JUDGE HILLSON: Other questions  
12 from the panel? Mr. Souza?

13 MR. SOUZA: Good afternoon.  
14 Anthony Souza, USDA. Just one quick question.  
15 Is it your opinion that if matrix were  
16 developed that they would require elimination  
17 of animal intrusion or the reduction of animal  
18 intrusion?

19 MR. SCOTT: I'll speak as the  
20 grower/producer. I think what I've done to  
21 date limits animal intrusion. I think if I  
22 were to do buffer zones, as being suggested

1 for my size operation, it really wouldn't have  
2 any effect. I mean, if you just look at a  
3 deer, for instance, a deer's range of travel  
4 is about two miles, two square miles so I  
5 don't think the buffers are effective. I do  
6 think buffers when it comes to, you know, like  
7 vegetation as a buffer against getting  
8 pathogens in from -- from the edge is  
9 effective and I have that on my farm.

10 MR. SOUZA: So in your opinion,  
11 you believe you would already have buffers if  
12 they would be required?

13 MR. SCOTT: I think my buffers are  
14 effective because around all of my -- my  
15 entire growing area is this deer fencing,  
16 which was pretty expensive for me to install  
17 and it's taken me about two and a half years  
18 to complete the process of what -- and any  
19 other additional growing area that I'll do,  
20 which I will continue to do, I will do the  
21 same fencing. But it's not just for food  
22 safety. It's also for the fact that a deer

1 can eat a lot in a very short period of time.

2 MR. SOUZA: I understand. One  
3 other just quick follow-up. I didn't see it  
4 in your statement, but you mentioned something  
5 about the cost of water tests. What are the  
6 costs associated with testing water in your  
7 area?

8 MR. SCOTT: Well, the water  
9 testing that I'm doing currently is just a few  
10 hundred dollars. I'm concerned about if I  
11 have to do something along the guidelines of  
12 the EPA, that it might be more costly, but I'm  
13 not overly concerned about that cost. What  
14 I'm concerned about is the labor that it would  
15 require from my farm and other small growers  
16 to do all the paperwork and making sure that  
17 you're in total compliance if you decided to  
18 go along with the agreement.

19 MR. SOUZA: Thank you. No further  
20 questions.

21 JUDGE HILLSON: Anything else from  
22 the panel? Ms. Deskins?

1 MS. DESKINS: Good afternoon. In  
2 your testimony you refer to FDA figures. Can  
3 you speak to the record where you got them  
4 from?

5 MR. SCOTT: I'll just say the  
6 Internet.

7 MS. DESKINS: Okay. Did you get  
8 it from the FDA web page?

9 MR. SCOTT: No, I did not.

10 MS. DESKINS: Can you state for  
11 the record where you got it on the Internet,  
12 if you recall.

13 MR. SCOTT: I'm not sure, to be  
14 honest with you. I can't recall specifically,  
15 but it was several sources.

16 MS. DESKINS: Okay. All right.  
17 Thank you.

18 JUDGE HILLSON: Ms. Carter?

19 MS. CARTER: Antoinette Carter  
20 with the USDA. Could you give us a little  
21 more information about the growing and  
22 harvesting practices in the Virginia area?

1           MR. SCOTT: It's interesting that  
2 you bring that up. I started to bring up the  
3 statistics that were put on the back of the  
4 table there that talk about what's being grown  
5 and they go from 2007, I think, is what the  
6 most recent stats were in there. But it's --  
7 for instance, it mentioned, I believe if I'm  
8 correct, if somebody could check this, it says  
9 there were 15 farms and 15 acres doing head  
10 lettuce or spinach. She's looking it up.  
11 She's saying yes. I know for a fact that it's  
12 significantly more than that. But the  
13 opportunity is tremendous. I don't have a  
14 sales problem. I have a production challenge  
15 --

16           MS. CARTER: Can you --

17           MR. SCOTT: -- if that answers  
18 your question.

19           MS. CARTER: Yes, it does. Thank  
20 you. Could you tell us a little bit more  
21 about your growing seasons.

22           MR. SCOTT: Well, as the gentleman

1 mentioned before me, I've extended my growing  
2 season because of the use of high tunnels.  
3 And these are unheated high tunnels. Mine are  
4 20 feet by 96 feet. I'm getting ready to put  
5 another one up next week.

6           It's not just about extending the  
7 season. I grow leafy greens year round.  
8 There's a lot of people who say you can't grow  
9 lettuce and tomatoes in the summer. Well, you  
10 can if you have the right varieties and you're  
11 doing it correctly. Just like in the middle  
12 of the wintertime, even though in those high  
13 tunnels I may get temperatures -- for  
14 instance, last year I reported temperatures in  
15 there where it might be from zero to seven  
16 outside where I am in the western part of the  
17 state, it will be anywhere from five to ten  
18 degrees warmer inside.

19           But if you have the right  
20 varieties, and there's a lot of new varieties  
21 out, you can easily grow leafy greens,  
22 lettuce, spinach, year round. You can't grow

1 lettuce -- spinach in the middle of summer,  
2 but lettuce you can.

3 MS. CARTER: With regards to your  
4 irrigation, your water source --

5 MR. SCOTT: I have two water  
6 sources. One is a deep well and the other is  
7 a small creek that I've dammed up and I'm  
8 getting ready to impound, doing impoundment to  
9 have more water. I know what's upstream from  
10 there and I have had it tested. I've had both  
11 tested. I don't do it on a regular basis.  
12 But I use drip irrigation. I do do some  
13 overhead, but that's limited strictly to  
14 lettuce in the summertime.

15 MS. CARTER: You noted that you're  
16 -- you're the president of Virginia  
17 Association of Biological Farming. Can you --

18 MR. SCOTT: Somebody had to do it.

19 MS. CARTER: Can you give us a  
20 little more detail about the association?

21 MR. SCOTT: Well, the association  
22 is 30 years old. It was -- it's main --

1 similar to Carolina Farm Stewardship, our main  
2 goal is to educate people on how to grow using  
3 sustainable agriculture, biological farming  
4 practices, meaning we don't use pesticides or  
5 herbicides. And the organization has grown to  
6 approximately 300 full-time members. Our last  
7 annual conference we had about 420  
8 individuals. We just recently became an  
9 official nonprofit, but up until then it's  
10 just been strictly private donors or members  
11 funded it.

12 But our main goal is educational  
13 process. Here this year we also -- I was one  
14 of five growers that were involved in testing  
15 some organic fungicides on winter squash to  
16 try to see if we could be effective in  
17 improving the production levels of winter  
18 squash production and that was through a USDA  
19 (inaudible).

20 MS. CARTER: So your membership  
21 includes other persons other than growers, is  
22 that what you're saying?



1 MR. SCOTT: There are consumers.

2 There are handlers, distributors who are  
3 members, also some retail establishments.

4 MS. CARTER: So about how many of  
5 your members -- members are growers?

6 MR. SCOTT: I would say at least  
7 70, 75 percent. That's just a guess.

8 MS. CARTER: And how many of those  
9 specifically -- specifically grow leafy green  
10 vegetables as proposed?

11 MR. SCOTT: I would say that most  
12 of the growers are growing some lettuce. I  
13 would say commercially where they're doing  
14 some retail, doing CSA other than consumer --  
15 direct to consumer, it's probably I would say  
16 half -- half the growers. That's a pretty  
17 wild guess.

18 MS. CARTER: Okay. Thank you.  
19 Those are all the questions I have.

20 MR. SCOTT: Thank you.

21 JUDGE HILLSON: Anything else from  
22 the USDA panel? Ms. Dash?

1 MS. DASH: Suzanne Dash. Would  
2 you be willing to identify yourself as a small  
3 or large farmer based on the FDA definition?

4 MR. SCOTT: Small.

5 MS. DASH: Thank you. Do any of  
6 your buyers have any requirement that you --  
7 that are food techniques?

8 MR. SCOTT: The only that's  
9 happened to date is there's been discussion  
10 about GAP certification. But I do not  
11 currently have any document that exists  
12 between myself and any of my wholesale  
13 customers, whether they be a handler or a  
14 direct, such as Jefferson Area Board of the  
15 Aging. There's no agreement in place that  
16 talks about food safety.

17 However, I can tell you that in  
18 the case of the Food Hub and Jefferson Area  
19 Board of the Aging, they all require a farm  
20 visit. The agreement is pretty  
21 straightforward, but they're obviously  
22 concerned about how you grow. And I think a

1 lot of that has to do with your farming  
2 practices and whether you're doing it  
3 organically.

4 I don't know whether I said it at  
5 the beginning, I was originally certified  
6 organic by the state of Virginia. When USDA  
7 took it over, I decided to opt out. That  
8 hasn't hurt my sales, but there are some such  
9 as Whole Foods, I would be -- I'd have a  
10 challenge selling to somebody like Whole  
11 Foods. But the retailers that I do sell to  
12 don't put those kind of requirements on me.

13 MS. DASH: Did you respond to  
14 USDA's 2007 Studies of Agriculture?

15 MR. SCOTT: Yes, I did.

16 MS. DASH: You're on that list of  
17 Virginia farmers? Thank you for looking --  
18 that's all I have.

19 JUDGE HILLSON: Anything else from  
20 the panel? Let me ask the proponents if they  
21 have any questions.

22 CROSS-EXAMINATION BY THE PROPONENTS:

1                   MR. RESNICK: Thank you. Jason  
2 Resnick, Western Growers. Thank you very much  
3 for testifying today, Mr. Scott. Could you  
4 just tell us for the record the name of your  
5 farm.

6                   MR. SCOTT: Twin Springs Farm.

7                   MR. RESNICK: And just looking at  
8 the end of your testimony, you said if the  
9 shoe fits it, wear it. The NLGMA shoe does  
10 not fit small sized -- small to mid-sized  
11 growers, period. I just want to ask you, if -  
12 - if you don't want to take part in the NLGMA,  
13 you understand, you don't have to take part in  
14 it?

15                   MR. SCOTT: Yes, I do understand  
16 that.

17                   MR. RESNICK: Then I just want to  
18 ask you, why would you want to prevent others  
19 that do want to take part in it from taking  
20 part in it?

21                   MR. SCOTT: Well, I'm not. That  
22 again is -- that's just my personal opinion.

1 I think it depends on how this plays out. I  
2 think if -- if there's some concessions --  
3 considerations made for small growers, I'm not  
4 saying that I wouldn't sign up, I think that  
5 comes down to a business decision for any  
6 grower.

7           If I believe I can be successful  
8 and grow my business without having to follow  
9 certain guidelines, then that's -- that's  
10 probably what I would do. You know, I'm  
11 basing it on the information that I've been  
12 able to get through USDA's website, through  
13 the California Leafy Greens Marketing  
14 Agreement website because that's the data  
15 that's accessible to me currently. So just  
16 like the GAP certification guidelines are what  
17 they are, if I decide to do GAP certification,  
18 then I obviously have to follow those  
19 guidelines.

20           MR. RESNICK: Thank you. I have  
21 nothing further.

22           JUDGE HILLSON: Mr. Hall?

1                   MR. HALL: Charles Hall, Georgia  
2 Fruit and Vegetable Growers Association.  
3 Thanks for the testimony, Mr. Scott. A couple  
4 of main questions, in the first page of your  
5 testimony you mention at least 30 agencies  
6 representing the small growers organizations  
7 made comments. Are you -- when you say 30  
8 agencies, are you referring to trade  
9 associations?

10                   MR. SCOTT: Yeah, like VABF.

11                   MR. HALL: Okay. So you're not  
12 referring to farms themselves -- farmers  
13 themselves? You're not --

14                   MR. SCOTT: Correct.

15                   MR. HALL: Okay.

16                   MR. SCOTT: Correct.

17                   MR. HALL: And did I understand in  
18 your testimony that you said you were not  
19 doing water testing now for your farm?

20                   MR. SCOTT: No. I am doing water  
21 testing. I just don't do it on a regular  
22 basis.

1                   MR. HALL:  What would not a  
2 regular basis be?

3                   MR. SCOTT:  The last time I tested  
4 my water was approximately 12 months ago.

5                   MR. HALL:  Okay.  And one of those  
6 water sources is a creek?

7                   MR. SCOTT:  That is correct.  It's  
8 a spring fed creek where I know where the --  
9 water --

10                  MR. HALL:  You mentioned in the  
11 testimony that in looking at, I guess  
12 legislative processes coming down, that  
13 something is coming from FDA or something is  
14 coming down the pike, I'm not sure exactly how  
15 you phrased that.

16                  MR. SCOTT:  Did I say that?

17                  MR. HALL:  What do you expect to  
18 be coming?  I mean, I'm --

19                  MR. SCOTT:  That's a good  
20 question.  I would like to have seen today a  
21 panel of proponents and a panel of opponents  
22 up here, but we don't have that so I think

1 that's a difficult question to ask. I think  
2 food safety is an issue. I don't think  
3 there's anybody in this room that grows food  
4 that doesn't think it's not an issue. It is  
5 an issue. How that plays out remains to be  
6 seen.

7 MR. HALL: Do you think under the  
8 FDA guidelines that may be coming there will  
9 be some kind of metrics put in place that will  
10 define small, medium, and large growers and  
11 they will have different guidelines to follow?

12 MR. SCOTT: I would hope so.

13 MR. HALL: And if the marketing  
14 agreement was approved, how would that affect  
15 your current farm operation?

16 MR. SCOTT: I think it only  
17 affects me currently because my -- one of my  
18 concerns, and it's the reason I brought up the  
19 Jefferson Area Board of the Aging, the school  
20 systems, my concern is if this were to become  
21 a national standard, that there may be  
22 organizations such as those two that I just



1 mentioned will be forced on me by -- from  
2 handlers or producers that are -- have the  
3 LGMA surface market, that they've signed off  
4 on the agreement. So if that were to happen,  
5 as it's stands today, I probably -- I probably  
6 would not be involved in serving those current  
7 customers.

8 MR. HALL: The Food Hub is  
9 actually the handler for those?

10 MR. SCOTT: The Food Hub is the  
11 handler, yes, and they are not currently GAP  
12 certified, but they are as an example, just  
13 one example of the certification process.

14 MR. HALL: Thank you.

15 JUDGE HILLSON: Anything else from  
16 the proponents? Anything else -- questions  
17 from other interested parties?

18 MR. ETKA: Redirect.

19 JUDGE HILLSON: Well, that's  
20 what's next. Do you have any redirect?

21 MR. ETKA: No.

22 JUDGE HILLSON: Okay. Thanks, Mr.

1 Scott. Thanks for testifying.

2 MR. SCOTT: Thank you.

3 JUDGE HILLSON: You may step down.

4 And Mr. Etko, you may call your next witness.

5 MR. ETKO: I would call Tim Will.

6 It's my understanding that Mr. Will does not  
7 have a written statement.

8 JUDGE HILLSON: Okay. He doesn't  
9 have to have one, just want to know. Have a  
10 seat.

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

14 JUDGE HILLSON: Okay. Could you  
15 please state your name and spell it for the  
16 record?

17 MR. WILL: My name is Timothy  
18 Will, T-i-m-o-t-h-y, W-i-l-l.

19 JUDGE HILLSON: And I take it, Mr.  
20 Etko, you don't want to ask any questions, you  
21 just want to have him make his statement, is  
22 that fair? Okay. Go ahead Mr. -- go right

1 ahead and testify.

2 MR. WILL: Thank you. And thank  
3 you for allowing me to speak in behalf of a  
4 number of western Carolina foothill farmers.  
5 I'm here to urge you to not go forth with the  
6 marketing agreement, the National Leafy Green  
7 Marketing Agreement. And I'll try to explain  
8 why I'm in opposition of it.

9 Foothills Connect is actually a  
10 rural economic development program. And as  
11 you may or may not know, we're in -- we're  
12 located in the 26 counties in North Carolina  
13 known as Appalachia. And we, in the last ten  
14 years, our economy has been devastated and has  
15 collapsed due to starting with NAFTA and then  
16 with the globalization. Our textile economy  
17 has virtually left the state and gone to China  
18 and Mexico. Furniture manufacturing followed  
19 it.

20 My county in particular where I  
21 live, Rutherford County, was in August picked  
22 number one county, dubious honor, number one

1 county in North Carolina in the Associated  
2 Press Stress Index. We were the thirteenth  
3 county in the nation. We are currently  
4 somewhere around 16 percent unemployment, but  
5 we were 12 before this disaster, this latest  
6 Wall Street disaster hit. There are churches  
7 in my -- my county that report 30 percent  
8 unemployment among the members. So what has  
9 been going on with the country has been going  
10 on in Appalachia for ten years.

11 Foothills Connect was formed to  
12 create job opportunities in small business and  
13 support entrepreneurs through technology.  
14 Once we did an assessment, myself and my  
15 staff, that -- of the assets of our region, we  
16 found just in Rutherford County we had over  
17 5,000 families that owned between five and 20  
18 acres of land. We then discovered that 80  
19 percent of the agricultural activity in the  
20 county was grass fed cattle. Supporting that  
21 was the largest crop, 17,000 acres of hay,  
22 followed by 5,000 acres of soybean and you had

1 to be above 200 acres to be listed on the USDA  
2 Almanac. From what we could understand, there  
3 were 192 acres of horticulture and that  
4 included Christmas trees and ornamental  
5 plants.

6           So we decided in 2007, once we,  
7 serendipitously I might add, spoke to the  
8 executive chef of the Marriott right here in  
9 Charlotte. The Marriott was unable to get on  
10 a consistent basis fresh local food. So with  
11 that knowledge we went back and we started  
12 organizing small land owners, many of whom in  
13 the Appalachian tradition had hung onto their  
14 agriculture land throughout the textile and  
15 furniture based Industrial Revolution, but had  
16 never really actually farmed themselves.

17           So Foothills Connect began a  
18 program called the farmersfreshmarket.org  
19 program whereby we sell directly to the end  
20 user, that would usually be high end  
21 restaurants here in Charlotte, locally and now  
22 residences, fruits and vegetables that aren't

1 picked until they're ordered. And then using  
2 a commercial trucking firm, we have just in  
3 time delivery. Generally the food arrives  
4 within no more than 18 hours of being picked,  
5 usually within six hours of being picked. So  
6 the freshness -- most people have never  
7 tasted, unless they're gardeners, have never  
8 tasted food that fresh.

9           We quickly outstripped the ability  
10 to supply our consumers and so we had to start  
11 making small businesses called farms and we  
12 had to start training entrepreneurs called  
13 farmers. And we developed an educational  
14 system whereby we actually teach people how to  
15 farm, in many ways the same way I was taught  
16 30 years ago when I was in the Peace Corps.

17           I was taught by the US Government  
18 to go to other countries and teach and raise  
19 bed, intensive dare I say organic, now it's  
20 outlawed, we called it organic 30 years ago,  
21 agriculture. And that's what we have done and  
22 -- within our county and we have graduated 130

1 farmers. So I say small business people that  
2 farming.

3           We have support programs where --  
4 well, precluding the idea of Internet and --  
5 and -- and computer literacy, we presupposed  
6 grammatic literacy, however in our county one  
7 out of four people over 40 is illiterate, so  
8 we teach people to read.

9           We -- excuse me. Many of the  
10 farmers that we deal with our good farmers,  
11 but they're not very good businesspeople.  
12 They don't know what their costs are so we  
13 teach them economic literacy, financial  
14 literacy. Every farmer that works with us,  
15 and that's 87 now, 62 of them have been  
16 written checks this year. Every farmer has to  
17 open a checking account. We have a local bank  
18 that gives farmers that work with Foothills  
19 Connect a free checking account.

20           We got a \$175,000 grant from the  
21 North Carolina Rural Center to begin a  
22 sustainable agriculture class in a local high

1 school where we teach the integration of  
2 animal manures and raise bed agriculture; we  
3 teach kids how to do it. We -- that class,  
4 just to give you an idea maybe of what's going  
5 on, has gone from 75 kids when we first  
6 started in the ag classes to now we have over  
7 200.

8           So we have started now realizing  
9 we had to establish a feeder pattern for the  
10 high school. We started a grade school  
11 program. I personally teach third graders how  
12 to not only grow leafy greens, but to eat them  
13 in their classroom. We do that with volunteer  
14 chefs that show them how to prepare them. And  
15 the adult education classes, we actually have  
16 farmers that are selling on the Internet that  
17 -- that we started -- we started teaching  
18 them how to farm in January.

19           Our customers are some of the  
20 highest end restaurants in the city, including  
21 the Marriott. Jean Pierre Marechal, the  
22 executive chef of -- of the Civic Center



1     Marriott downtown -- or uptown here in  
2     Charlotte, is one of our most enthusiastic  
3     supporters. And I might add that in August he  
4     was the guest -- guest chef at the James Beard  
5     Foundation banquet, where he not only took all  
6     of our food, he had to borrow our refrigerated  
7     truck. And he was given a standing ovation  
8     for his cuisine that he presented, primarily  
9     with foods from the mountain people.

10                 We are now growing rapidly. We  
11     have -- just Monday I had representatives from  
12     Cherokee, Stokes, and Rockingham County visit  
13     our farmers and our operation and want us to  
14     go and organize them because they too have  
15     extremely high unemployment. Their economy  
16     has been devastated and, like us, they don't  
17     have many cards to play.

18                 My fear as we work with people  
19     that are basically -- the only asset they have  
20     is their family land, is that we are erecting  
21     more barriers to entry through which they are  
22     not responsible for the problem. Just the

1 research that I've done, I can't quote him,  
2 again, off the Internet, we -- one of the  
3 foremost food litigation attorneys in the  
4 country said he had never heard of one food  
5 recall that had ever been caused by food from  
6 a farmers' market.

7           And I would like to urge you,  
8 because there are vastly more small farmers  
9 than there are your definition of large  
10 farmers. And as we are now in a period, the  
11 second time since 1900 where the number of  
12 small farms are increasing, I might add 65  
13 percent of those owners are women, where we do  
14 not erect barriers for problems that they  
15 haven't caused. So with that, I think I'll  
16 conclude my -- my testimony and thank you very  
17 much for listening.

18           JUDGE HILLSON: Thank you, Mr.  
19 Will. Let me first ask Mr. Etko, do you have  
20 any further direct questions at this time?

21           MR. ETKO: Not at this time.

22           JUDGE HILLSON: Let me ask the

1 USDA panel if they have any questions of Mr.  
2 Will. Ms. Schmaedick?

3 CROSS-EXAMINATION BY THE USDA:

4 MS. SCHMAEDICK: Melissa  
5 Schmaedick, USDA. Thank you for your  
6 testimony. I just wanted to clarify that you  
7 are representing an organization called  
8 Foothills Connect?

9 MR. WILL: We are, Foothills  
10 Connect Business and Technology Center. And  
11 I might add that we just won a national award  
12 for innovative solutions to rural economic  
13 development.

14 MS. SCHMAEDICK: Thank you.

15 MR. WILL: You're welcome.

16 JUDGE HILLSON: Do we have  
17 anything else from the USDA panel? I don't  
18 see any questions. How about the proponents?  
19 Do we have any questions from the proponent  
20 for Mr. Will? I don't see any questions. Any  
21 questions from -- go ahead. Don't forget to  
22 identify yourself.

1 EXAMINATION BY THE PUBLIC:

2 MR. MCREYNOLDS: Roland  
3 McReynolds, Carolina Farm Stewardship  
4 Association. Mr. Will, I just want to clarify  
5 that institutional markets are an important  
6 part of the -- the ability that you've been  
7 able to provide these growers, these new  
8 growers to -- to bring themselves up out of --  
9 out of poor economic conditions, correct?

10 MR. WILL: Absolutely. We make it  
11 very clear through the folks, the  
12 institutional buyers, that they are -- that  
13 they are helping us redevelop an economy a  
14 mere 70 miles away.

15 MR. MCREYNOLDS: And so your  
16 concern would be that if those institutional  
17 buyers are -- become in a situation where  
18 their insurer or their -- for whatever reason,  
19 they decide that they must only be purchasing  
20 greens from a handler that has signed -- such  
21 as Foothills Connect that has signed onto the  
22 National Leafy Greens Agreement, that you

1 would be losing that market?

2 MR. WILL: Absolutely. We've had  
3 to face something similar to that when the  
4 Marriott itself, the executive management in  
5 Washington DC required us to carry 5 million  
6 dollars worth of insurance.

7 MR. MCREYNOLDS: And do you carry  
8 that?

9 MR. WILL: Absolutely, yeah.

10 MR. MCREYNOLDS: You carried that  
11 policy already --

12 MR. WILL: Yes.

13 MR. MCREYNOLDS: -- in order to  
14 have the protection that is in place and the  
15 concern is additional steps up that will be  
16 beyond the capacity of your growers or --

17 MR. WILL: Well, repeat your  
18 question. I'm sorry.

19 MR. MCREYNOLDS: That -- that  
20 you've already -- you've already -- there's  
21 already this system in place of your insurance  
22 to have this liability policy, correct?

1                   MR. WILL:  Yes.  In fact I thought  
2  it was -- when we were required to get it, I  
3  figured it would be much more than that, but  
4  the insurance agent told me that -- that they  
5  insured farmers' markets because generally  
6  that has not been an issue with sanitation or  
7  at least with illnesses.

8                   MR. MCREYNOLDS:  And do you feel  
9  that insurance situation might change if there  
10 were a National Leafy Greens Marketing  
11 Agreement?

12                   MR. WILL:  Well, I think what will  
13 happen is that the -- the industrial food  
14 suppliers will go and -- to the corporate  
15 management of the institutional buyers and  
16 mention to them that there's this requirement  
17 for -- that there is a suggestion that  
18 legitimate and safe food can only come from  
19 people that have signed that agreement.

20                   MR. MCREYNOLDS:  Thank you.  No  
21 further questions.

22                   MR. HAMIL:  I'm George Hamil.

1 Good afternoon, Tim. It's nice to see you.

2 MR. WILL: Good afternoon, George.

3 Are you going to mention you're one of our  
4 customers?

5 MR. HAMIL: Yeah. That's what I  
6 was just going to say. I am one of your  
7 customers, all right. And I want to ask you  
8 to give us a few more details about the  
9 importance of uncommon varieties in what you  
10 do.

11 MR. WILL: When we teach these new  
12 entrepreneurs how to do their business, as we  
13 would teach any entrepreneur, small business,  
14 they have to find niche markets. They can't  
15 compete against the big boys. It just --  
16 they're not going to make a living growing  
17 corn. So we teach them, we encourage them to  
18 grow things that the industrial food system is  
19 not capable of delivering. And these would be  
20 products that have less than a two week shelf  
21 life.

22 So do we grow cantaloupes? Yes.

1 But do we grow the ones that are cannonballs,  
2 that are -- have to resist 1500 miles of  
3 shaking in a truck? No. We grow the skin --  
4 thin skinned variety that most people, if  
5 they've only eaten out of grocery stores, have  
6 never tasted before. Burpee hybrids,  
7 Crenshaws, where there's only a four to five  
8 day shelf life. We teach them not to grow --  
9 well, we're really good at growing blue runner  
10 beans, but we teach them to pick them when  
11 they're pencil thin and instead of selling --  
12 selling the blue runner beans for \$20 a  
13 bushel, we sell them as haricot verts for six  
14 to eight dollars a pound.

15 MR. HAMIL: How about specifically  
16 in the leafy greens market?

17 MR. WILL: In the leafy greens  
18 market, well, you have a couple of different  
19 ways of doing it. We pick them when they're  
20 two weeks old. We grow them and we pick them  
21 as micro-greens, where we can make \$35 a pound  
22 to \$40 a pound because the restaurants and the



1 chefs have to not only purchase them for that  
2 much, but then have to have them flown in  
3 overnight and it costs them 70 to \$80 a pound.

4           We -- we grow leafy greens,  
5 Asiatic leafy greens and the tropical leafy  
6 greens, primarily those grown in Japan, during  
7 the heat of the summer, all right? So we grow  
8 specialty crops. Wintertime, we've introduced  
9 -- I mean, some of these farmers have never  
10 even tasted the things that they're growing,  
11 rainbow chard, covolonara, you know, kale  
12 laciniata. We teach them to grow --

13           JUDGE HILLSON: When you're done  
14 you're going to have to help out the reporter,  
15 I think, with some spelling, by the way.  
16 Don't go too far.

17           MR. WILL: Kale, K-a-l-e, L-a-c-i-  
18 n-a-t-a.

19           JUDGE HILLSON: We have about a  
20 half dozen more, but when you're done, we'll  
21 take a break and you can fix that up.

22           MR. WILL: All right. So fennel,

1 the choy family, bok choys, these are all  
2 vegetables that are very difficult for the --  
3 for the industrial food system to -- to -- to  
4 compete against us in because of their demand  
5 for freshness and the -- and their short shelf  
6 life.

7 MR. HAMIL: So one final question  
8 in this direction and that is you're working  
9 with chefs in particular, okay, with this.  
10 What is your interplay with chefs? Do you  
11 grow things specifically for them? Do you  
12 take that type of direction from them?

13 MR. WILL: That's a very good  
14 question and it's yes and yes. When you go on  
15 our website, and I encourage you all to do  
16 that, and just to let you know, by the end of  
17 next week we'll have -- that website will have  
18 a bar coding and scanning capability that will  
19 allow us to go -- to not only track the  
20 product, but be able to, if the requirements  
21 become that extreme, to put in a longitude and  
22 latitude of the field.

1           So we -- every product we sell has  
2 a SKU number and the first four letters of the  
3 SKU, in other words, a part number, are the  
4 farmer's -- the farm's initials. And on the  
5 immediate left-hand side are listed all the  
6 farms. Because we want the chefs to know  
7 exactly where the food is coming from, all  
8 right? We are the antithesis of a -- of a  
9 anonymous food system.

10           Our chefs come out and visit our  
11 farmers. Our chefs have come out and -- and  
12 taught classes to our farmers. So we try to  
13 get that identification and bring back that  
14 bond between the consumer and the producer.  
15 The chefs do tell us what they need to have.  
16 We've -- kale laciniata, I didn't even know  
17 what it was, but it's the main ingredient of  
18 Italian wedding soup. And so if you're -- if  
19 you're a self respecting Italian lady, you  
20 don't get married without Italian wedding soup  
21 apparently so -- so yes, we listen to them.

22           MR. HAMIL: Well --

1                   MR. WILL: Any small business is  
2 going to listen extensively to their  
3 customers.

4                   MR. HAMIL: Do any of those chefs  
5 use the names of the farms and Farmers Fresh  
6 Market in their advertising?

7                   MR. WILL: Absolutely.  
8 Absolutely. When -- when -- just to take it  
9 to an extreme, when Chef Jean Pierre went to  
10 the James Beard Foundation, he took two and a  
11 half ounce jars of one of our -- an 82-year-  
12 old woman makes kudzu jelly. Yes, here --  
13 it's an invasive weed in the rest of the world  
14 and here it's a moneymaker. The -- and the --  
15 and she had her label on there, all right,  
16 that we printed up in our office. But most of  
17 the restaurants put the farms that we -- that  
18 they get their product from on their -- on  
19 their menus.

20                   MR. HAMIL: Okay. So as you  
21 understand the National Leafy Greens Marketing  
22 Agreement, what would Farmers Fresh Market's

1 position be? Would it be a handler?

2 MR. WILL: From my understanding  
3 of it, yes. We would be a handler.

4 MR. HAMIL: Okay. So if you were  
5 the handler and it became so that you needed  
6 to be a part of the National Leafy Greens  
7 Marketing Association, what do you think that  
8 would do for the net income to your farmers?

9 MR. WILL: Well, right now we have  
10 a 80/20 split with the farmer. Anything sold  
11 over the Internet, the farmer gets 80 percent  
12 or 80 cents on a food dollar. I'm not really  
13 sure what the industrial food system pays  
14 them, but I don't think it's quite that much.  
15 We would have to adjust that because our costs  
16 would go up because we would then have to  
17 verify the inspections.

18 Their costs would go up and their  
19 cost of -- right now we have people that have  
20 gone into business and are selling produce  
21 over the -- over the Internet where their  
22 investment was a hoe. So their costs would go

1 up. It would be one more barrier to entry for  
2 people who have one of the highest  
3 unemployment rates in the country and  
4 absolutely no hope of getting a job. Industry  
5 is not moving to Appalachia.

6 MR. HAMIL: So if you were to try  
7 to market those farms, produce, into the --  
8 into the existing distribution system when you  
9 started, okay, what success would you have  
10 had?

11 MR. WILL: The existing  
12 distribution system meaning the -- the  
13 industrial food system?

14 MR. HAMIL: Right.

15 MR. WILL: We actually did. We  
16 had -- we had an industrial -- we had a -- the  
17 last -- the last independent produce company  
18 in -- in Charlotte, they're no longer around,  
19 they got bought up by a bigger company, used  
20 to buy food from us. And it wasn't  
21 particularly successful from -- from their  
22 point of view because they're mark-up, we

1 would not go down on our -- on our split with  
2 the farmer. Their mark-up pushed our product  
3 beyond -- way beyond the prices that many  
4 customers are willing to pay. But despite  
5 that, we still sold.

6 MR. HAMIL: Did you have any  
7 difficulty in working with that wide spectrum  
8 of varieties and cultivars in terms of the  
9 distributor -- distributor marketing or was  
10 the distributor wanting you to grow other  
11 varieties that were more common?

12 MR. WILL: We grew more varieties  
13 than they were used to distributing. It was  
14 the other way around.

15 MR. HAMIL: Thank you very much,  
16 Mr. Will.

17 MR. WILL: You're welcome.

18 JUDGE HILLSON: Do we have any  
19 more questions for Mr. Will?

20 MALE VOICE: Yes.

21 JUDGE HILLSON: Mr. Resnick?

22 MR. RESNICK: Me? I'm sorry.

1                   JUDGE HILLSON: I'm sorry. I  
2 thought I saw Mr. Resnick waving his hand, but  
3 Mr. Giclas.

4 CROSS-EXAMINATION BY THE PROPONENTS:

5                   MR. GICLAS: My apologies and  
6 thank you, Your Honor. Hank Giclas, Western  
7 Growers. Mr. Will, thank you for your  
8 testimony.

9                   MR. WILL: You're quite welcome.

10                  MR. GICLAS: I -- I walked in the  
11 middle of your testimony. I apologize for  
12 that. But I just wanted to, you know, sort of  
13 try to clarify. You -- you're talking about  
14 some of the chefs and institutional buyers  
15 that are suppliers through your operation.  
16 Would you say that those -- those chefs and  
17 institutional buyers have product  
18 specifications, I mean, in terms of like the  
19 type of product that they want or the quality  
20 of product that they want?

21                  MR. WILL: Yes. They're very --  
22 I've come to understand that many chefs are



1 their art. Their art is their food so they're  
2 -- they're quite demanding.

3 MR. GICLAS: And, I mean, do they  
4 have any kind of specifications whatsoever in  
5 terms of, you know, an expectation maybe is a  
6 better way to put it of, you know, that  
7 product being a state product?

8 MR. WILL: Absolutely.

9 MR. GICLAS: How do they -- how do  
10 they go about ensuring that, just by visiting  
11 the farm or --

12 MR. WILL: Well, I think there's a  
13 risk in every business. And one of the ways  
14 we ameliorate that fear -- because the major  
15 difference between what our folks do with the  
16 -- with the -- the small farmers do and what  
17 larger farmers do is we generally eat out of  
18 our own fields. We feed our families out of  
19 our own fields and we -- we feed our neighbors  
20 out of our own fields so there's a general  
21 expectation of -- of health, you know, when we  
22 feed our own families. So I would suspect

1 that their expectation would be the same as  
2 ours.

3 MR. GICLAS: And you don't think  
4 large farmers eat out of their fields?

5 MR. WILL: I'm not sure. I've  
6 never known a large farmer.

7 MR. GICLAS: Okay. So a Marriott,  
8 for example, doesn't have any food safety  
9 requirements, per se --

10 MR. WILL: Not to get anybody in  
11 the Marriott in trouble here, but I would say  
12 their food safety requirements are -- are very  
13 high because they're demanding. Have they  
14 ever -- they're -- at a corporate level their  
15 food safety requirement is that a -- that we  
16 carry five million dollars worth of insurance.

17 MR. GICLAS: So -- okay, so that's  
18 their requirement as to liability insurance,  
19 not the actual practices in the field?

20 MR. WILL: I believe that's how  
21 most businesses ameliorate their risks.

22 MR. GICLAS: Okay. Did I hear you

1 say that you're doing instruction in classroom  
2 settings, too?

3 MR. WILL: Yes. We even have a  
4 laboratory where you're welcome to come and  
5 visit, where we actually show them techniques  
6 in high intensity sustainable agriculture.

7 MR. GICLAS: And one of those  
8 sustainable techniques is the use of manure in  
9 raised bed farms or raised bed plots?

10 MR. WILL: Not in our class. We  
11 don't have any -- any animals. We generally  
12 use organic fertilizers. In the school we  
13 have -- there is a high school that has an FFA  
14 program, Future Farmer of Americans, and they  
15 are, from what we understand, the only school  
16 in North Carolina, high school in North  
17 Carolina, that is actually teaching their kids  
18 how to use in rotation animals, thereby  
19 manures, and green manures and crop growers.

20 MR. GICLAS: But your  
21 understanding is that that's -- there are some  
22 practices for the rotation of that material or

1 the treatment of that material to ensure its  
2 safety and its --

3 MR. WILL: Absolutely, yes.  
4 Absolutely, yes.

5 MR. GICLAS: Okay. Thank you. No  
6 further questions.

7 JUDGE HILLSON: Anything else?  
8 Okay. Thanks a lot for your testimony, Mr.  
9 Will. You may step down.

10 MR. WILL: My pleasure.

11 JUDGE HILLSON: And before you go  
12 too far, why don't we take a ten minute break  
13 now partly so that Mr. Will can help our  
14 reporter out with some of those spellings.  
15 And I'm going to check the list. And I know  
16 I have McReynolds and Battle testifying as the  
17 next two witnesses called by the National  
18 Organic Coalition and I just want to make sure  
19 I have the other witnesses here who plan to  
20 testify and just get a list for the rest of  
21 the day. So let's take ten.

22 (WHEREUPON, a brief recess was

1 observed.)

2 JUDGE HILLSON: Okay. We're  
3 taking things just a little bit out of  
4 sequence now because Mr. Resnick has informed  
5 me that he and Mr. Giclas have to catch --  
6 catch a flight out in a couple hours. So  
7 normally the last thing I discuss is the  
8 briefing schedule and the schedule for any  
9 corrections to the transcript.

10 Normally my experience has been --  
11 well, the briefing -- not the briefing, the  
12 transcript is normally done about three weeks  
13 after the close of the hearing. Now I know  
14 that we have a huge portion of the transcript  
15 already in hard copy. That's going to be  
16 probably posted on the Internet some time in  
17 the next week or so. But I normally figure  
18 three weeks. And, let's see, today is the --  
19 today is the 22nd. One, two, three -- so  
20 three weeks let's say will be Friday, the  
21 13th, the transcript should be done.

22 The normal time that parties want

1 for brief -- any interested person can file a  
2 brief, anyone. But the brief has to be pretty  
3 much based on the evidence that's in the  
4 record so you can't try to sneak too much  
5 stuff in that hasn't been -- already been  
6 submitted, according to the rules. Normally  
7 it's about 30 days.

8           So my question to everybody is 30  
9 days is about December 14th or 15th. December  
10 15th is a Tuesday. Will that be adequate for  
11 the -- an adequate time for you to file the  
12 briefs?

13           MR. RESNICK: No, Your Honor, only  
14 because just the volume of testimony, there's  
15 -- it's so voluminous and it just happens to  
16 fall --

17           JUDGE HILLSON: Volume is  
18 voluminous. It happens.

19           MR. RESNICK: There's so much  
20 testimony.

21           JUDGE HILLSON: Do you have a  
22 suggestion date? And I don't see -- I got to

1 hear from Mr. Etko as well. When do you want  
2 the briefs to be due?

3 MR. RESNICK: I would say 60 days,  
4 just to --

5 JUDGE HILLSON: And how do you  
6 feel about that, Mr. Etko?

7 MR. ETKO: Just to clarify, 60  
8 days from when the transcript comes out?

9 JUDGE HILLSON: Yes, yeah. Now,  
10 the transcript is going to mostly be out. I  
11 don't know how quickly they get it on-line,  
12 but I know that today people from Ms. Carter's  
13 office picked up the hard copies of the  
14 transcript that we had as far as the hearing  
15 clerk's office and I was told that it was a  
16 couple feet high. So I'm guessing that --  
17 that it probably has most of -- that they  
18 probably have the first three -- three weeks'  
19 worth already of the hearings posted on-line,  
20 probably next week --

21 FEMALE VOICE: Right.

22 JUDGE HILLSON: -- if I'm not

1 mistaken. Because they have them on disks as  
2 well. There's no scanning that needs to be  
3 done. So but the contract with the reporter  
4 stipulates that they have to get it in three  
5 weeks after the close of any hearing session.  
6 So that means -- that's why I came up with  
7 that Friday the 13th. It would actually be  
8 Thursday the 12th, but I was throwing in an  
9 extra day just to make it be another week.

10 MR. RESNICK: Sir, will there be  
11 opportunities to make corrections?

12 JUDGE HILLSON: That's part two;  
13 we're on part one. Part one is when the brief  
14 is due.

15 MR. ETKA: So when you say 60  
16 days, that would be 60 days after the Thursday  
17 the 12th?

18 JUDGE HILLSON: Yeah. I didn't  
19 say 60 days; Mr. Resnick said 60 days. I said  
20 30 days and he said that wasn't enough.

21 MR. ETKA: I heard his proposal.

22 JUDGE HILLSON: So if you -- I'll



1 just ask Ms. Deskins on behalf of AMS if  
2 there's -- if they have any problem with 60  
3 days?

4 MS. DESKINS: We have no problem.

5 MR. ETKA: I mean, if it would be  
6 possible to do 90 days. I mean --

7 JUDGE HILLSON: No, no. That's  
8 too -- that's too far afield.

9 MR. ETKA: We're just --

10 MR. MCREYNOLDS: Many of the  
11 organizations that might brief don't have in-  
12 counsel staff.

13 JUDGE HILLSON: Well, you're going  
14 to have -- I mean, since most of the  
15 transcript is already there and you folks are  
16 all pretty well apprised of what the testimony  
17 has been, I mean, 75 days from now -- or no,  
18 that's -- or it's almost 80 days from now,  
19 that's -- I mean, I think 60 days from  
20 November 13th is -- is way more generous than  
21 I've -- and you can always ask for an  
22 extension if things get -- get pretty ugly if

1 you have a good reason. I won't be here to  
2 rule on it, but you can ask for an extension.

3 MR. ETKA: We're agreeable.

4 JUDGE HILLSON: So I got to read  
5 the fine print on my calendar. Hang on a  
6 second here.

7 MALE VOICE: Just 60 days --

8 JUDGE HILLSON: I'm just trying to  
9 figure out what 60 days from the 13th is  
10 approximately. Let's say -- let's say January  
11 13th, which is actually 62 or 63 days. It's  
12 a Wednesday; Wednesday, January 13th. That's  
13 when the briefs are due. And I'm going to say  
14 this again at the end of the hearing because  
15 that's when the hearing clerk takes a look at  
16 the last page of the hearing. The parties  
17 agree that we're just going to do 60 days from  
18 November 13th, which is approximately January  
19 13th.

20 The other thing is in terms of  
21 transcript corrections. I don't look at the  
22 briefs, but I do have to certify that the

1 transcript and exhibits are correct. And as  
2 I mentioned a few dozen times outside the  
3 hearing, I'm retiring at the end of this  
4 calendar year. And therefore I need to get  
5 the -- any suggested transcript corrections  
6 I'm going to say by December 15th. Let me  
7 just make sure what day of the week that is.  
8 Yeah. I need -- I need to look at them, if  
9 there's any conflicts in them, if y'all  
10 disagree with each other on anything.

11           So I'm going to say, that's a  
12 pretty tight schedule, but I want to have any  
13 -- any transcript corrections by December 15th  
14 and if you need a -- I don't know. They don't  
15 --

16           MS. DESKINS: They file them with  
17 the hearing clerk.

18           JUDGE HILLSON: They file them  
19 with the hearing clerk. I'm just trying to  
20 figure out how the hearing clerk -- how they -  
21 - in case there's a conflict, someone  
22 disagrees with the transcript corrections, how

1 are we going to know about it.

2 MS. DESKINS: If you just check  
3 with AMS. I think they were posting things on  
4 their web page.

5 JUDGE HILLSON: I think so. Yeah.  
6 They post those documents, yeah. Your request  
7 for transcript corrections will be posted, so  
8 that -- but because the schedule is so short,  
9 I'm going to have to ask that if you have any  
10 opposition to the other party -- to any --  
11 anyone's transcript suggested corrections, I'm  
12 going to have to get that within a week,  
13 December 22nd. You're just going to have to  
14 look at that. If you want, I can move up the  
15 transcript correction date by a week, if you  
16 think you can handle that.

17 MR. ETKA: Just so -- we're new in  
18 this process, what is involved with the  
19 transcript corrections?

20 JUDGE HILLSON: You read it. You  
21 read it and you -- and you say, "On page 2,577  
22 it says this when it should say that," or you

1 said "yes, but he -- the transcript says he  
2 said yes, but I know he said no," those kind  
3 of things. I mean --

4 MR. ETKA: So do the folks that  
5 have been testifying get it and they do that?

6 JUDGE HILLSON: Oh, no.

7 MR. ETKA: We do it on their  
8 behalf?

9 JUDGE HILLSON: Anyone -- anyone  
10 in the free world basically can put it in for  
11 a -- and the unfree world too can put in for  
12 a transcript correction, but I'm mostly  
13 thinking about --

14 MR. ETKA: They're not sent out to  
15 --

16 JUDGE HILLSON: Well, they'll be  
17 sent to the hearing clerk and the hearing  
18 clerk will presumably post them. I mean, the  
19 hearing clerk will give it to -- to Ms.  
20 Carter's office and they'll get it posted.  
21 But unless you two want to agree, as the two  
22 most significant presences, I guess, in terms

1 of the parties, to serve your corrections on  
2 each other electronically.

3 MS. CARTER: You two can agree to  
4 send your corrections to each other, rather  
5 than having to go to the hearing clerk and  
6 each get a copy of it.

7 MR. RESNICK: Yeah, we would  
8 stipulate to that.

9 JUDGE HILLSON: Yeah. Why don't -  
10 - why don't you two very quickly make sure you  
11 have each other's email addresses and -- and -  
12 - and -- and by December 15th -- let me move  
13 it up a few days. Let's say like by December  
14 11th you guys will be serving your transcript  
15 corrections on each other, as well as sending  
16 an official copies both to the hearing clerk.  
17 And then I'll give you a week after that,  
18 December 18th, if you have objections to any  
19 of the transcript corrections.

20 If you don't have objections, I'll  
21 just tell -- I'll certify the record and just  
22 tell the hearing clerk to make all the

1 corrections that both parties have asked for.  
2 If there's a conflict, if you guys see a  
3 conflict in something, and I've seen that  
4 happen in other cases, other hearings, then  
5 I'll have to resolve it. But I'm running --  
6 I'll be running out of days to resolve it, so  
7 that's why I'm going -- this date on it.

8 MR. ETKA: I apologize for the  
9 questions. I'm new to this process. So folks  
10 that have testified, if they wanted to look at  
11 their -- how their testimony was transcribed,  
12 they would be able to go on-line to look at  
13 that?

14 JUDGE HILLSON: Yeah, yeah. The  
15 transcript is going to be posted on-line. I  
16 mean, the first -- as you probably know, the  
17 first three days were videotaped, as you may  
18 recall.

19 MR. ETKA: Right.

20 JUDGE HILLSON: And that's --  
21 that's been on-line for a long time. And --  
22 and the written transcript should -- should

1 mostly be on-line by next week, but the rest  
2 of it should be on-line at the latest three  
3 weeks from today. So anyone can look at the  
4 transcript. If you want to tell the various  
5 people who testify on behalf of -- of either  
6 party that, "Please look at your transcript  
7 and see if it makes sense."

8 I mean, you know, you don't need  
9 to correct simple things like, I mean, I know  
10 about ten different people who have said  
11 "matrix" rather than "metrics." And you don't  
12 need to -- we don't need to -- you don't need  
13 to submit a formal correction for that. Try  
14 to -- try to confine it to things that are  
15 reasonably significant. If there's a letter  
16 or two off in -- in the spelling of some --  
17 one of the -- one of the -- one of the names  
18 that Mr. Will mentioned, for example, I mean,  
19 that's not significant. Try to -- if you  
20 focus in on significant matters, I don't your  
21 request for corrections is going to be more  
22 than two, three, four pages long. But just



1 cite to the -- "On page so and so, line so and  
2 so, this should be that," and put it in  
3 quotes.

4           You can look at other transcript  
5 corrections with the hearing clerk. You can  
6 ask for other ones or maybe there might be  
7 other ones posted on-line. You can probably  
8 check with Ms. Carter to see if there's any  
9 ones from previous hearings posted on-line.  
10 It's really basic, very simple.

11           MR. ETKA: If I need to, I'll  
12 contact you all.

13           JUDGE HILLSON: Okay. It's real -  
14 - real basic. Okay? So we're set on that?  
15 I'll go over those dates one more time and  
16 I'll say it again at the end of the hearing  
17 that transcript corrections by December 11th  
18 and you're going to serve it electronically on  
19 each other. It will be Mr. Etko and Mr.  
20 Resnick are going to do that. By December  
21 18th, if you have any -- any opposition to  
22 each other's transcript corrections, and the

1    briefs are going to be due on January the  
2    13th.  Okay?  So we can move on?

3                   MR. ETKA:  Yes, sir.  Thank you.

4                   JUDGE HILLSON:  Okay, okay.  Why  
5    don't you call your next witness.  Let me go  
6    over the witness -- who I have as testifying.  
7    Besides Reynolds and Battle, the names I have  
8    are -- and I'm going to ask if the rest of  
9    these people are still here so I should know  
10   if I should cross them off.  Chris Sawyer?

11                   MR. SAWYER:  Here.

12                   JUDGE HILLSON:  Okay.  Harry  
13   Hamil?

14                   MALE VOICE:  He's here.

15                   JUDGE HILLSON:  I know.  I can't  
16   believe he left.  I'm sure he wanted to  
17   testify.

18                   MALE VOICE:  No, he's still here.

19                   JUDGE HILLSON:  Okay.  Chris  
20   Gunter?

21                   DR. GUNTER:  Here.

22                   JUDGE HILLSON:  Okay.  Ned

1 Johnson?

2 MR. MCREYNOLDS: His stuff is  
3 still here.

4 JUDGE HILLSON: Ned Johnson --

5 MR. MCREYNOLDS: He's the  
6 gentleman sitting here at the end of the row.  
7 His materials are still there.

8 JUDGE HILLSON: Okay. Then I'll  
9 presume he's going to still be here. And  
10 Debbie Hamrick?

11 MS. HAMRICK: Here.

12 JUDGE HILLSON: Okay, good. So we  
13 have seven more witnesses and we'll start off  
14 -- I'll let you call Mr. McReynolds, who I  
15 think is your next witness.

16 MR. ETKA: We'd call Roland  
17 McReynolds.

18 JUDGE HILLSON: And I'm going to  
19 mark Mr. McReynolds's written testimony as  
20 Exhibit 133.

21 MR. MCREYNOLDS: Page 3 and 4 are  
22 out of order.

1 (WHEREUPON, Exhibit Number 133 was  
2 marked for identification.)

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

6 JUDGE HILLSON: Please state your  
7 name and spell it for the record.

8 MR. MCREYNOLDS: Roland  
9 McReynolds, R-o-l-a-n-d, M-c-R-e-y-n-o-l-d-s.

10 JUDGE HILLSON: Okay. Mr.  
11 McReynolds, do you have a statement you'd like  
12 to read?

13 MR. MCREYNOLDS: Yes.

14 JUDGE HILLSON: Go right ahead.

15 MR. MCREYNOLDS: Thank you.

16 Pardon me. My name is Roland McReynolds. I'm  
17 the executive director with the Carolina Farm  
18 Stewardship Association. Your Honor and USDA  
19 staff, I appreciate your being here to conduct  
20 this testimony today and I wish to -- I will  
21 be going through this -- this written  
22 testimony. There will be -- I won't read all

1 of it, however. Certainly if you have  
2 questions about any of the written materials,  
3 I'm happy to answer them, but I will skip over  
4 some of the portions for time's sake.

5           CFSA is a member based  
6 organization with a mission to support local  
7 and organic agriculture in the Carolinas by  
8 educating, inspiring, and organizing farmers,  
9 consumers, and businesses. Our farmer  
10 membership includes large scale organic  
11 operations of 1,000 acres all the way to  
12 beginning farmers intensely cultivating a  
13 quarter -- a quarter of an acre or less.  
14 They're predominantly family farms that use  
15 sustainable and organic production practices  
16 to grow a variety of fruit, vegetable,  
17 livestock, and dairy foods and the vast  
18 majority run small operations with annual  
19 revenues less than \$250,000 per year.

20           Because of the generally  
21 prevailing climate conditions in the  
22 Carolinas, and we represent farmers in North

1 and South Carolina, leafy greens can be  
2 successfully grown throughout the year here  
3 and therefore many small farmers are able to  
4 rely on leafy greens as an income source  
5 during those seasons. We have over 1200  
6 members in North and South Carolina and we  
7 estimate that approximately one quarter of  
8 them produce leafy greens at some point during  
9 the year. Almost all of them market at least  
10 some of their products locally through direct  
11 market sales, restaurants, local grocery  
12 retailers, institutions, and local handlers  
13 and distributors.

14           Small scale and diversified  
15 organic farmers are committed to providing  
16 safe, healthy products to their consumers and  
17 they take that responsibility very seriously.  
18 Every grower wants to constantly improve their  
19 practices for preventing pathogen  
20 contamination. The best way to achieve that  
21 goal across all markets, all farm sizes, all  
22 climates, and all growing conditions is to

1 provide growers with the best scientific  
2 information available on pathogen controls so  
3 that they can adapt that knowledge to  
4 conditions on their specific farms to create  
5 effective, risk-based, scale appropriate  
6 approaches to avoiding pathogen contamination  
7 in their crops on their farms.

8           During the comment period in late  
9 2007 on the announced notice of -- advanced  
10 notice of proposed rule making regarding this  
11 -- this proposed agreement, Carolina Farm  
12 Stewardship Association submitted extensive  
13 comments and argued for the need to avoid a  
14 national system for the governance of pathogen  
15 control in leafy greens. And I would like to  
16 -- I believe all those comments are already in  
17 the -- in the record for this hearing, but I  
18 would like to -- I have copies of our  
19 statement, which I would also like to enter as  
20 an exhibit at this time, that we submitted  
21 back in December 2007 for the Leafy Greens  
22 Marketing Agreement.

1           JUDGE HILLSON:   Okay.  You want it  
2 as an attachment or a separate document?

3           MR. MCREYNOLDS:  As a separate  
4 exhibit.  Would that be appropriate?

5           JUDGE HILLSON:  It doesn't matter  
6 to me that much.  I'll take it.  So I'm going  
7 to mark as Exhibit 134 the -- the comments of  
8 the Carolina Farm Stewardship Association  
9 dated -- dated -- in response to the October  
10 24th, 2007 Federal Registry?

11           MR. MCREYNOLDS:  That's correct.  
12           (WHEREUPON, Exhibit 134 was marked  
13 for identification.)

14           JUDGE HILLSON:  Okay.  Go ahead.

15           MR. MCREYNOLDS:  Thank you.  As I  
16 say, we argued for the need to avoid a  
17 national system for the governance of pathogen  
18 control in leafy greens.  Unfortunately, our  
19 concerns were largely ignored by the  
20 proponents in the development of this  
21 proposal.  CMSA believes that for a number of  
22 reasons, which I will now outline and which



1 have already been entered into the record for  
2 this hearing, that this -- that the proposal  
3 that is the subject of this hearing is fatally  
4 flawed and inappropriate for adoption by the  
5 USDA. We strongly encourage the secretary to  
6 reject this proposed agreement and we do not  
7 believe that any modifications to this  
8 proposed agreement can salvage it.

9           The first area -- issues that I  
10 would like to address is the fact that the  
11 Agricultural Marketing Agreements Act of 1937  
12 precludes AMS from adopting food safety rules  
13 like the National Leafy Greens Marketing  
14 Agreement. The intent of the AMAA is to  
15 provide a mechanism for growers to organize  
16 and protect themselves from the market power  
17 of handlers. This proposal is an agreement  
18 by, of, and for handlers that will dictate the  
19 terms of production and sale to farmers  
20 without providing any assurance for the  
21 salability of the affected producers products.

22           The AMS, by adopting this

1 agreement, would be using its authority in  
2 violation of the statutory intent and to the  
3 detriment of growers. AMS, in the words of  
4 its administrator Rayne Pegg, is not a food  
5 safety agency. Marketing agreements and  
6 orders are for the purpose of verifying  
7 measurable attributes of agriculture products.  
8 Establishing a process for food safety  
9 protocols is not the same as measuring an  
10 attribute in an end product.

11           The activities of the  
12 administrative committee under the proposed  
13 agreement are not for the purpose of measuring  
14 attributes, but of dictating processes for  
15 production, processing, and handling. And as  
16 Mr. Hall stated in the August 19th webinar  
17 that the proponents hosted on this agreement,  
18 quote, the primary goal of the marketing  
19 agreement is to continue our commitment to  
20 food safety, end quote. Quote, this marketing  
21 agreement allows for the development of  
22 production and handling best practices that

1 will be endorsed by the signatories, end  
2 quote.

3           And Mr. Wingard's testimony  
4 earlier today underscored this fact. Good  
5 agricultural practices are practices, not a  
6 quality of the product coming out of the  
7 field. Authority for ensuring produce safety  
8 is the exclusive jurisdiction of the Food and  
9 Drug Administration and indeed managing  
10 pathogen controls from marketing agreement is  
11 an inappropriate way to provide assurance to  
12 the consumer as to the safety of a food item.

13           AMS's mission is to facilitate  
14 strategic marketing of agricultural products,  
15 not to protect public health. Because food  
16 safety is not a measurable attribute, this  
17 agreement does not achieve AMS's goals for  
18 marketing agreements, which are to decrease  
19 market chaos, promote consumer choice, and  
20 control supply. The agreement would increase  
21 market chaos by establishing a competing  
22 standard for existing and pending private and

1 federal produce safety standards. It would  
2 confuse consumers by treating pathogen control  
3 systems as a product attribute that varies  
4 between brands and it would inappropriately  
5 conflate food safety standards with supply  
6 controls. Food safety should remain constant  
7 and not be subject to change according to  
8 fluctuations in supply and demand.

9           Therefore, were AMS to adopt this  
10 agreement, any handler signing on would not  
11 benefit from the exemption for antitrust  
12 liability that would be conveyed by their  
13 acceptance of a lawful marketing agreement.  
14 Thus this National Leafy Greens Marketing  
15 Agreement could result in market disruptions  
16 through civil and criminal actions -- legal  
17 actions against those parties.

18           With respect to the voluntariness  
19 of the standards, I just want to highlight  
20 that. Once adopted by a large proportion of  
21 handlers and processors -- by a large  
22 proportion of handlers, LGMA production,

1 processing, and handling metrics will  
2 essentially become the governing baseline  
3 standard for all leafy greens. It will create  
4 a defacto standard of care that will creep  
5 into liability insurance policies, legal  
6 proceedings, forcing all -- this is where I  
7 think the page skips over -- growers to use  
8 those production practices prescribed by the  
9 agreement, regardless of their lack of  
10 applicability to a particular farm, climate,  
11 or other lawful USDA program such as AMS's  
12 National Organic program or the conservation  
13 programs in the Natural Resources Conservation  
14 Service.

15           Also, contrary to proponent  
16 claims, the agreement will not reduce the  
17 proliferation of private handler and retailer  
18 produce safety standards and so will in fact  
19 increase consumer confusion. Mr. Giclas, in  
20 speaking at the webinar on August 19th, 2009  
21 stated that it's, quote, likely, end quote,  
22 that there will continue to be super metrics

1 if the NLGMA is adopted. And again, Mr.  
2 Wingard also made that very same point in his  
3 testimony. USDA lacks authority to prohibit  
4 super metrics. This agreement will not change  
5 that. There is nothing in the agreement that  
6 would prevent companies from requiring growers  
7 to follow metrics that exceed or differ in  
8 some way from the LGMA metrics. In fact, some  
9 retailers could use their requirement of super  
10 metrics as a marketing strategy by arguing  
11 that their product is better because it  
12 exceeds USDA standards.

13 We know that the California LGMA  
14 has not limited super metrics and in fact,  
15 those super metrics have become more  
16 Draconian, particularly for small scale  
17 organic farmers and those increasingly  
18 Draconian super metrics clearly lack  
19 scientific bases. So the California agreement  
20 has in fact increased the proliferation of  
21 unscientific, one size fits all standards for  
22 leafy greens production.

1                   And of course this is being  
2 proposed at a time when Congress and FDA are  
3 already in the process of developing  
4 legislation and regulations. And there's a  
5 hearing going on in Washington today on  
6 proposed legislation on -- to government  
7 produce safety.

8                   Oversight of the Leafy Greens  
9 Marketing Agreement by AMS is not adequate to  
10 protect public health. And this goes to why  
11 it's inappropriate for LGMA to take -- for AMS  
12 to take on the food safety role. AMS is an  
13 agency that deals with marketing, not food  
14 safety. AMS's expertise is in the area of  
15 marketing and economics, not microbiology. So  
16 under this agreement an industry driven board  
17 writes the rules under supervision of an  
18 agency without -- it should say without in my  
19 testimony there -- expertise -- with expertise  
20 in marketing, solely with expertise in  
21 marketing. Forgive me. This system does not  
22 offer consumers assurance that this is a

1 sufficient approach to food safety.

2           The structure of the agreement is  
3 biased in favor of entities that already enjoy  
4 market dominance and so would limit  
5 competition. In our comments on the original  
6 advanced notice of proposed rule making, CFSA  
7 opposed any sort of national governing board  
8 for the implementation of pathogen control  
9 practices in leafy greens production. We  
10 argued for grower controlled marketing  
11 agreements based on region, climate, and  
12 growing conditions and on the -- and based on  
13 the scale and market of -- markets served by  
14 the farms.

15           We specifically argued that a  
16 national board would be inappropriate because  
17 of the tremendous variation in growing  
18 conditions in various climates and regions of  
19 the country, which would make it impossible  
20 and inadvisable to establish nationally  
21 applicable standards for the production of  
22 leafy greens. The proposed agreement ignores



1 these essential agriculture realities and the  
2 delineation of the zones for representation on  
3 the administrative committee flies in the face  
4 of those realities.

5           And according to the statement of  
6 Mr. Giclas at the Western Grower -- at the  
7 proponent group webinar on August 19th, the  
8 zones were established quote, on the base --  
9 quote, on the volume of production, end quote,  
10 with each zone, quote, anchored by at least  
11 one principal area of production as determined  
12 by volume, end quote, institutionalizing the  
13 existing market -- the existing conditions for  
14 production of leafy greens in this country.  
15 And it would be hard to see the administrative  
16 committee recommending to the secretary that  
17 it change -- that it change that system in the  
18 future to reflect changing conditions for  
19 growers.

20           According to the statement at the  
21 webinar, again, by Mr. Giclas -- I'm sorry --  
22 there is no requirement for representation of

1 organic handlers, organic farmers, or natural  
2 foods retailers on the administrative  
3 committee despite double digit annual growth  
4 rates in those markets over the last decade.  
5 And this condition would not be changed by the  
6 proposed changes that have been offered today  
7 for revision to the membership of the  
8 technical committee.

9           Efforts to influence the  
10 development of this agreement by the small  
11 scale, diversified, and organic farming  
12 communities have been ignored by the  
13 proponents and this situation would likely  
14 continue in the administration of the  
15 agreement. Again in 2007 CFSA submitted  
16 comments in response to the ANPR. We shared  
17 grave concerns about the inappropriateness of  
18 a national agreement, given region, climate,  
19 soil, cultural practices, farm scale, market  
20 served, and the long variety of farms growing  
21 leafy greens across this country.

22           We suggested regional scale

1 appropriate and risk based marketing  
2 agreements for the purpose of educating  
3 growers on best practices in the prevention of  
4 -- of pathogen contamination in leafy greens.

5 Our suggestions were not  
6 incorporated into the proposed NLGMA. We were  
7 never contacted by the proponents about our  
8 concerns prior to the June 10th, 2009  
9 submission of the proposal to USDA. And we  
10 were only contacted on October 5th by a  
11 representative of the proponents solely for  
12 the purposes of collecting data about the food  
13 safety costs for small farms.

14 I should also note that in spring  
15 of this year I was on a conference call hosted  
16 by the North Carolina Fresh Produce Safety  
17 Task Force. Mr. Guenther was in attendance  
18 and spoke at that task -- at that conference  
19 call. I did in fact raise concerns at that --  
20 in that call about the appropriateness of  
21 these agreements. There was never any follow-  
22 up from Mr. Guenther or any other member of

1 the proponent group to try to get me to  
2 elaborate on my concerns or identify how the  
3 concerns of small growers might be  
4 incorporated into the agreement.

5           A vast -- the vast majority of the  
6 3500 comments submitted in response to the  
7 ANPR opposed the NLGMA concept. At least 30  
8 agencies representing -- and agencies being  
9 organizations like mine or state departments  
10 of agriculture representing small, diversified  
11 organic agriculture interests made comments  
12 opposing the agreement or making  
13 recommendations for it that were not  
14 incorporated by the proponents. And there is  
15 no evidence the proponents made contact or  
16 outreach to any of those other organizations  
17 besides CFSA prior to the proposal of this  
18 agreement on June 10th.

19           I also wish to call attention to  
20 testimony in the hearing in Syracuse where a  
21 representative of the Produce Marketing  
22 Association indicated that the industry

1 position indicated -- I'm sorry -- indicated  
2 the industry position that the NLGMA would  
3 more quickly establish pathogen control  
4 practices than any FDA regulatory process  
5 arising out of the pending federal legislation  
6 and would establish more specific standards  
7 for leafy greens production than any FDA  
8 process. This representative also stated that  
9 quote, everyone, end quote, agrees on the  
10 NLGMA.

11 The proponent group's website  
12 includes a projected time line for marketing  
13 agreement -- for the marketing agreement  
14 process that provides at most, by its own  
15 terms, four months for the process of  
16 developing and recommending -- developing the  
17 recommended audit metrics in a possibly short  
18 period of time for collecting input from the  
19 wide segments of the market that the  
20 proponents and USDA staff have indicated at  
21 this hearing would be involved in the metrics  
22 development process.

1 All these statements by the  
2 proponent demonstrate the clear expectation of  
3 the large scale handlers that are the  
4 principal constituents of the proponent  
5 groups, that production metrics will be  
6 dictated by those dominant industry players  
7 without concessions to the concerns of small,  
8 diversified, and organic producers, despite  
9 the protestations contrary during this  
10 hearing.

11 I also just wish to speak briefly  
12 to issues of the cost for -- of this proposal  
13 for small growers. I wish to, again, call  
14 attention to the fact that the state based  
15 protocols on which this agreement is modeled  
16 directly contradict science based standards  
17 for the use of raw manure in organic farming  
18 systems, that once adopted by the -- I'm sorry  
19 -- that the agreement would require handlers  
20 to establish traceability protocols and does  
21 not establish any protections for small  
22 growers from inappropriate costly trace

1 ability mechanisms.

2           Indeed, again, according to the  
3 statements of Mr. Hall and Mr. -- and Mr.  
4 Guenther at the -- the proponent group webinar  
5 -- I really wish I'd gotten this collated  
6 properly -- okay -- and Mr. Guenther of the  
7 proponent group United Fresh -- United Fresh,  
8 Incorporated at the proponent group webinar of  
9 August 19th, 2009, traceability protocols  
10 under the agreement would be aligned with the  
11 industry's produce traceability initiative, a  
12 program developed by and for large scale  
13 producers, handlers, and processors with  
14 mandate -- which mandates to use, the very  
15 expensive bar coding equipment, and paperwork  
16 burdens that are beyond the reach of small  
17 scale producers.

18           Also, with respect to the issue of  
19 cost and wildlife control, again, the state  
20 based agreements that are the only existing  
21 model for the national agreement, those state  
22 based agreements broadly target animal's and

1 wildlife habitat as risk. The industries of  
2 this approach contradicts research showing  
3 one, that only certain animals are likely to  
4 carry pathogens. Ongoing research by the  
5 California Department of Fish and Game based  
6 on two years of data from fecal samples has  
7 shown that contrary to prior assumptions,  
8 wildlife are not a significant source of E.  
9 coli 0157:H7, for instance.

10           Two, that practices in use on  
11 diversified conservation oriented farms,  
12 including planting of vegetative buffers  
13 between fields and around water -- waterways,  
14 research shows that they benefit food safety  
15 by slowing the movement of pathogen organisms  
16 -- pathogenic organisms in water and dust.

17           And three, again, those state  
18 based metrics do not incorporate data that  
19 indicates that the incorporation of well  
20 managed animal manure and other natural  
21 fertilizers in the soil can suppress the  
22 presence of pathogenic organisms in the soil.



1           So again, all of these issues are  
2 ones that certainly we see from the example of  
3 the California agreement and the metrics in  
4 that agreement. And as I note, those -- this  
5 agreement does not establish metrics. But  
6 given the record of inclusion or lack of  
7 inclusion of the sustainable organic and small  
8 scale diversified community, it gives us  
9 significant pause that these types of metrics  
10 will be the norm, will be what is adopted  
11 under the national agreement because --  
12 because the voices of this community -- the  
13 community that my organization represents have  
14 not been involved and at the table in  
15 developing the -- these agreements despite our  
16 efforts to submit comments through the normal  
17 channels of -- of the federal regulatory  
18 process.

19           That concludes my testimony at  
20 this point and I'd be happy to entertain any  
21 questions.

22           JUDGE HILLSON: First let me --

1 I'll receive into evidence Exhibit 133 --

2 MS. DESKINS: Judge Hillson,  
3 Before you receive it, some of the pages we  
4 had were out of order. Could he just state  
5 what pages are supposed to be in the exhibit?

6 JUDGE HILLSON: I thought --

7 MR. MCREYNOLDS: Are you talking  
8 about my written testimony?

9 MS. DESKINS: Yeah.

10 MR. MCREYNOLDS: Yeah. I wrote on  
11 the bottom. You'll find in the lower right-  
12 hand corner page -- handwritten page numbering  
13 or --

14 MS. DESKINS: Okay.

15 MR. MCREYNOLDS: Are you talking  
16 about the CFSA comments on the --

17 MS. DESKINS: The reason I'm  
18 asking is we have a page 4 and it didn't seem  
19 like it followed page 3. I just --

20 MR. MCREYNOLDS: Yeah. Page 3 and  
21 4, again, I apologize, are you of order.

22 JUDGE HILLSON: If it makes you

1 feel better, the copy he gave me he must have  
2 re-stapled because my  
3 pages --

4 MR. MCREYNOLDS: Only some of them  
5 didn't collate.

6 MS. DESKINS: Okay. So the record  
7 copies --

8 JUDGE HILLSON: The record copy is  
9 okay.

10 MS. DESKINS: Okay.

11 MR. MCREYNOLDS: Yeah.

12 JUDGE HILLSON: So 133, your  
13 written statement and 134, which is the  
14 resubmission of your statement in response to  
15 the ANPR, are both received into evidence.

16 (WHEREUPON, Exhibit Numbers 133  
17 and 134 were submitted into  
18 evidence.)

19 JUDGE HILLSON: And let me first  
20 ask Mr. Etko if he has any further direct to  
21 ask Mr. McReynolds?

22 DIRECT EXAMINATION BY THE ORGANIC COALITION:

1                   MR. ETKA: Thank you for your  
2 testimony, Mr. McReynolds.

3                   MR. MCREYNOLDS: Certainly.

4                   MR. ETKA: I have one question, in  
5 your written testimony after point number  
6 five, which in your written testimony is on  
7 page 3, second bullet, you make reference to  
8 ongoing research by the California Department  
9 of Fish and Game with regard to fecal samples  
10 from wildlife. And in that regard, are you  
11 generally aware of the testimony provided by  
12 Garth Coll or (inaudible) at the Monterrey  
13 hearing on this issue?

14                   MR. MCREYNOLDS: Yes, I am.

15                   MR. ETKA: And are you further  
16 generally aware that during that Monterrey  
17 hearing there was some cross-examination by a  
18 member of the audience suggesting that the  
19 funding for that research had been cut off?

20                   MR. MCREYNOLDS: Yes, I am.

21                   MR. ETKA: And lastly, are you  
22 aware that the funding for that study has been

1 restored recently through a grant from the  
2 University of California at Davis for produce  
3 safety?

4 MR. MCREYNOLDS: Yes, I am.

5 MR. ETKA: Thank you very much.

6 JUDGE HILLSON: Okay. Let me ask  
7 the USDA panel if they have questions of Mr.  
8 McReynolds. Ms. Schmaedick?

9 CROSS-EXAMINATION BY THE USDA:

10 MS. SCHMAEDICK: Thank you.  
11 Melissa Schmaedick, USDA. Thank you, Mr.  
12 McReynolds for your statement.

13 MR. MCREYNOLDS: Sure.

14 MS. SCHMAEDICK: So if I  
15 understand correctly -- I guess I'm confused.  
16 On the first page of your statement you  
17 encourage the secretary to reject this  
18 proposed agreement and you do not believe that  
19 any modifications to this proposed agreement  
20 could salvage it. So my question is your  
21 comments about the need to include  
22 representation for the conservation interest

1 groups or small producer and handlers or  
2 organic industry, if those -- if interests  
3 were to be represented in this process, is it  
4 still your opinion that this agreement could  
5 not be salvaged?

6 MR. MCREYNOLDS: It is my opinion  
7 that those parties, those entities, should  
8 have been involved in the development of this  
9 proposal that USDA -- that -- and if it -- and  
10 that the appropriate mechanism for  
11 distributing information about microbial  
12 contamination is educational and that would be  
13 -- you know, that would be the focus of any  
14 agreement, should be the focus of any effort  
15 like this.

16 MS. SCHMAEDICK: So --

17 MR. MCREYNOLDS: So adding -- I'm  
18 sorry to -- so adding at this stage these  
19 recommendations of additional people here or  
20 there do not sufficiently address the fact  
21 that from the start this process has not had  
22 sufficient engagement from diversified organic

1 and the small scale farming community.

2 MS. SCHMAEDICK: And if those  
3 interests were to be included in the  
4 development of any proposed metrics, that  
5 would also not satisfy your concerns?

6 MR. MCREYNOLDS: Yes, because I  
7 don't believe that development of metrics is  
8 an appropriate vehicle for this -- for the  
9 development of a food safety regime under --  
10 under AMS authority.

11 MS. SCHMAEDICK: Okay. Thank you.  
12 No further questions.

13 JUDGE HILLSON: Anything else from  
14 the USDA panel? Okay. I don't see any  
15 questions. How about the proponents? What?  
16 Well, get the hand up faster, Mr. Souza.

17 MR. SOUZA: Thank you. Anthony  
18 Souza, USDA. One quick question, Mr.  
19 Reynolds. You state in your testimony that  
20 you do not feel that AMS is a proper agency  
21 because it only has expertise in marketing.  
22 Do you have members that are members of the

1 National Organic Program?

2 MR. MCREYNOLDS: Absolutely.

3 MR. SOUZA: In your opinion, is  
4 that just a marketing scheme?

5 MR. MCREYNOLDS: Yes.

6 MR. SOUZA: Could you elaborate on  
7 that, please?

8 MR. MCREYNOLDS: The National  
9 Organic program is developed under statute and  
10 a different -- separate statute from the  
11 Agricultural Marketing Agreements Act as a  
12 marketing program. It is a verification of  
13 growers who have organic certification, are  
14 following a set of processes and it is a  
15 process verification system that allows that -  
16 - those growers to use a mark in commerce for  
17 -- for the purposes of demonstrating that they  
18 have complied with those processes.

19 MR. SOUZA: So the certified  
20 members are certified as following certain  
21 processes within --

22 MR. MCREYNOLDS: Under the



1 National Organic program, which I might ask  
2 Steve to help me with the exact statute under  
3 which it's authorized, but it is a separate  
4 statute from the AMAA.

5 MR. SOUZA: Okay. No further  
6 questions. Thank you.

7 JUDGE HILLSON: Anything else from  
8 the panel? Mr. Resnick?

9 CROSS-EXAMINATION BY THE PROPONENTS:

10 MR. RESNICK: Jason Resnick.  
11 Thank you very much, Mr. McReynolds, for your  
12 testimony today. I was taking a look at the  
13 comments submitted by your organization on  
14 October 4th of 2007.

15 MR. MCREYNOLDS: Uh-huh.

16 MR. RESNICK: And during today's  
17 testimony you said that your suggestions were  
18 not considered.

19 MR. MCREYNOLDS: With one  
20 exception and that is we recommended that it  
21 not be an order, like most of the agriculture  
22 community, and it is not an order.

1                   MR. RESNICK:  And I'm just curious  
2  what other recommendations you made that were  
3  not considered, other than abandoning the  
4  proposal in its entirety?

5                   MR. MCREYNOLDS:  Well, at that  
6  time there was no proposal.  This was the  
7  USDA's advanced notice of proposed rule making  
8  requesting comment on whether or not there  
9  should be a National Leafy Greens Marketing  
10 Agreement.

11                  MR. RESNICK:  To which you said  
12 there should not?

13                  MR. MCREYNOLDS:  To which we  
14 indicated there should not be and there  
15 instead should be a system that -- we took  
16 issue with the focus on national  
17 implementation and we identified that it is  
18 inappropriate to fragment the voices, in  
19 particular independent small producers by zone  
20 or by -- by -- by region when the conditions  
21 that exist for small farmers in various  
22 regions of the country are -- are consistent

1 and unique and difficult of being addressed by  
2 a national system.

3           So we called for a system. And I  
4 think if you have a chance to read the entire  
5 agreement, our entire comments, we identified  
6 issues that a regulatory system should  
7 address, including again, providing  
8 educational opportunities to ensure that the  
9 maximum amount of scientific information is  
10 available to growers to allow them to develop  
11 the best plans that match the conditions for  
12 their parts.

13           MR. RESNICK: Have you heard  
14 testimony that -- to the effect that there  
15 will be education as a part of the national  
16 agreement and part of the outreach?

17           MR. MCREYNOLDS: Heard testimony  
18 today?

19           MR. RESNICK: Or throughout these  
20 proceedings.

21           MR. MCREYNOLDS: No, I can't say  
22 that I'm familiar with specific testimony on

1 that issue from previous hearings, except from  
2 -- from opponent groups who -- who make that -  
3 - who feel like the agreement does not  
4 currently address that issue sufficiently.

5 MR. RESNICK: Are you aware of  
6 collaboration between USDA and FDA in areas of  
7 food safety?

8 MR. MCREYNOLDS: My organization  
9 helped participate in a forum that was hosted  
10 only a couple of weeks ago by the North  
11 Carolina Fresh Produce Safety Task Force where  
12 we hosted staff from both USDA and FDA and  
13 took them to the small farms. So yes, we are  
14 aware that --  
15 that --

16 MR. RESNICK: And are you aware of  
17 marketing agreements or marketing orders on  
18 the federal level that deal with food safety  
19 issues?

20 MR. MCREYNOLDS: No, I am not.

21 MR. RESNICK: Okay. Thank you. I  
22 have nothing further.

1 JUDGE HILLSON: Anything else?

2 Mr. Giclas?

3 MR. GICLAS: Hank Giclas, Western  
4 Growers. Mr. McReynolds, thank you for your  
5 testimony.

6 MR. MCREYNOLDS: Certainly.

7 MR. GICLAS: I appreciate it. I  
8 am -- I have a few questions. My first one is  
9 I think you said in your line of questioning  
10 and certainly in your testimony food safety is  
11 not a measurable attribute, I think?

12 MR. MCREYNOLDS: That's correct.

13 MR. GICLAS: So to -- you don't  
14 believe that the absence of pathogens in a  
15 product or the level of pathogens in a product  
16 can be measured?

17 MR. MCREYNOLDS: This agreement  
18 would not purport to establish a measurement  
19 system for pathogens in the end product. It  
20 would purport to establish a process for --  
21 for hazard analysis, critical control point,  
22 good agriculture practices in the production

1 of greens. Certainly in measurement of  
2 pathogens, if you wanted to measure every head  
3 of lettuce and grade it for its pathogen  
4 contamination level, that certainly would be  
5 a level of quality. That's not what I believe  
6 is being addressed with this agreement.

7 MR. GICLAS: Do you think the  
8 agreement would preclude that type of a  
9 measurement?

10 MR. MCREYNOLDS: I think good  
11 sense and economics would dictate that it  
12 would preclude that type of measurement.

13 MR. GICLAS: I -- I noticed that --  
14 -- well, let me ask you, when did you become  
15 aware of the -- the developmental efforts, if  
16 you will, relative to a National Marketing  
17 Agreement?

18 MR. MCREYNOLDS: I became aware of  
19 them in the course of the conference call with  
20 the North Carolina Fresh Produce Safety Task  
21 Force where Mr. Guenther was -- was speaking.

22 MR. GICLAS: And when was that?

1           MR. MCREYNOLDS: That was in the  
2 spring of this year. I don't have the  
3 specific date. It could have been February;  
4 it could have been May.

5           MALE VOICE: It was April.

6           MR. MCREYNOLDS: April.

7           MR. GICLAS: It preceded the  
8 opponent webinar?

9           MR. MCREYNOLDS: That's correct.

10          MR. GICLAS: Did you participate  
11 in that webinar?

12          MR. MCREYNOLDS: I did.

13          MR. GICLAS: So after those --  
14 those briefings, if you will, at the proponent  
15 webinar and the -- the earlier conference  
16 call, did you reach out to any of the  
17 proponent organizations to provide any input  
18 or direction or express concerns?

19          MR. MCREYNOLDS: Well, I provided  
20 testimony -- or provided comments in December  
21 of 2007 on the proposal. And my comments were  
22 a part of the public record that would have

1    been reviewed in this process.  Moreover, you  
2    know, we certainly have been engaged in North  
3    Carolina through the North Carolina Fresh  
4    Produce Safety Task Force in the contemplation  
5    of these issues and we have issued statements  
6    as the Task Force of what food safety  
7    agreements need to address or what food safety  
8    metrics and standards are to address, or  
9    regulations.

10                    But it seems to me that it would  
11    have been more incumbent upon the proponents  
12    to make -- to make outreach to the people who  
13    were already on record with their concerns.

14                    MR. GICLAS:  Perhaps, but that's  
15    not my question.  My question is did you reach  
16    out to any of the proponent groups?

17                    MR. MCREYNOLDS:  I spoke with Mr.  
18    Guenther on the conference call, yes.

19                    MR. GICLAS:  And that conference  
20    call was in April?

21                    MR. MCREYNOLDS:  That's correct.

22                    MR. GICLAS:  And during -- well,



1 during the course of that discussion, were  
2 there, you know, recommendations for how to  
3 address those concerns? Did you express an  
4 interest in serving on the drafting committee  
5 or assisting with the drafting of the  
6 marketing agreement?

7 MR. MCREYNOLDS: Just as with the  
8 webinar, it was clear that the tenor of the  
9 comments and the situation was not an  
10 invitation to participation.

11 MR. GICLAS: Okay. You have  
12 several quotes that are attributed to me in  
13 the context of that webinar. Do you remember  
14 -- it looks like -- I have to ask you about  
15 the -- well, let's just pick the first one.  
16 Under item three, I see the only part that's  
17 in quotes is likely. I'm representing the  
18 proponent group stated in a nationally  
19 broadcast webinar that it's likely there will  
20 continue to be super metrics, even if an NLGMA  
21 adopted. Is that the -- is that the entire  
22 statement?

1                   MR. MCREYNOLDS:  It is in response  
2  to a question, I believe.  If I remember  
3  correctly, the question was will this -- will  
4  super metrics continue to exist after this?  
5  And the -- and again, I would assume, and  
6  perhaps I'm -- perhaps it's something that  
7  should be recognized or put in an exhibit, the  
8  webinar itself.  Has that already been entered  
9  in the record of this -- this hearing?  It  
10 might be advisable that the audio recording  
11 that's currently available on NLGMA.org be  
12 entered and recognized as relevant here  
13 because it is a, you know, an audio recording  
14 and you can find different minutes of time  
15 where there particular statements were made.

16                   JUDGE HILLSON:  How do you feel  
17 about that, Ms. Deskins?  I don't have a copy  
18 of it to --

19                   MS. DESKINS:  Well, is he offering  
20 it as part of the record or just suggesting  
21 someone else to put it in?

22                   MR. MCREYNOLDS:  If it's not

1 already part of the record, I'd be happy to  
2 offer it. It's in LMGA.org, if I'm not  
3 mistaken.

4 MS. DESKINS: This is something  
5 that is from when, April?

6 MR. MCREYNOLDS: August 19th is  
7 when the webinar was broadcast. But it  
8 continues -- it's a continuous playback.  
9 Anyone can go to the website today and listen  
10 through. And that's actually what I had to do  
11 to get -- get these specific quotes, was to  
12 listen to it several times.

13 MS. DESKINS: Maybe we can ask you  
14 to take official notice of it because he  
15 doesn't have it here.

16 JUDGE HILLSON: I don't have it  
17 and I was going to ask Mr. Resnick who --

18 MR. RESNICK: We don't have it  
19 either. This is Jason Resnick. We don't have  
20 it, but we don't have any objection to -- to  
21 your taking notice of it.

22 JUDGE HILLSON: If no one has an

1 objection to my taking notice of it, then I'll  
2 take official notice that there's a webinar at  
3 NGLMA.org, is that where it is?

4 MR. MCREYNOLDS: That's correct.

5 JUDGE HILLSON: And it took place  
6 August 19th, did you say?

7 MR. RESNICK: That would be  
8 NLGMA.org

9 JUDGE HILLSON: What did I say?

10 MR. RESNICK: I think you said  
11 NGLMA.

12 JUDGE HILLSON: I won't ask you to  
13 read that one back. But I had the date right,  
14 August 19th, was it? Okay. I'll take --  
15 okay. I'll -- of that --

16 MR. RESNICK: -- for it.

17 JUDGE HILLSON: And speaking of  
18 dates, I just happened to look at the caption  
19 on your written statement, Mr. McReynolds, and  
20 it says October 22nd, 2010.

21 MR. MCREYNOLDS: Yeah. The same  
22 person that did the collating did that.

1                   JUDGE HILLSON:   Okay.  Do you have  
2 any problem if I change that to 2009?  I've  
3 been disoriented enough over the last five  
4 weeks so --

5                   MR. MCREYNOLDS:  Not at all.  
6 Thank you.

7                   JUDGE HILLSON:  So -- 2009, on the  
8 official copy.  Okay.  Do we have any other  
9 questions?  Will you still --

10                  MR. GICLAS:  Yeah, yeah.

11                  JUDGE HILLSON:  I'm sorry.

12                  MR. GICLAS:  I'm sorry.  I still  
13 want to go back to this because, you know, I  
14 don't actually recall what I said, but I'm  
15 curious if you have the rest of the context of  
16 that statement?

17                  MR. MCREYNOLDS:  It was -- I can  
18 dial it up hopefully here on the web and find  
19 the full context.  This, as I say, if memory  
20 serves it was in response to a question and so  
21 it was a fairly short statement in response  
22 and -- with what I believe the relevant

1 portion being where you specifically stated  
2 that it was likely in response to a question  
3 you stated, quote, it was likely that --

4 JUDGE HILLSON: Okay. I've taken  
5 official notice. That means you can all go  
6 back and look at it and use it however you  
7 want to in your briefs and quote it or not  
8 quote it. Do whatever you want with it.

9 MR. RESNICK: I'll just confirm  
10 the date was August 19th of 2009.

11 JUDGE HILLSON: Okay. I had that  
12 right at least, okay.

13 MR. GICLAS: Can I ask if there  
14 was any discussion on that briefing of the  
15 proponent's intent relative to super metrics?

16 MR. MCREYNOLDS: I believe there  
17 was, yes.

18 MR. GICLAS: And do you recall the  
19 tenor of that discussion?

20 MR. MCREYNOLDS: I think it was  
21 consistent with the intents discussion that  
22 you all -- that the proponent groups have made

1 in the course of this, that the intent is that  
2 it would eliminate super metrics. As we've  
3 heard in testimony today, there is strong  
4 reason to doubt that it will in fact reduce or  
5 eliminate super metrics.

6 MR. GICLAS: Thank you. I also  
7 wanted to ask questions about the -- the state  
8 based research.

9 MR. MCREYNOLDS: Uh-huh.

10 MR. GICLAS: On the bottom of what  
11 I believe is page 3 --

12 MR. MCREYNOLDS: Right.

13 MR. GICLAS: -- under item number  
14 5 --

15 MR. MCREYNOLDS: Yes.

16 MR. GICLAS: -- ongoing research  
17 by the California Department of Fish and Game  
18 based on two years of data from fecal samples  
19 shown contrary to prior assumptions wildlife  
20 are not a significant source of E. coli. What  
21 -- what do you consider a significant source?

22 MR. MCREYNOLDS: The Fish and Game

1 Department's research indicated a prevalence  
2 of E. coli 0157:H7 in wild population of  
3 animals in California at less than one half of  
4 one percent, so I would consider that  
5 insignificant.

6 MR. GICLAS: So what do you  
7 consider significant?

8 MR. MCREYNOLDS: I think that is  
9 going to vary based on -- on other factors.  
10 And so I think the key point is that the state  
11 based LGMA's have this focus on wild animals  
12 that in fact is clearly an insignificant  
13 factor.

14 MR. GICLAS: Were you -- did you --  
15 -- are you aware of Dr. Michelle J. Russell's  
16 testimony at the Yuma hearings on the risks  
17 associated with wildlife?

18 MR. MCREYNOLDS: I am not.

19 MR. GICLAS: Okay. And I guess my  
20 last question is you don't believe that there  
21 are any modifications to this proposed  
22 agreement that in your mind can salvage it?



1 MR. MCREYNOLDS: That's correct.

2 I believe it should go back to the drawing  
3 board.

4 MR. GICLAS: Thank you.

5 MR. MCREYNOLDS: Thank you.

6 JUDGE HILLSON: Other questions  
7 from the proponent table? Mr. Guenther?

8 MR. GUENTHER: Yes. Robert  
9 Gunter, United Fresh Produce. Thank you, Mr.  
10 McReynolds --

11 MR. MCREYNOLDS: Thank you.

12 MR. GUENTHER: -- for testifying.  
13 Several questions. Let me start out by  
14 asking, you mentioned in your testimony and  
15 several witnesses this afternoon have  
16 mentioned about food safety legislation moving  
17 through Congress -- with the hearing this  
18 morning about food safety in the senate. The  
19 House has already passed the bill. And you  
20 also state in this that the FDA has the  
21 primary jurisdiction over food safety related  
22 -- especially related to produce, which is the

1 actual statement. Is this -- based on what  
2 you see here, does this mean that your group  
3 and your organization support federal  
4 legislation related to produce food safety?

5 MR. MCREYNOLDS: We believe that  
6 federal legislation on the issue of food  
7 safety is coming and we are actively engaged  
8 with the organizations working in D.C. to  
9 provide feedback and information and --

10 MR. GUENTHER: What kind of  
11 feedback and information?

12 MR. MCREYNOLDS: We are engaged  
13 with staffers on the relevant committees.

14 MR. GUENTHER: But what  
15 specifically are you looking for?

16 JUDGE HILLSON: If you ask a  
17 question, you've got to let him answer it.  
18 Don't interrupt him.

19 MR. MCREYNOLDS: We are -- our  
20 comments specifically -- our suggestions for  
21 legislative language specifically address  
22 factors that FDA should take into account in

1 developing, for instance, performance  
2 standards for fresh produce production, which  
3 would include taking -- you know, verifying or  
4 evaluating the impact on small farms, ensuring  
5 that any guidance -- any regulations do not in  
6 fact conflict with the National Organic  
7 Program or with NRCS programs and other such  
8 items.

9 MR. GUENTHER: So the language  
10 that is in the House bill is something that  
11 you guys are comfortable with?

12 MR. MCREYNOLDS: No. We are  
13 looking for -- we are looking for  
14 significantly stronger language that would  
15 specifically require coordination with the  
16 Department of Agriculture programs to ensue  
17 that congruence between the different issues.

18 MR. GUENTHER: Do you have a copy  
19 of the Federal Register notice?

20 MR. MCREYNOLDS: I do.

21 MR. GUENTHER: Can you turn to  
22 page -- I guess it's the second page I have

1 here, 45566. And in the middle of the third  
2 column regarding -- it starts out with  
3 testimony. Can you read that first --

4 MR. MCREYNOLDS: I'm sorry, the  
5 third column?

6 MR. GUENTHER: The third column in  
7 the middle, it starts off with the word  
8 "testimony." Will you read that -- just that  
9 one paragraph?

10 MR. MCREYNOLDS: Sure. Testimony  
11 is invited at the hearing on the proposed  
12 marketing agreement and all of its provisions  
13 as well as any appropriate modifications or  
14 alternatives.

15 MR. GUENTHER: So this process  
16 we've been through that the proponent groups  
17 have offered out to the leafy green industry  
18 in this country, they've offered this as a  
19 concept. USDA has published in the federal  
20 registry notice, we've gone through a month of  
21 hearings.

22 MR. MCREYNOLDS: Uh-huh.

1                   MR. GUENTHER:  And we're -- at  
2  every point in this process, there are  
3  opportunities to ask for modifications or  
4  change these things.  Can you give us two or  
5  three examples of where you see particularly  
6  in this -- in this proposal that you would  
7  like to see changed?

8                   MR. MCREYNOLDS:  Well, as I've  
9  stated in my testimony, the -- where it is  
10 right now is -- is incapable of being  
11 salvaged.  AMS does not have authority to  
12 issue the agreement as it's drafted and the --  
13 it's addressing -- it's -- information  
14 relating to the scale -- you know,  
15 appropriateness to the scale and nature of the  
16 farming operations is simply far beyond any  
17 point where it can be salvaged.

18                   MR. GUENTHER:  Would you recommend  
19 a totally redo of this?  I mean, that's  
20 probably not the right word, redo, but would  
21 you just totally get rid of it, basically?

22                   MR. MCREYNOLDS:  We are

1 recommending that the Department of  
2 Agriculture not adopt this -- not adopt this  
3 agreement, that's correct.

4 MR. GUENTHER: So you mentioned  
5 the fact that you really had no input into  
6 this, either from the groups here and others  
7 who were part of the proponent group. I'll  
8 add that I think it was stated earlier today  
9 that a number of the groups that participated  
10 in this process aren't on the list of  
11 proponents right now. I mean, there were a  
12 number of groups that -- that participated in  
13 this process and decided they didn't think  
14 this was right at this point in time.

15 Do you think that this entire  
16 process has not provided the opportunity for  
17 you and the people you represent, the  
18 organizations you represent, to come up with  
19 a new idea, a new concept, something  
20 different, something that would change it to  
21 make it more palatable to your groups?

22 MR. MCREYNOLDS: We proposed a

1 process -- a concept in response to the ANPR  
2 back in December of 2007. That is where we  
3 think the start ought to be. And that is in  
4 no way, shape, or form reflected in this  
5 agreement, in this proposed agreement.

6 MR. GUENTHER: No further  
7 questions.

8 JUDGE HILLSON: Do we have other  
9 questions? Mr. Etkka, do you want to do some  
10 redirect?

11 REDIRECT EXAMINATION BY THE ORGANIC COALITION:

12 MR. ETKA: Yes. Steve Etkka,  
13 National Organic Coalition. Just a quick  
14 question. Are you aware that these  
15 proceedings are governed under the  
16 Agricultural Marketing Amendment Act of 1937,  
17 whereas organic certification is governed  
18 under the Organic Foods Production Act of  
19 1990?

20 MR. MCREYNOLDS: Yes, I am. Thank  
21 you for reminding me of the statute.

22 JUDGE HILLSON: Anything else?

1 Okay, Mr. McReynolds. You may step down.

2 Thank you.

3 MS. HYATT: I have a question.

4 JUDGE HILLSON: I didn't see that.

5 Okay. Come on up. Identify yourself.

6 MS. HYATT: Hi. My name is

7 Francesca Hyatt. I'm from the Friends of the

8 Federated group in Durham, North Carolina and

9 we are a small advocacy organization.

10 JUDGE HILLSON: I'm going to have

11 to ask you to spell you name. You said that

12 sort of quickly.

13 MS. HYATT: Sure, thank you.

14 Francesca, that's F-r-a-n-c-e-s-c-a, Hyatt is

15 my last name.

16 JUDGE HILLSON: Is that with a Y

17 or I?

18 MS. HYATT: A Y. And I'm with the

19 Friends of the Federate group in Durham and

20 we're a small, nonprofit advocacy organization

21 that gives attention to small farmers' rights

22 and also cultural and biological diversity.



1 And thank you for your testimony. I have a  
2 couple of questions. The first one is the  
3 process. If I understand correctly, if the  
4 Department of Agriculture chooses to adopt the  
5 creation of this NLGMA, there will be a period  
6 of I don't know how long where the actual  
7 content of the agreement is drafted, is that  
8 correct?

9 MR. MCREYNOLDS: That is my  
10 understanding, yes.

11 MS. HYATT: So far the actual  
12 regulations of the agreement are not complete?

13 MR. MCREYNOLDS: There are no  
14 metrics in place and no metrics proposed as  
15 part of this agreement.

16 MS. HYATT: Okay. So if they were  
17 to adopt the creation of this agreement, would  
18 there be -- or what would the capacity and the  
19 opportunity be for the farmers that you work  
20 with to continue to have their interests and  
21 views represented in the actual content of the  
22 agreement?

1                   MR. MCREYNOLDS: Well, I would say  
2 that I know that any metrics that would be  
3 proposed by the administrative committee would  
4 be sent to the Department of Agriculture for -  
5 - for publication and public comment and  
6 approval. You know, again, based on the time  
7 line that is on the proponent group website,  
8 the time period for developing comments and  
9 then publishing them and getting feedback is  
10 approximately five months, which I would say  
11 is an insufficient amount of time for small  
12 growers in particular to digest and -- and  
13 provide meaningful feedback in response to any  
14 -- any metrics that might end up actually  
15 being proposed.

16                   MS. HYATT: So if I understand  
17 correctly, you don't believe that the capacity  
18 of small farmers to have meaningful  
19 involvement in the content is possible with  
20 the structured --

21                   MR. MCREYNOLDS: That's right.  
22 Much like my organization, they can't hire

1 general counsels to write briefs and have them  
2 due in 60 days, after the -- you know, so yes,  
3 capacity is certainly an issue for our  
4 community.

5 MS. HYATT: My second question is,  
6 again, if the NLGMA were to be adopted, in  
7 addition to concern that small producers might  
8 be shut out of the market because they're not  
9 able to comply or they choose in interest of  
10 to help with their farm -- the agreement, in  
11 addition to that concern, are there any other  
12 unintended consequences that the agreement  
13 could have? And my question is informed by  
14 reading a little bit about the California  
15 situation where it sounds like some farms had  
16 to -- buffers and our organization is  
17 interested in --

18 MR. MCREYNOLDS: Uh-huh.

19 MS. HYATT: -- biological  
20 diversity, I'm wondering what other -- you  
21 might --

22 MR. MCREYNOLDS: Right. Well, I

1 mean, as you referred to in the California  
2 experience, there certainly have been  
3 instances of destruction of practices of -- of  
4 farmers going back from conservation oriented  
5 practices meant to protect the environment,  
6 our soil and water. And so that is a  
7 significant risk in any sort of quick time  
8 process that would be involved in the  
9 development of these technical  
10 recommendations, that same sort of  
11 consequence, there would be insufficient  
12 opportunity for evaluation of the impact on  
13 the environment, yes.

14 MS. HYATT: Thank you very much.

15 MR. MCREYNOLDS: Thank you.

16 JUDGE HILLSON: Mr. Guenther?

17 MR. GUENTHER: I just have one  
18 quick question. Does your organization  
19 support good ag practices?

20 MR. MCREYNOLDS: Do we support  
21 good --

22 MR. GUENTHER: Yes.

1                   MR. MCREYNOLDS:  -- agricultural  
2 practices?

3                   MR. GUENTHER:  GAPs.

4                   MR. MCREYNOLDS:  We -- we support  
5 educating farmers on best practices for  
6 controls of pathogen microbes on their farms.  
7 We have issues with the implementation of GAP  
8 audits in some circumstances.  And, you know,  
9 I think that there are -- there's a need for  
10 more practical farmer oriented education  
11 specific to the scale, nature, and markets  
12 served of particular operations in the future  
13 evolved evolution of good agriculture  
14 practices.

15                   MR. GUENTHER:  Thank you.

16                   JUDGE HILLSON:  Any further  
17 questions for Mr. McReynolds?  You may step  
18 down, Mr. McReynolds.

19                   MR. MCREYNOLDS:  Thank you.

20                   JUDGE HILLSON:  Thank you for  
21 testifying.  And Mr. Etko, you said you have  
22 one more witness to call?  Then we have five

1 more after that.

2 MR. ETKA: Yes. We call Patrick  
3 Battle.

4 JUDGE HILLSON: I'm going to mark  
5 Mr. Battle's written statement as Exhibit 135.

6 (WHEREUPON, Exhibit Number 135 was  
7 marked for identification.)

8 MR. BATTLE: Thank you, sir.

9 PATRYK BATTLE, being first duly  
10 sworn, was examined and testified as follows:

11 JUDGE HILLSON: Please state your  
12 name and spell it for the record.

13 MR. BATTLE: My name is Patryk, P-  
14 a-t-r-y-k, Battle, B-a-t-t-l-e.

15 JUDGE HILLSON: Okay. And you  
16 have a statement you wish to read, sir?

17 MR. BATTLE: I do and I want to  
18 preface it by apologizing for an incredible  
19 preponderance of run-on sentences and other  
20 mistakes. I am a busy grower who had to work  
21 hard to find the time to come here and did not  
22 pay enough attention to the e-mails that

1 Roland sent out to notice that I should have  
2 written testimony. I expected to come here  
3 and just extemporaneously speak. So I stayed  
4 up late last night trying to make the  
5 computers in the business resource center work  
6 and they didn't work as well as I would like.  
7 Hopefully, you'll get the gist of it and I  
8 gave the best corrections I could to the one  
9 for the record.

10                   Anyways, I want to thank you for  
11 taking my testimony. I'd like you to know  
12 that I have read the proposed National Greens  
13 Marketing Agreement proposal and I'm  
14 disappointed to find that the proponents had  
15 drafted a document that shows little awareness  
16 or respect for the concerns raised by myself  
17 and other small organizations in response to  
18 the 2007 call for comments on what the  
19 National Leafy Green Marketing Agreement would  
20 entail.

21                   I'm disappointed to find that with  
22 the exception of calling for voluntary

1 participation in proposed -- you know what,  
2 I'm afraid I have a different copy from what  
3 you have. One copy back. Some of it's --  
4 this is -- one of the things I had to do was  
5 like move to a different computer last night  
6 so this is from the original computer I  
7 redrafted so I was reading -- it didn't look  
8 right. Sorry. We're probably pretty close  
9 though.

10 I worked with other farmers and  
11 Carolina Farm Stewardship Association to write  
12 our organization's response to the original  
13 advanced notice proposed rule making call for  
14 comment. I note that for the moment at least  
15 the proponents are asking that the National  
16 Green -- Leafy Greens Marketing Agreement be  
17 voluntary -- as voluntary as the realities of  
18 handler and insurer's pressures will allow it  
19 to be.

20 Aside from proposing that this  
21 agreement be voluntary, the proponents have  
22 completely ignored our proposals and clearly



1 their agenda is not able to accommodate the  
2 needs of small producers here in the  
3 Carolinas. Starting with the size and  
4 proposed makeup of the administration  
5 committee, their proposal hopelessly skews the  
6 power dynamics to the benefit of large scale  
7 producers and handlers.

8           The proponents' inability to  
9 accommodate any of our requests and refusal to  
10 even acknowledge our concerns and dialogue  
11 with us combined with their stacking the  
12 administration committee in favor of large  
13 scale producers and handlers makes this  
14 proposal in my view a nonstarter.

15           The proponents make their agenda  
16 even clearer by proposing the committee  
17 members not be compensated for their time.  
18 This proposal virtually assures that truly  
19 small growers will not be able to afford to  
20 serve even in their token two allotted  
21 positions.

22           Given the slant the proponents are

1 building into the governing committees and  
2 their inability to even entertain our  
3 proposal, it is obvious that as they set  
4 metrics and make rules, they will continue to  
5 ignore our call to ensure that rules and  
6 metrics are scale appropriate.

7           In our comments on the advanced  
8 notice proposed rule making small farmers and  
9 our grassroots advocacy organizations asked  
10 that small growers in light of their excellent  
11 food safety record and their limited resources  
12 be spared the burden of complying with demands  
13 for yet more record keeping and other  
14 potentially burdensome metrics. Rather, we  
15 proposed that small farmers participate --  
16 participate by taking advantage of a proposed  
17 comprehensive cutting edge food education  
18 program that respects small farmers' reliance  
19 on natural systems.

20           Personally, I envision the  
21 voluntary study program for farmers would get  
22 credits for having documented that the farmer

1 diligently studied such material and thereby  
2 qualified as participating in that type of  
3 National Leafy Greens Marketing Agreement. It  
4 is appropriate that in such a National Leafy  
5 Green Marketing Agreement larger growers would  
6 be asked to meet higher standards because of  
7 the pathogen contamination problems they're  
8 experiencing and their need to reassure the  
9 public.

10           The nature of small producers are  
11 often very diverse both in crops and in  
12 planting time frame. Greens programs would  
13 make record keeping, water testing, and  
14 wildlife monitoring requirements impossibly  
15 burdensome on some small producers, including  
16 myself.

17           Frankly, my personal experience  
18 with GAP leads me to wonder if GAP stands for  
19 Government Agricultural Prejudices. I'm going  
20 to spare you the gory details of my GAP  
21 training unless you ask, but I will tell you  
22 that I got none of the cutting edge food

1 safety insights I expected and indeed was  
2 advised to post a notice at the farmers'  
3 markets at my farmers' market booth imploring  
4 customers to wash all produce they purchase.  
5 That's good advice as far as it goes, but  
6 without the other information, which we  
7 hopefully all know now, they would not have  
8 known that if they washed their produce  
9 inappropriately they could actually force  
10 bacteria into the produce.

11 I thought I would be trained in  
12 the role that water temperature in the  
13 emerging in rather than the rinsing of  
14 produce, emerging in water rather than rinsing  
15 it plays in facilitating pathogen infiltration  
16 of produce via -- via osmotic pressure. I  
17 wasn't. Nor did I hear a word about the role  
18 pH plays in the effectiveness of chlorine  
19 bleach.

20 And I'm going to go off of the  
21 written comment for a moment to say that when  
22 I finally got that information, I got it from

1 Elizabeth Henderson, from an article she wrote  
2 for "Growing for Market" newsletter. It  
3 scared the heck out of me. I mean, I have  
4 been in communication with extension people as  
5 much as possible for years and pursue every  
6 chance I can get for the most cutting edge  
7 information on how to make sure my produce is  
8 safe.

9           And never, ever did anybody tell  
10 me that if I had the wrong pH, bleach might  
11 not work. I mean, I don't know about you,  
12 everybody I know thinks -- thinks bleach is a  
13 guarantee of safety. If you use the right  
14 bleach solution, you take the pathogens out.

15           And so I attend a GAP training and  
16 I get all kinds of other information, I don't  
17 want to even go into some of the stuff I was  
18 told, but I don't get told this critical piece  
19 of information. I just don't find it to be --  
20 didn't find my training anyways to be a useful  
21 training.

22           I did get told this adjusting --

1 that the naturally occurring benign and  
2 beneficial microbes on produce were a part --  
3 were a part of our food safety toolkit was  
4 somehow shooting the messenger. I also  
5 learned that my farm could not pass an audit  
6 because it is a half mile from my home and the  
7 nearest -- nearest bathroom.

8           However, that is not why I pause  
9 it that perhaps GAP should stand for  
10 Government Agriculture Prejudices. Sadly I  
11 say that because it seems that the very land  
12 grant food experts that are offered to us as  
13 the experts for the proposed technical review  
14 board and also the proposals that are in the  
15 National Leafy Green Marketing Association --  
16 I mean Agreement, and what I've experienced  
17 with GAP training all seem to ignore the  
18 scientific reality of the great vulnerability  
19 of pathogenic microbes -- pathogenic microbes  
20 suffer when they're not in the anaerobic guts  
21 of their vectors.

22           Pathogens -- these pathogens are

1 mostly facultative anaerobes and as such tend  
2 to be weak competitors when they have to  
3 survive on leafy greens that have the full,  
4 robust compliment of beneficial aerobic  
5 microbes, the beneficial microbes that  
6 populate normal healthy leafy greens. These  
7 pathogens are usually unable to compete for  
8 food, get crowded out, or can even become  
9 dinner for the right aerobic microbes.

10           Unfortunately, I fear that the  
11 science that the National Leafy Green  
12 Marketing Association is being based on is  
13 this myopic science which only sees microbial  
14 problems and not microbial solutions. This  
15 puts us small growers at a great disadvantage  
16 because for many reasons, including  
17 temperament, resource availability, coil  
18 system, pest and fertility programs, and just  
19 possibly wisdom, we rely on the critical  
20 advantage of the right microbes as our main  
21 pathogen defense system.

22           Admittedly, many small farmers

1 would not have identified their practices as  
2 being designed to favor beneficial microbes as  
3 their first and most important pathogen  
4 protection, but their practices still have  
5 that effect. And they, along with those such  
6 as myself, recognize and offer up microbes as  
7 a key tool in our food safety toolbox are  
8 served very poorly by government agricultural  
9 prejudices, which ignore this huge piece of  
10 the food safety picture.

11 In closing, I'd like you to know  
12 that if you would like to question me, I will  
13 be happy to describe a myriad of other ways  
14 that this proposal will make my farm less  
15 financially and environmentally stable.  
16 However, from the conversations and advance  
17 readings of some of my colleagues'  
18 testimonies, I'm confident these points will  
19 be well covered -- well covered. Please know  
20 that I also share my colleagues' concerns that  
21 feel that my time is best devoted to the wee  
22 ones and the folly of trying to eradicate



1 rather than illicit them.

2 JUDGE HILLSON: Okay. Thanks, Mr.  
3 Battle. I'm going to receive your written  
4 testimony as Exhibit 135.

5 (WHEREUPON, Exhibit Number 135 was  
6 submitted into evidence.)

7 JUDGE HILLSON: And did you have  
8 any further direct, Mr. Etkka?

9 MR. ETKA: Not at this time.

10 JUDGE HILLSON: Okay. Let me hand  
11 it over to the USDA panel. Do we have  
12 questions from the USDA panel? Ms.  
13 Schmaedick?

14 CROSS-EXAMINATION BY USDA:

15 MS. SCHMAEDICK: Melissa  
16 Schmaedick, USDA. Thank you, Mr. Battle, for  
17 your testimony. My question is the name of  
18 the farm that you produce under?

19 MR. BATTLE: I'm sorry. Sparkling  
20 Earth Farm.

21 MS. SCHMAEDICK: Sparkling Earth  
22 Farm. That's the only question I have. Thank

1 you.

2 JUDGE HILLSON: Anything else from  
3 the panel, the USDA panel, I should say? Ms.  
4 Dash?

5 MS. DASH: Suzanne Dash. Would  
6 you be willing to identify yourself as a small  
7 or large farm?

8 MR. BATTLE: Definitely very  
9 small.

10 MS. DASH: Thank you. Who do you  
11 sell to? You sell to farmers' markets?

12 MR. BATTLE: Largely I sell  
13 retail, but I do like having the wholesale  
14 option for when I miscalculate or the weather  
15 is way better than I thought it would be and  
16 I have an abundance of greens. And I live in  
17 Yancey County in the mountains, which is a  
18 very cool climate. And leafy greens --  
19 there's many a year that I can't get a tomato  
20 crop, but almost any year, no matter how hot  
21 it is other places, I can grow great lettuce  
22 and great cooking greens straight through the

1 summer, so they're a big part of what I focus  
2 on.

3 MS. DASH: Do any of your buyers  
4 have any requirements that are food safety  
5 related?

6 MR. BATTLE: Not that they have  
7 expressed to me so far. But I do fear,  
8 especially my favorite market, which is my  
9 local food co-op, which is struggling to  
10 survive the greater success of the larger  
11 health food supermarkets, could easily just be  
12 bulldozed into going along with this Leafy  
13 Green Marketing Agreement, just not having the  
14 time to -- to say, "No, we're going to opt out  
15 of it." And that could limit my ability to  
16 sell to them.

17 MS. DASH: And could you tell us  
18 how many acres you farm and what commodities  
19 you grow -- leafy greens?

20 MR. BATTLE: Actually, this year I  
21 took off a year and basically only did garlic.  
22 I had other projects I was working on. But

1 usually -- recently until the economic crash  
2 made it hard for me to get the price I needed  
3 for eggs that were fed organic -- chickens  
4 that were fed organic feed to raise eggs, I  
5 had a combined animal and vegetable process.  
6 I did about 400 layers and a great array of  
7 cooking greens and salad greens and other  
8 vegetables.

9 I've actually moved away from the  
10 diversity I used to do in CSA because I work  
11 part-time and I couldn't really manage all  
12 that. So large focus on potatoes, storage  
13 crops, (inaudible) and artichokes, cooking  
14 greens, stuff like that, and then eggs.

15 MS. DASH: Thank you. That's all  
16 the questions.

17 JUDGE HILLSON: Anything else from  
18 the USDA panel? How about the proponent  
19 panel? Mr. Resnick?

20 CROSS-EXAMINATION BY THE PROPONENTS:

21 MR. RESNICK: Jason Resnick.  
22 Thank you very much for your testimony today.

1 Just a couple of questions. You state in your  
2 testimony that you're skeptical about the  
3 science food safety is based on today?

4 MR. BATTLE: I'm skeptical of how  
5 it's been presented to me and appalled that  
6 there's stuff that I think is critical that I  
7 haven't gotten from the current system.

8 MR. RESNICK: Do you think there  
9 is any difference between the science that you  
10 expect would flow from this agreement, should  
11 it be implemented, and the science of  
12 potential FDA regulation? Do you think  
13 they're different or the same?

14 MR. BATTLE: I haven't given that  
15 any consideration, I have to be honest. I --  
16 I fear that all the science that we are  
17 currently being offered, as I've said in my  
18 statement, is not paying enough attention to  
19 the key role that microbial health plays on  
20 small farms. And I don't really have a lot of  
21 faith, given the makeup of the proposed  
22 committees for the Leafy Green Marketing

1 Agreement that there will be much of a focus  
2 on that. So I guess -- I can't say I'm a lot  
3 more optimistic about the FDA, to tell you the  
4 truth. I'm pretty bleak about it. I'm not  
5 optimistic in what I'm seeing.

6 MR. RESNICK: I thought you would  
7 say that. Thank you.

8 MR. RESNICK: What percentage of  
9 your leafy greens do you sell to farmers'  
10 markets?

11 MR. BATTLE: The last few years  
12 it's been near 100 percent. I've not done  
13 wholesaling lately. I would like to say  
14 though that I'm more than I should be a big  
15 person -- big picture person and an activist.  
16 And I care a whole lot that we have a really  
17 dynamic, strong local food industry and I  
18 really care a whole lot that my food co-op  
19 really be involved in that.

20 And I'm also -- I give a fair  
21 amount of talks and really -- you know, I'm  
22 teaching at a local community college right

1 now organic growing kind of techniques and  
2 stuff and have farmers that attend those kind  
3 of sessions and stuff. And they're just  
4 breaking in and for them -- I mean, a lot of  
5 them are, you know, former tobacco growers and  
6 they're not -- they don't have the -- I could  
7 sell really well and I'm really ambitious  
8 about the price that I want to get. I'm fussy  
9 about, you know, where I market and all that.

10           A lot of them just want to sell  
11 commodities. And I sit there all the time and  
12 look at the irony of the fact that my food co-  
13 op and the local health food stores really  
14 want local greens. And lots of times they're  
15 selling stuff from California. Because most  
16 of the farmers can get a better price at  
17 retail and they're not going to give the price  
18 to the stores that the stores need. So I've  
19 seen the potential and have taken some steps  
20 and hope to take more steps to hook up these  
21 new growers for growing stuff. It would be  
22 easy for them to do. If they've grown

1 tobacco, they can grow kale. And frankly, I  
2 see this added burden as being another  
3 impediment to them taking that on.

4 MR. RESNICK: If the retailer --  
5 you understand the retailer can not be a  
6 signatory to the agreement?

7 MR. BATTLE: Yes, I do.

8 MR. RESNICK: And that the CSA has  
9 direct buying relationships with the farmer?  
10 So do you see how that could be considered  
11 outside the scope of the agreement?

12 MR. BATTLE: Well, if -- like, for  
13 example, Earth Fare, Earth Fare has on  
14 occasion, I don't know if they're doing it  
15 now, but they -- they go back and forth  
16 between saying everything has got to go to our  
17 terminal, which would be a handler, and you  
18 could sell direct to the store.

19 You know, Green Light, you know,  
20 is more than one store. It has ambitions of  
21 being more stores and that could happen again  
22 in the future, you know. My partner, Diane,



1 is a produce manager for our food co-op for a  
2 long time and she was a constant advocate of  
3 getting the local state regional co-ops to buy  
4 together to be more efficient and that would  
5 then become handlers. So all those situations  
6 would then create the impediments I fear.

7 MR. RESNICK: Okay. I have no  
8 further questions. Thank you.

9 JUDGE HILLSON: Anything else from  
10 the proponent's table? Mr. Hall?

11 MR. HALL: Charles Hall, Georgia  
12 Fruit and Vegetable Association. Mr. Battle,  
13 thank you for your testimony. In the summer  
14 of '06 -- or excuse me, the fall of '06 and  
15 the summer of '08 when we had the spinach  
16 issue nationally and tomato issue nationally,  
17 how did that affect your farm?

18 MR. BATTLE: It was no problem. I  
19 was selling direct. Actually, I was also  
20 selling -- I was selling some greens, but I  
21 was selling those direct wholesale. And  
22 nobody was misguided enough to think that our

1 stuff wasn't safe. I mean, what I heard about  
2 spinach is, "I wish I could get some," you  
3 know.

4 I did -- a good friend who runs  
5 Mountain Food Products, which is probably the  
6 -- the high end produce handler for Asheville,  
7 sells to the better restaurants and all, and  
8 he had to scramble real hard. And he found  
9 Colorado spinach and got it back on menus for  
10 restaurants in less than a week. But I've  
11 heard from him several times. He's been quite  
12 appalled at the way -- the way these food  
13 scares have been handled and the lack of  
14 clarity that consumers have about where the  
15 threats are coming from and what food is safe  
16 and what food is not safe.

17 MR. HALL: Do you think a -- some  
18 type of national food safety program would be  
19 of help nationwide? Obviously you're dealing  
20 primarily on a local market, a local customer  
21 base, how do we overcome that -- the concern  
22 you're -- to?

1                   MR. BATTLE: I see the -- I mean,  
2 even Ron Aspen at Mountain Food Products tries  
3 always to get as much local food as possible,  
4 but we, as I just described, are not meeting  
5 the demand for wholesale. I see that the  
6 large growers do have a problem and do need to  
7 reassure the public that they're doing things  
8 to -- to forestall packaging contamination.  
9 And I know that my fellow farmers, my fellow  
10 small farmers are passionate about providing  
11 food that is healthy, as Harry would say, or  
12 I guess he's called George today, would say,  
13 rather than -- than just safe food.

14                   But a component of that is of  
15 course safe food. So what I really -- what I  
16 call for here and what I continually call for  
17 is cooperation whereby on a large scale you  
18 set the metrics you need to reassure -- with  
19 your rather problematic industry, as far as I  
20 can see. There's a lot of problems to large  
21 scale production and mixing all that stuff  
22 together, putting it back. We've been over

1 this. It's not -- you know, it's not rocket  
2 science. We all understand what those  
3 problems are.

4 We don't have those, you know.

5 And indeed I read some testimony this morning  
6 -- I wasn't here, but I read some testimony  
7 where somebody said that it doesn't matter if  
8 you get contamination from a small farm or a  
9 large farm, you still get sick. And I would  
10 say I wish the USDA -- USDA would ask the CDC  
11 for some research on this. Because when I --  
12 I mean, just my, you know, uneducated sense of  
13 statistics, if you have a small farm that is  
14 unlucky enough to not have this, you know,  
15 biological advantage I talk about whereby the  
16 aerobic microbes are probably going to eat  
17 that pathogen for lunch and a pathogen managed  
18 to make -- manages to make it onto their  
19 greens and those greens get distributed, the -  
20 - what was posited this morning was that those  
21 greens would still make people equally sick.

22 But when we look at these

1 outbreaks, from what I can see, you have  
2 millions of servings of food going out and you  
3 get a few people who die, I don't want to  
4 denigrate the tragedy of that, right, and  
5 maybe 60 that get sick. So for a small  
6 farmer, their odds are real good, they're not  
7 going to hit those vulnerable people --  
8 vulnerable people.

9           So it seems to me that we are less  
10 of a threat just even based on the statistics.  
11 So I would hope that we can together work in  
12 a system whereby you take stronger measures to  
13 ensure that you're inherently more dangerous  
14 methods are protecting the public and that we  
15 take equally strong measures to educate  
16 ourselves thoroughly so that none of us have  
17 the catastrophe that it would be if we ever  
18 made somebody sick or even worse, caused  
19 somebody to die.

20           And my experience with the growers  
21 that I work with and know is that we're  
22 information hounds. I mean, we all want the

1 cutting edge information and we all want as  
2 much of it as we can get. And I feel under-  
3 served that way. I feel like we're not  
4 getting that information.

5 MR. HALL: Mr. Battle, based on  
6 your testimony, as I understand, you're food  
7 safety practice is basically the microbes --  
8 the good microbes are killing the bad microbes  
9 and that's -- that's how the --

10 MR. BATTLE: That's -- that's I  
11 think the most dynamic and most important part  
12 of my defense. I mean, I was telling somebody  
13 on one of the breaks today, I shudder to  
14 think, from what I know now about how I, as  
15 one of the first farmers to introduce salad  
16 mix to my region and one of the first farmers  
17 in this country possibly to be doing that in  
18 the eighties, how I handled greens then.

19 I did everything wrong. I didn't  
20 understand about osmotic pressure. I thought  
21 the colder the water, the better and I wanted  
22 it to be nice and crisp so I let it sit in

1 there a while, you know. I, you know, was --  
2 at that time understood -- you know, I'd  
3 already heard that manure should be in the  
4 soil longer and stuff so I had taken care of  
5 that part.

6 But I took that stuff, I put it in  
7 bags, and I sold it and I didn't make anybody  
8 sick, you know. I don't even do salad mix  
9 anymore. I don't want to take the risk. I  
10 use as much common sense, good -- good  
11 handling practices as I can. I unfortunately  
12 don't have a water source that I'm as happy  
13 about as I'd like. It's -- you know, there  
14 are people upstream that I don't like how they  
15 handle their animals. I only use drip  
16 irrigation and I do actually believe that the  
17 great biological diversity and health in my  
18 soil is helping me a whole lot with that  
19 potential threat.

20 MR. HALL: So you are using other  
21 good agriculture practices?

22 MR. BATTLE: Every -- everything I

1 can come up with, yeah. And I'm sure that  
2 every other small grower I know is too. As  
3 I've said, it's a catastrophe for us. I mean,  
4 it's a catastrophe for anybody. But for us it  
5 could mean we lose our farm and we have to  
6 live with the fact that somebody in our  
7 community who thought they were being nurtured  
8 by us instead has been harmed by us.

9 I mean, it's probably not a  
10 surprise to anybody that, you know, most of  
11 the small growers I know that are doing this  
12 are not doing this because it's the fast track  
13 to wealth, you know. We're doing this because  
14 it's what feels good; it's meaningful to us.  
15 So it's critical that we do stuff that makes  
16 us feel good. Making people sick is not going  
17 to make us feel good.

18 MR. HALL: Thank you, sir. I  
19 appreciate it.

20 JUDGE HILLSON: Any other  
21 questions for Mr. Battle? Thank you for  
22 testifying, Mr. Battle. You may step down.



1 I have five more witnesses on my list here and  
2 I'm going to just let them testify in the  
3 order they signed up. I'll just go over it  
4 one more time. It's -- it will be Sawyer,  
5 Hamil, Gunter, Johnson, and Hamrick. So Mr.  
6 Sawyer, if you're ready, you can come on up.

7 MR. HAMIL: Your Honor?

8 JUDGE HILLSON: Yes?

9 MR. HAMIL: I would request that I  
10 go after Ms. Hamrick because she is testifying  
11 on issues that I would like to clear up her  
12 testimony. She works for the insurance  
13 company.

14 JUDGE HILLSON: All right. If  
15 there's anyone else that has an urgent need to  
16 get out sooner rather than later, you need to  
17 let me know now. Okay. So in any event,  
18 we'll have Mr. Sawyer go. So we should do  
19 then Gunter, Johnson, Hamrick, and Hamil.  
20 Okay. I'm going to - I'm going to mark Mr.  
21 Sawyer's written testimony as Exhibit 136.

22 (WHEREUPON, Exhibit Number 136 was

1                   marked for identification.)

2                   CHRIS SAWYER, being first duly was  
3 sworn, was examined and testified as follows:

4                   JUDGE HILLSON: Please state your  
5 name and spell it for the record.

6                   MR. SAWYER: Chris Sawyer, C-h-r-  
7 i-s, S-a-w-y-e-r.

8                   JUDGE HILLSON: Okay. And you  
9 have a statement you'd like to read?

10                  MR. SAWYER: My statement was kind  
11 of like Mr. Battle's. I didn't realize you  
12 were taking written statements and so it's  
13 just basically an outline and I might digress  
14 from it from time to time. And if I could go  
15 get --

16                  JUDGE HILLSON: You just go on.  
17 We'll figure it out.

18                  MR. SAWYER: And I'm certainly not  
19 comfortable speaking up here, but this is a  
20 very important issue to me and I appreciate  
21 the opportunity to be able to address this  
22 issue. My background is varied. In the past

1 I've owned three restaurants. I'm currently  
2 a certified organic farmer. I've been  
3 certified for 11 years and I'm submitting this  
4 comment on behalf of Jake's Farm and Carolina  
5 Organic Growers, which is a marketing  
6 cooperative with five members.

7 I'm concerned that the Leafy  
8 Greens Marketing Agreement does little to  
9 ensure safer food while increasing costs to  
10 small farmers to the extent that many will  
11 cease to farm. It might be appropriate for  
12 very large scale farms, but in fact it does  
13 little to ensure food safety. And to  
14 illustrate my point I would call attention to  
15 the GAP program, which does nothing to address  
16 the quality of overhead irrigation water.

17 My farm was used as a  
18 demonstration farm to teach other farmers how  
19 to comply with GAP and I've passed all areas  
20 of GAP, with the exception of the inspector  
21 telling me that if he saw my dog in the field,  
22 he would just get in his and give me an

1 automatic failure and not look any further at  
2 the farm. I'll go into that a little bit more  
3 later.

4           As a background in restaurants, I  
5 know a little bit about food pathogens. In  
6 fact, I have what they call a pickle license,  
7 or the FDA certification to the process of  
8 acidified foods and I am the co-chairman of  
9 the Farmer's Value Added Group at Blue Ridge  
10 Food Ventures where we process our food to try  
11 to add value to it to make more income on our  
12 farms.

13           My research tells me that this  
14 proposal is designed to control or limit the  
15 occurrences of food borne pathogens in leafy  
16 greens destined to be eaten in a raw state.  
17 The two main culprits seem to be to me E. coli  
18 and salmonella. What I've learned about  
19 salmonella is that it can be vectored by  
20 mammals, birds, insects, and reptiles. It's  
21 been shown to live in a desiccated state up to  
22 70 days on paper and weeks on stainless steel.

1 It can exist in soil upwards of 1300 days. It  
2 travels in water, air borne dust, and probably  
3 other means yet to be discovered.

4 E. coli infections in 2003  
5 resulted in approximately 50 million dollars  
6 in healthcare costs while obesity in that same  
7 year cost us upward of 75 billion dollars.

8 Most E. coli infections occur from undercooked  
9 meats and other sources besides vegetables.  
10 No farmer wants to sell contaminated foods  
11 unless he's of a criminal nature.

12 In California many examples of  
13 extreme measures can be sited as a result of  
14 this agreement. It is reported to be a  
15 voluntary program, but now many buyers are  
16 refusing product that is not produced under  
17 this agreement. Some farmers have destroyed  
18 acres of vegetation around their crops.  
19 Others have had whole crops refused or  
20 rejected because a tadpole was found in a  
21 water source.

22 The current standards for GAP do

1 not preclude the use of surface waters for  
2 overhead irrigation, which is an obvious  
3 shortcoming. I would suggest that we certify  
4 farmers with a basic education in microbial  
5 contamination and require ongoing credits  
6 similar to pesticide license. It's a fact  
7 that science discoveries are moving much  
8 faster than regulation could ever keep up  
9 with. This would be a way to ensure farmers  
10 are keeping up with the latest discoveries  
11 about these infectious bacteria. Farms then  
12 could be given grades as dairy operations  
13 already enjoy. I resent control, but I would  
14 willingly work toward a grade A farm  
15 operation.

16 I also think this present attitude  
17 toward commodity specific regulation is  
18 redundant, expensive, and lacks common sense.  
19 It would seem that regulations ought to  
20 include all vegetables that are or could be  
21 consumed in a raw state, including even  
22 berries or small fruits.

1           The method we use on our farm for  
2   controlling mammalian reptilian pests is  
3   through the use of working breed dogs. They  
4   also control nesting birds in our tomato vines  
5   and I would ask that exceptions be made for  
6   allowing these hardworking animals in our  
7   fields.

8           Another fact is that certified  
9   organic farms already address many of these  
10  same issues. And asking us to double up on  
11  our record keeping would be unnecessarily  
12  expensive and also redundant. We're a truck  
13  farm, meaning that we grow any and all crops  
14  that survive in our region. I know that farms  
15  experience microclimates and unique  
16  geographical aspects and that fact needs to be  
17  taken into account with any regulations  
18  forthcoming.

19           Many of my fellow farmers in the  
20  mountain regions produce vegetables and meat  
21  or dairy products on the same land. I'm  
22  concerned about food safety and always have

1    been.  And for that reason we don't practice  
2    animal husbandry.  Furthermore, the compost  
3    and regulations that already exist concerning  
4    our organic farms is very strict.  And I only  
5    use compost produced by those who manufacture  
6    it professionally.  Just because that's been  
7    our choice, I would not like to see any  
8    regulations that would prevent such actions  
9    from those farmers who do desire to have those  
10   options open for them.

11                Jake's Farm, we started -- last  
12   year we were six acres; this years I rented  
13   the five acres next door and we planted 11  
14   acres.  This has been our worst year in our  
15   ten years of existence.  Our farm was started  
16   in 1998 on a piece of raw ground.  So we've  
17   had to invest a lot of money.  In fact, we've  
18   invested \$910,000 over the last ten years.  
19   And in those ten years time we've managed to  
20   sell \$550,000 worth of vegetables.

21                Last year was our best year.  We  
22   grossed \$110,000.  This year I'll be doing



1 good if I sell \$70,000 worth of product. That  
2 difference is due to increased competition in  
3 the marketplace and extremely bad weather. I  
4 lost three plantings of corn because of excess  
5 rain. We had a flood that wiped out one of my  
6 fields and t's been the toughest year we've  
7 ever survived through.

8 My personal income tax for this  
9 last year shows a loss of \$229,000. That's  
10 what I've carried forward from the time that  
11 I've been in business and mostly that's my  
12 inheritance. So everything I own is invested  
13 in my farm. I'm not protected by a  
14 corporation umbrella. I'm personally liable  
15 for everything I sell. It's not my choice to  
16 go out of business and I can't really stand  
17 any more expenses.

18 The main issue I have with the  
19 Leafy Greens Marketing Agreement has already  
20 been mentioned by I don't know how many  
21 witnesses and it's about the wildlife and the  
22 -- and the animals in the field. Since I have

1 those dogs, I'm surrounded by deer, I'm  
2 surrounded by a national forest, I don't have  
3 any deer on my land. I have no problems with  
4 racoons or possums or voles or moles. And the  
5 dogs even point out where the snakes are so I  
6 can deal with them.

7           You know, but I've heard some real  
8 scary things about somebody finding one  
9 cantaloupe that was infected and the whole  
10 load trashed. And while they searched through  
11 the remaining cantaloupes they never found a  
12 single other infected cantaloupe. So I think  
13 sometimes these agreements and regulations can  
14 really go overboard.

15           GAP is supposed to be voluntary.  
16 I grow, like I said, 60 percent wholesale.  
17 And to get into Ingall's Market I have to be  
18 GAP certified. So we're working on that. I  
19 don't know what I'm going to do about the dog  
20 issue. I guess I'm going to have to fence my  
21 fields. We are --

22           I don't understand why you used

1 the SPA standard for small business when the  
2 USDA website says that 91 percent of the farms  
3 are under \$250,000. It seems like in the  
4 farming business that ten percent of the  
5 growers produce 90 percent of the food.

6 As a farmer, I'm already subject  
7 to regulations by the USDA, the FDA, OSHA,  
8 ICE, IRS, the Buncombe County Health  
9 Department, North Carolina Department of  
10 Agriculture, and the National Organic Program.

11 As a farmer I have to be an electrician,  
12 plumber, carpenter, a mechanic of both  
13 gasoline and diesel motors, a botanist, a  
14 salesman, a teacher, an insurance expert, an  
15 Internet expert, and now a microbiologist.

16 It's hard work to be a farmer and  
17 I think we need a lot of help. I think if  
18 this agreement or something like it is passed,  
19 that small farms also will need some help to -  
20 - with the costs that will be incurred with  
21 testing the water. Our water has always been  
22 tested. It's required by the NOP. It's

1 tested every year. With these new standards  
2 we'll require even more tests. But basically  
3 the only test we do is for coliform and just  
4 use that as an indicator. I have no way to  
5 know if my product is really safe or not  
6 unless it's actually tested for salmonella and  
7 E. coli. I can't afford those tests. I  
8 wouldn't even know where to go get them.

9           The issue of the GAP  
10 certification, one of our local co-ops that's  
11 up in Virginia named Appalachian Harvest has  
12 been able to write their own GAP standards  
13 where the farmers inspect each other instead  
14 of having to go through the expense of hiring  
15 a third party inspector. And that seems to be  
16 a good enough qualification for their virus  
17 requirements.

18           I think there might be a way that  
19 we could all come together and come up with a  
20 way that we could all have safer food, but not  
21 suffer the big expenses. One study I just  
22 read recently said that the average cost of

1 compliance in California for the Leafy Greens  
2 Marketing Agreement on a per farm basis was  
3 \$26,000. If you divide that \$26,000 into a  
4 1,000 or 5,000 acre farm, that's just small  
5 potatoes. But if you gotten an 11 acre farm  
6 that has to absorb a \$20,000 expense, that  
7 would be prohibitive and would flat put me out  
8 of business. That's all I have to say.

9 JUDGE HILLSON: Okay. Thank you  
10 for your testimony, Mr. Sawyer. I'm going to  
11 receive your written testimony into evidence  
12 as Exhibit 136.

13 (WHEREUPON, Exhibit 136 was  
14 submitted into evidence.)

15 JUDGE HILLSON: I will ask the  
16 USDA panel if they have any questions for Mr.  
17 Sawyer? Anyone? Ms. Dash?

18 CROSS-EXAMINATION BY THE USDA:

19 MS. DASH: Suzanne Dash. I was  
20 wondering if you could tell us how many acres  
21 you farm and what leafy greens you grow?

22 MR. SAWYER: In the wintertime we

1 survive on leafy greens. We have 6,000 square  
2 feet of heated greenhouses and we grow in the  
3 ground in those greenhouses leafy green crops  
4 because I can keep the nighttime temperatures  
5 at 36, 37 degrees safety and water propane.  
6 And we planted 11 acres this year.

7 MS. DASH: Thank you.

8 JUDGE HILLSON: Anything else from  
9 the USDA panel? Anything from the proponent's  
10 panel? Anything else? Any other questions?

11 EXAMINATION BY THE PUBLIC:

12 MR. HAMIL: George Hamil. It's  
13 nice to see you, Chris, thank you. In the  
14 wholesale market area, would you talk a minute  
15 about your use of uncommon varieties.

16 MR. SAWYER: That's one of the  
17 advantages we have in the marketing aspect of  
18 our farm, is that we cater to chefs and we  
19 grow the varieties that taste the best and we  
20 -- as a small farm, we can plant lots of  
21 different varieties. In fact our seed list  
22 comprises about 275 different kinds of seed.

1                   And we actually take requests from  
2 chefs in the wintertime asking them what they  
3 want us to plant, what they might like to try.  
4 And our goal is to grow the best tasting  
5 vegetables to set us aside from the standard  
6 run of the mill vegetables that you find in  
7 the grocery store.

8                   And one thing I forgot to add is  
9 that we take all this care and all these  
10 precautions and at the end of the deal, we put  
11 this food out on beautiful shelves in grocery  
12 stores for anybody and everybody to touch with  
13 whatever kind of hands happens to walk through  
14 the door. So that's another huge loophole in  
15 food safety as I see that's not being  
16 addressed. In fact, I don't even know how you  
17 could address it without changing our whole  
18 system of how the housewife purchases food.

19                   We do bag salad mix and we do bag  
20 baby spinach. And our label clearly states,  
21 "Washed once, wash again before eating." So  
22 we -- that's the best we can do. We don't --

1 our well -- we use our well water for all our  
2 overhead irrigation and we also irrigate out  
3 of the creek. And that all is filtered  
4 through sand and then used under plastic  
5 through drip irrigation. So we never use any  
6 surface water for overhead use.

7 MR. HAMIL: Would you tell us  
8 about Carolina Organic Growers?

9 MR. SAWYER: Carolina Organic  
10 Growers, when I first joined, consisted of  
11 about 27 to 30 members and then the National  
12 Organic Program came into being. And one of  
13 the bylaws is that all growers have to be  
14 certified organic. And now we only have five  
15 members. And all those other growers are  
16 still growing, but they chose to exist solely  
17 in the retail market so they're not doing any  
18 wholesaling; they dropped out of our co-op.

19 MR. HAMIL: So is Carolina Organic  
20 Growers a handler?

21 MR. SAWYER: Yes, I guess they  
22 would be a handler.



1                   MR. HAMIL:   Okay.  Now, you've  
2   been in western North Carolina for a dozen  
3   years now?

4                   MR. SAWYER:  I've been here since  
5   1987.

6                   MR. HAMIL:  Okay, since 1987.  In  
7   your experience, what would you -- what  
8   percentage of the farmers that you know would  
9   you estimate are your size or larger in terms  
10  of acreage versus your -- versus smaller than  
11  you?

12                  MR. SAWYER:  I'd say we're in the  
13  top five percent.

14                  MR. HAMIL:  So this is the 11  
15  acres would put you in the top five percent?

16                  MR. SAWYER:  I know of three farms  
17  that are 20 acres plus, then maybe four or  
18  five farms about our size and all the rest are  
19  smaller.  According to the statistics, there's  
20  like, what, 1500 farms in our area?

21                  MR. HAMIL:  Of the larger farms,  
22  how many of those farms do you personally know

1 of that are new farmers where the land was not  
2 in the family?

3 MR. SAWYER: None.

4 MR. HAMIL: So in your experience,  
5 you're in the top five percent and in that top  
6 five percent there are no new farmers in the  
7 sense of coming in and acquiring the land and  
8 paying for it with the money that they make in  
9 agriculture?

10 MR. SAWYER: One. I only know of  
11 one.

12 MR. HAMIL: You know of one?  
13 Okay. Now, if you were coming in to farming  
14 today in western North Carolina and you had  
15 only half a goal of \$50,000, do you believe  
16 that you could make a full-time living, and if  
17 so, when would you actually be making that  
18 living? How long would it be?

19 MR. SAWYER: That would depend on  
20 how much land you're trying to grow on, but I  
21 would say no. You'd have to have some off  
22 farm income. I mean, if I didn't have the off

1 farm income from my wife, we couldn't stay in  
2 business. Obviously I've already lost \$20,000  
3 this year.

4 MR. HAMIL: Thank you very much.

5 JUDGE HILLSON: Any further  
6 question for Mr. Sawyer? Okay. Thanks for  
7 testifying, sir. You can step down. I'd like  
8 -- it's ten minutes to five. I'd like to take  
9 one more ten minute break at five o'clock and  
10 then we'll do -- and then we'll go through the  
11 next four witnesses, okay? So let's go off  
12 the record and come back in ten minutes.

13 (WHEREUPON, a brief recess was  
14 observed.)

15 JUDGE HILLSON: Let's go back on  
16 the record. And the next witness is Dr. Chris  
17 Gunter.

18 CHRIS GUNTER, upon being first  
19 duly sworn, was examined and testified as  
20 follows:

21 JUDGE HILLSON: If you'd please  
22 state your name, spell it for record.

1 DR. GUNTER: Chris Gunter, C-h-r-  
2 i-s, G-u-n-t-e-r.

3 JUDGE HILLSON: Could you state --  
4 I'm marking your -- your written testimony as  
5 Exhibit 137.

6 (WHEREUPON, Exhibit Number 137 was  
7 marked for identification.)

8 JUDGE HILLSON: And if you want to  
9 -- go ahead and testimony, please do so.

10 DR. GUNTER: Thank you. My name  
11 is Dr. Chris Gunter, assistant professor in  
12 the Department of Horticultural Science at NC  
13 State University and co-chair of the North  
14 Carolina Fresh Produce Safety Task Force. I  
15 thank you for coming to North Carolina to  
16 conduct this hearing on the proposed National  
17 Leafy Greens Marketing Agreement.

18 I'm testifying today on behalf of  
19 the North Carolina Fresh Produce Safety Task  
20 Force, which I'll refer to as the Task Force  
21 throughout the rest of this testimony. The  
22 Task Force is a unique partnership that brings

1 together stakeholders who have interest in  
2 North Carolina produce to address food safety  
3 risks. The group is comprised of fresh  
4 produce growers, support industry members,  
5 academia, and regulators and reports as a part  
6 of the North Carolina Governor's Food Safety  
7 and Defense Task Force.

8 Partners include North Carolina  
9 State University, NCA&T State University, the  
10 North Carolina Department of Agriculture and  
11 Consumer Sciences, North Carolina Farm Bureau,  
12 the FDA, individual producers, packers,  
13 produce growers, associations, and others.

14 We have five working groups that  
15 focus on the following areas: education,  
16 research, industry outreach, policy, and  
17 strategy. The Task Force partners have  
18 successfully secured more than \$220,000 in  
19 grants, developed an on farm risk reduction  
20 train the trainer curriculum and trained more  
21 than 90 North Carolina cooperative extension  
22 agents from North Carolina's 100 counties on

1 how to present this information to their  
2 constituents.

3 Task Force members have made over  
4 100 produce safety presentations both in  
5 state, out of state, and internationally.

6 Currently we're conducting simulated outbreak  
7 exercises for state produce meetings at which  
8 producers participate in a mock crisis. We  
9 have developed and -- and are finalizing an  
10 on-farm produce safety plan template and have  
11 put together a comprehensive website of  
12 resources for growers. A state wide  
13 traceability study in partnership with the  
14 Task Force, and private industry will identify  
15 areas of weakness that we will assist our  
16 producers in addressing.

17 Our policy team consists of  
18 growers, industry representatives, commodity  
19 associations, and researchers. This group has  
20 -- interacts regularly via e-mail, conference  
21 call, and face to face meetings. It's  
22 committed to providing insights and expertise

1 into how proposed federal regulations and  
2 legislation will affect North Carolina.

3           In North Carolina we take pride in  
4 our proactive approach to produce safety,  
5 rather than waiting for an incident or  
6 legislation, we're working diligently and  
7 collectively to focus our resources. Our  
8 mission is to ensure that North Carolina has  
9 competitive, vibrant, and safe produce  
10 industry.

11           The Task Force's policy group has  
12 developed several parameters that shape our  
13 views on produce safety. At the core of the  
14 policy group are North Carolina producers,  
15 large, small, conventional, organic, and  
16 geographically spread through our diverse  
17 state.

18           The Task Force believes that  
19 produce safety regulations need to incorporate  
20 the following points: be scale appropriate.  
21 All farms should comply with baseline  
22 protocols that are consistent with existing

1 rules and regulations. Produce safety  
2 regulations should not cause a producer to be  
3 out of compliance with another federal or  
4 state program. Risk based and allow for  
5 variance. Measures and solutions employed for  
6 produce safety should be risk based and allow  
7 for variance due to geographic and climatic  
8 diversity.

9 Be science based. Produce safety  
10 regulation and metrics should be base on sound  
11 science and that research must be conducted  
12 regionally. Tiered compliance. Programs  
13 should be tiered to reflect farm size, markets  
14 served, and risks. All fruit and vegetable  
15 producers should comply with baseline produce  
16 safety measures. Additional tiers of  
17 compliance would be mandated by risk, market  
18 demands, and developed based on science. We  
19 believe USDA has a tremendous technical and  
20 marketing expertise that can shape  
21 implementation of produce safety regulations.

22 Be farmer driven. Produce safety



1 initiatives should be proactively driven by  
2 the farmer and that process is inclusive of  
3 all farm sizes, crops, and includes  
4 conventional and organic production. Be --  
5 proactively mitigate risks. Mitigate risks  
6 based on scientifically derived practices  
7 through education and incentives, rather than  
8 punitive measures for noncompliance. Market  
9 recovery. Produce safety legislation and  
10 regulations should include measures from  
11 market recovery and assistance to producers,  
12 who, through no fault of their own, were  
13 materially harmed due to recalls.

14           With this backdrop of policy  
15 points, I would like to share with you some of  
16 the concerns the Task Force is hearing in  
17 North Carolina regarding potential National  
18 Leafy Green -- the potential National Leafy  
19 Greens Marketing Agreement.

20           Local markets. The local food  
21 movement in North Carolina is burgeoning. In  
22 communities across the state citizens are

1 banning together to work to increase use of  
2 locally produced fruit and vegetables in  
3 schools and other institutions. While the  
4 National Leafy Greens Marketing Agreement is  
5 to be a voluntary agreement, it will become  
6 the defacto standard for leafy greens.  
7 Producers marketing through CSAs, farmers'  
8 market -- markets and direct to consumers via  
9 on-farm stands are also pursuing alternative  
10 wholesale markets including restaurants and  
11 grocery store chains. Small producers who are  
12 not marketing nationally and choose not to  
13 sign on to the agreement fear they will lose  
14 these new potential market opportunities.

15           Allow for variance. While it's  
16 understood that audit matrix will be developed  
17 by technical review board for approval, fear  
18 among North Carolina growers, regarding the  
19 possibility that metrics for Arizona and  
20 California leafy greens production will be  
21 extended to the production systems here has  
22 been high. Our growing conditions are vastly

1 different. For example, unlike the arid  
2 climates of the west coast, North Carolina is  
3 blessed with 40 to 60 inches of rainfall per  
4 year. The majority of our producers are using  
5 irrigation from surface water sources. If a  
6 National Leafy Greens Marketing Agreement  
7 moves forward, there must be a process for  
8 audit metric variance at the state and local  
9 level to accommodate different production  
10 parameters.

11           Transparent broad based process.  
12 The process employed by the technical review  
13 board to develop metrics should be transparent  
14 and broad based. Public -- publically,  
15 proponents of the National Leafy Greens  
16 Marketing Agreement have stated, "One size  
17 does not fit all." However, many of our  
18 producers fear that a National Leafy Greens  
19 Marketing Agreement could be used by large  
20 producers to close market windows for smaller  
21 competitors.

22           Market recovery. A portion of the

1 assessment needs to be set aside in a pool of  
2 funds earmarked for producers following the  
3 guidelines to receive compensation in the  
4 event they are materially or economically  
5 harmed due to a food safety incident which  
6 through no fault of their own devastates the  
7 market.

8           Animals of significant risk.

9 While audit metrics are developed -- are not  
10 developed, North Carolina producers are  
11 concerned about animals of significant risk  
12 and how a National Leafy Greens Marketing  
13 Agreement will be implemented. Our state's  
14 agricultural production is as diverse as  
15 California agriculture; however, our largest  
16 production segments are livestock,  
17 specifically pork and poultry, which make up  
18 approximately 60 percent of our farm-gate  
19 production value. Most of our largest  
20 livestock producing counties also include  
21 fruit and vegetable production. The question  
22 of livestock production and produce safety is

1 one that requires more research to understand  
2 real risks and implement science based  
3 mitigation strategies.

4 On behalf of the North Carolina  
5 Produce -- Fresh Produce Safety Task Force, I  
6 commend you for keeping the goal of fresh  
7 produce safety and specifically improved  
8 safety in leafy greens as a high concern. I  
9 encourage you to discuss with growers both  
10 here in North Carolina and other states to  
11 keep their production practices in mind when  
12 implementing any marketing agreement. Thank  
13 you.

14 JUDGE HILLSON: Thank you, Dr.  
15 Gunter. I'm going receive your written  
16 statement in evidence as Exhibit 137.

17 (WHEREUPON, Exhibit Number 137 was  
18 submitted into evidence.)

19 JUDGE HILLSON: And let me ask the  
20 USDA panel if they have any questions for Dr.  
21 Gunter? Ms. Schmaedick?

22 CROSS-EXAMINATION BY THE USDA:

1 MS. SCHMAEDICK: Melissa  
2 Schmaedick, USDA. Thank you, Dr. Gunter, for  
3 your testimony. My first question is have you  
4 had the opportunity to read the proposed  
5 language?

6 DR. GUNTER: Yes.

7 MS. SCHMAEDICK: In your opinion,  
8 does the draft outline, does it provide the  
9 mechanisms by which some of your views and  
10 concerns that you have raised could be  
11 addressed?

12 DR. GUNTER: In some cases. In  
13 other examples there is no language that --  
14 that demonstrates that these concerns are  
15 addressed.

16 MS. SCHMAEDICK: Is there anything  
17 specific that you could recommend at this  
18 point to add to the proposed language that  
19 would address some of your concerns?

20 DR. GUNTER: If I could add, I'm  
21 not an expert on this type of language, but if  
22 I could add a piece that is a concern to

1 producers, not just in North Carolina but  
2 across the country, I would add the marketing  
3 recovery piece.

4 MS. SCHMAEDICK: Could you expand  
5 on that -- that suggestion and describe in  
6 your mind how the market recovery proposal  
7 might work?

8 DR. GUNTER: My -- my thought  
9 would be to set aside some of the funds that  
10 are gathered to help producers who are  
11 materially damaged by the -- by an outbreak  
12 incident, which -- which destroys the market,  
13 to help them in some way materially recover  
14 from that incident.

15 MS. SCHMAEDICK: So if those funds  
16 were collected, who would have oversight in  
17 the keeping of those funds and our decision  
18 making on how they might be disbursed?

19 DR. GUNTER: That, I'm not sure  
20 how they would implement that.

21 MS. SCHMAEDICK: Based on your  
22 work and experience with working in North

1 Carolina, can you expand on your suggestion of  
2 a tiered compliance program?

3 DR. GUNTER: Yes. We've met with  
4 a number of producers across the state, both  
5 large and small producers. And the recognition  
6 that all producers must have training in food  
7 safety practices has been voiced by --  
8 universally by producers across the state.  
9 The need that every producer, regardless of  
10 scale, should have some baseline training has  
11 been -- has been a -- sort of a resounding  
12 point that's been made whenever we meet with  
13 growers about this issue.

14 But there is some recognition that  
15 small growers and large growers have different  
16 market demands based on -- for food safety  
17 based on the scale of their operations. So  
18 it's usually larger producers having more food  
19 safety demands from their buyers than small  
20 producers. So this --the tiered approach  
21 would address that need that large producers  
22 have more demands from their markets than



1 small producers do, but still recognizing that  
2 everyone who is producing fresh produce needs  
3 training in food safety.

4 MS. SCHMAEDICK: And is that to a  
5 certain extent what your group currently does,  
6 does it provide training?

7 DR. GUNTER: I'd like to say that  
8 we do provide training. We developed a  
9 training curriculum for our producers.  
10 Currently that curriculum is being rolled out  
11 to our extension education staff across the  
12 state. And those are -- those educators will  
13 deliver that curriculum to producers in their  
14 areas. The tiered approach, this -- this  
15 baseline training would be the -- or this  
16 initial curriculum would be the baseline  
17 training for that tiered approach.

18 And then if there are more  
19 specific training opportunities, which we're  
20 working on now, based on larger markets, what  
21 did those producers need that these smaller  
22 producers do not need, that's what -- that's

1 what we would do in the next level of our  
2 tiered approach.

3 MS. SCHMAEDICK: So would you  
4 support the addition of an educational  
5 component if that were to be included in the  
6 proposed agreement?

7 DR. GUNTER: Yes.

8 MS. SCHMAEDICK: I have no further  
9 questions. Thank you.

10 JUDGE HILLSON: Do any of the  
11 other USDA panel members have questions? Mr.  
12 Souza?

13 MR. SOUZA: Good afternoon.  
14 Anthony Souza, USDA. Good afternoon, Dr.  
15 Gunter.

16 DR. GUNTER: Good afternoon.

17 MR. SOUZA: A couple questions for  
18 you. Going back on the tiered compliance  
19 portion, you discuss in there comply with  
20 baseline produce safety measures. What do you  
21 mean by that and could you follow up with a  
22 few examples?

1 DR. GUNTER: Sure. It's  
2 recognized that small producers, for example,  
3 or producers who are marketing directly to  
4 their customers are not currently receiving  
5 demands from those buyers to demonstrate food  
6 safety training. So in this baseline level of  
7 training we would recognize that this -- this  
8 level of training is not being demanded by --  
9 by the customer, but yet still needs to be  
10 provided.

11 And in our initial baseline  
12 training in this tiered approach, we cover  
13 these critical areas: general microbiology  
14 for fresh produce safety, safety in the field,  
15 field sanitation, packing house sanitation,  
16 water quality, manure handling, some of those  
17 issues that would apply in general to food  
18 safety issues in production across -- across  
19 the state regardless of scale. Of course  
20 those would be adapted by -- by the producers  
21 to fit their operation, depending on what  
22 practices they're using on their own farms.

1           Another area would be the  
2 development of a food safety plan. Currently  
3 if you're not being audited by a third party  
4 auditor, you may have no demand in your  
5 operation to develop a food safety plan for  
6 your specific production practices. And so in  
7 this baseline training, we would hope to  
8 address those issues, begin the development of  
9 a food safety plan for your operation.

10           MR. SOUZA: Would I be correct in  
11 stating then that it sounds like the baseline  
12 produce safety measures pretty much follow the  
13 guide to reduce microbial contamination, the  
14 FDA (inaudible)?

15           DR. GUNTER: They're in compliance  
16 with that or they're congruent with those  
17 recommendations, yes.

18           MR. SOUZA: In the same section  
19 there you talk -- or bring up science based.  
20 What would it take as a doctor in this field  
21 for you to consider something to be sound  
22 science?

1 DR. GUNTER: You mean in terms of  
2 repeatability or what is the --

3 MR. SOUZA: Let's --

4 DR. GUNTER: I'll give you an  
5 example. You let me know if this is correct.  
6 For example, the study that we brought up a  
7 number of times in this meeting is the -- is  
8 the incidence of E. coli in wild deer  
9 populations, for example. That -- that's a  
10 west coast study, west coast based study and  
11 lots of people at this meeting have painted  
12 broad strokes either way with the results of  
13 that study, made broad sweeping claims hoping  
14 that this does or does not apply to this area  
15 of the country.

16 But we don't have that kind of  
17 data for North Carolina. We don't have that  
18 kind of study to show do our local populations  
19 of animals also follow that, you know, same  
20 trend that they're seeing in those studies?  
21 So I think that's the kind of science we're  
22 going to have to have in this area that's

1 regional.

2 MR. SOUZA: In your opinion, what  
3 would be the best approach on a situation like  
4 what you've just discussed with the deer  
5 population, to put it out on a -- on a  
6 national level and then have it disputed on  
7 regional levels or to have it proven on  
8 regional levels? What do you feel would be  
9 the best approach?

10 DR. GUNTER: You mean put out the  
11 paper on it to apply nationally?

12 MR. SOUZA: Let's say there's data  
13 that shows that deer are a high risk animal.  
14 Does that need to be proven on -- at each  
15 regional level or should that be done on a  
16 national level and then as research shows in  
17 certain regions that it's not applicable  
18 withdraw it from the matrix at that point?

19 DR. GUNTER: I think that's a  
20 fundamental piece of science. That -- whether  
21 or not your regional study can apply to broad  
22 based -- can apply to a more broad geographic

1 area, for example, is a fairly fundamental  
2 claim in scientific papers. You may -- you  
3 may to try to claim that and then if it's  
4 published by -- peer reviewed and published,  
5 it would be up to other scientists to either  
6 verify or disprove your claim based on science  
7 at their regional level.

8           So if that -- if that claim, for  
9 example, were to be -- to be made nationally  
10 and producers in my area came to me as a  
11 concern -- with that as a concern, then that  
12 would be something we would have to verify in  
13 this area. Does that make sense?

14           MR. SOUZA: Yes. Following up on  
15 that, with your expertise you bring up peer  
16 review before something is to be considered to  
17 be sound science. Do you feel that peer  
18 review should be a process in that?

19           DR. GUNTER: Yeah, yes.

20           MR. SOUZA: Thank you. No further  
21 questions.

22           JUDGE HILLSON: Anything further

1 from the USDA panel? I'm not seeing anything.

2 Let me ask the proponents' panel if they have

3 any questions? Mr. Guenther?

4 CROSS-EXAMINATION BY THE PROPONENTS:

5 MR. GUENTHER: Yes, Robert

6 Guenther, United Fresh Produce. Thank you Dr.

7 Guenther -- Gunter, excuse me.

8 DR. GUNTER: Very common, very

9 common.

10 MR. GUENTHER: I knew I was going

11 to do that. I've been sitting here for ten

12 minutes, I wasn't going to do that. Thank you

13 for being here today. This is, you know, I

14 would say some of the best testimony I've read

15 in the entire seven hearings we've had in

16 terms of recommendations and observations so

17 I really appreciate the work you guys put into

18 this.

19 DR. GUNTER: Thank you.

20 MR. GUENTHER: I have just three

21 questions. In terms of the grant money you

22 mentioned, can you state some of the programs



1 that you -- you know, kind of specifics  
2 or --

3 DR. GUNTER: Sources of -- sources  
4 of funding, you mean or the project itself?

5 MR. GUENTHER: Sources -- the  
6 project itself.

7 DR. GUNTER: We've -- we've  
8 obtained both federal funding and state level  
9 funding for projects that involve the  
10 development specifically of this educational  
11 curriculum and then the delivery of that  
12 curriculum to the grower level. So the  
13 projects that we've -- we've focused on thus  
14 far in the educational program have -- have  
15 been the formulation of the curriculum itself,  
16 the development of the educational units, and  
17 then the distribution of those units to  
18 educators and grower groups.

19 MR. GUENTHER: I noticed in this  
20 last week's announcements in the Special Crop  
21 Block grants, you also were awarded a grant as  
22 the Produce -- North Carolina Fresh Produce

1 Safety Task Force to do crisis communications,  
2 crisis management. Is that, I mean, part of  
3 this process as well?

4 DR. GUNTER: Yes. That's --  
5 that's another project that is -- sort of  
6 falls under the umbrella of the Fresh Produce  
7 Safety Task Force and that's another area that  
8 our growers directly expressed a need for,  
9 specifically crisis communication training.  
10 In the event of an outbreak, how are they  
11 going to deal with questions from the media,  
12 questions from their consumers? And so that -  
13 - that funding will help to train those  
14 specific growers and commodity associations in  
15 that -- you know, in crisis management.

16 MR. GUENTHER: I want to ask  
17 another follow-up question to the tiered  
18 compliance recommendation, which I think is  
19 very interesting. And my question is the way  
20 this reads to me is it's tiered based on the  
21 farm size and you also talk about market  
22 risks. Have you looked at or considered

1 commodity risks? In other words, you know, we  
2 all -- scientists -- a lot of the food safety,  
3 you know -- you know, five or six of the  
4 commodities related to fresh produce represent  
5 90 percent of the outbreaks. And there's a  
6 lot of commodities out there that really have  
7 not ever had the food safety outbreaks before.  
8 Is that -- could that -- you also look at  
9 that, you know, an apple grower or a kumquat  
10 grower have a lot of different food safety  
11 risk profile than a leafy green or a tomato  
12 farmer?

13 DR. GUNTER: Absolutely.

14 MR. GUENTHER: I mean, is that  
15 part of that?

16 DR. GUNTER: Yes, yes. We  
17 recognize that we have high risk commodity  
18 risk groups and lower risk commodity groups.  
19 And we're gearing our training to try to  
20 address those specific needs. But at the same  
21 time we want to make sure that if a commodity  
22 has a lower risk based on -- on an arbitrary

1 list or a list of outbreaks, we want to make  
2 sure that we're still training those producers  
3 as well, that they still have a fundamental  
4 knowledge of fresh produce safety on their  
5 farm.

6 MR. GUENTHER: And then one last  
7 question on the market recovery concept, which  
8 I think is very interested and encouraging.  
9 I think we've all talked about a lot of  
10 different levels. The question is is the  
11 earmark here would be just producers. But as  
12 you know in an outbreak it goes up through the  
13 distribution --

14 DR. GUNTER: Yes.

15 MR. GUENTHER: -- whether you're a  
16 re-packer, a wholesaler, distributor. You  
17 know, have you thought about that in terms of  
18 where would you draw the line in terms of who  
19 would be -- who would be eligible for  
20 something like that?

21 MR. GUENTHER: You know, I think  
22 that that's a -- that's going to be a very

1 broad based discussion. Because it doesn't  
2 really only include produce handlers. I mean,  
3 there are package companies that go out of  
4 business in the event of an outbreak. There  
5 are trucking companies that go out of business  
6 in the event of an outbreak because they no  
7 longer have commodity to pack or they no  
8 longer have commodity to move. So I think  
9 that's going to have to be a very, very broad  
10 based discussion and -- and decision about how  
11 that might be implemented.

12 MR. GUENTHER: Thank you.

13 JUDGE HILLSON: Mr. Hall?

14 MR. HALL: Charles Hall, Georgia  
15 Fruit and Vegetable Growers Association. Dr.  
16 Gunter, I agree, very good testimony. Thank  
17 you very much on that.

18 DR. GUNTER: Thank you.

19 MR. HALL: Let me follow up on the  
20 tiered compliance question. In the testimony  
21 that is mentioned -- you know, your testimony  
22 producers should comply with baseline produce

1 safety measures and as you described what  
2 those were, there -- I think I heard basic  
3 good agricultural practices from that  
4 standpoint.

5 DR. GUNTER: That's the  
6 fundamentals, I think, of the -- of the  
7 educational program, the baseline educational  
8 program.

9 MR. HALL: And the way that the  
10 Task Force is recommending, that would be done  
11 as training, but yet there would be no --  
12 necessarily any audit or third party review of  
13 whether the grower is following those  
14 practices?

15 DR. GUNTER: Correct, correct,  
16 yeah. That would -- that's -- as a -- as our  
17 system is now, the produce system is now,  
18 that's usually fire driven, whether they --  
19 whether they require an audit.

20 MR. HALL: We've heard some  
21 testimony here today that we really need to  
22 start over with the marketing agreement here.

1 I sensed from your testimony you're maybe not  
2 -- your Task Force is not in that same feel.  
3 And do you -- your recommendations as far as  
4 what, you know, needs to happen from the --  
5 from the marketing agreement -- from your Task  
6 Force?

7 DR. GUNTER: Of course our Task  
8 Force is a very broad group so that would be -  
9 - you'll find members of our Task Force who  
10 fall on both sides of that issue. So I think  
11 the most important thing that this Task Force  
12 has as a fundamental goal is fresh produce  
13 safety education. Whether that is a part of  
14 an agreement like this one or a part of a, you  
15 know, state sponsored program, state level  
16 program, the fundamental goal is to educate  
17 and make aware fresh produce safety producers  
18 and get them to a point where they can  
19 recognize risks and mitigate those risks on  
20 their own farms.

21 MR. HALL: One last question. You  
22 used the example of a deer study just now on

1 that. Under the proposed Marketing Agreement,  
2 would that be a proponent of the technical  
3 review board and subcommittees as you -- as  
4 you read the agreement?

5 DR. GUNTER: Would which be?

6 MR. HALL: Would going further to  
7 do say a deer study for a specific region,  
8 would that be under the purview of a technical  
9 review board subcommittee as far as metrics  
10 are being developed?

11 DR. GUNTER: Is there a process in  
12 the marketing agreement language now to  
13 develop a research program like that? I mean,  
14 I think that would be a fundamentally science  
15 based program. So if there was no mechanism  
16 to develop research -- a research component,  
17 then I would say no.

18 MR. HALL: There is a component  
19 within the technical review board to appoint  
20 subcommittees to take in, put in, and look at  
21 further studies, not necessarily funding those  
22 studies, but look at other studies and then



1 put from producers, handlers, academia areas  
2 that would be specific to that -- specific to  
3 regions.

4 DR. GUNTER: Okay.

5 JUDGE HILLSON: Can you answer  
6 that out loud, please?

7 DR. GUNTER: Okay. I agreed with  
8 him.

9 JUDGE HILLSON: Are --

10 MR. HALL: Let me ask just to that  
11 question, let me ask --

12 JUDGE HILLSON: -- Gunter.

13 MR. HALL: -- question kind of to  
14 that mind. You know, you talk about the  
15 market recovery, a portion of the assessments  
16 being set aside. What I heard you say there,  
17 would you think that a -- a portion of the  
18 assessment for a new -- new mandate that -- or  
19 excuse me -- science research should be  
20 including in this type of marketing agreement?

21 DR. GUNTER: I think if there  
22 isn't language or a method in the agreement to

1 support that science, then the recognition  
2 that more science based information needs to  
3 be a fundamental part of that agreement. If  
4 it's not already in the agreement, in the  
5 language, then at least the recognition and  
6 sort of a change in the mechanism to make it  
7 more science based would be -- would be good,  
8 vital.

9 MR. HALL: Thank you.

10 JUDGE HILLSON: Are there any  
11 other questions for Mr. Gunter? Mr. Hamil?

12 EXAMINATION BY THE PUBLIC:

13 MR. HAMIL: I'm George Hamil. I  
14 have four basic questions for you, Dr. Gunter.  
15 First, I am intrigued by the use of the phrase  
16 science based. If I go on-line to any of the  
17 on-line dictionaries, there is not a single  
18 one that has a definition. There's not a  
19 single definition I've been able to find in a  
20 print dictionary either, okay? And I'm  
21 wondering, as was brought up by the USDA  
22 questions to you, about exactly what this

1 means. Would you say that science based as  
2 you are using the phrase is the same as  
3 scientific?

4 DR. GUNTER: What's your  
5 definition of scientific?

6 MR. HAMIL: I would say that it's  
7 something that follows the precepts of  
8 science.

9 DR. GUNTER: Then I would say that  
10 there -- that would be similar terms, yes.

11 MR. HAMIL: Okay. Thank you very  
12 much on that.

13 DR. GUNTER: Uh-huh.

14 MR. HAMIL: Number two, in  
15 understanding your tiered approach to safety,  
16 are you -- have some familiarity with the way  
17 health departments and the FDA and stuff come  
18 together a bit in terms of food -- prepared  
19 foods?

20 DR. GUNTER: I have some  
21 understanding.

22 MR. HAMIL: Some understanding?

1     Would you say that type of tiered approach  
2     where you have a county health department, you  
3     have a state health department, you have the  
4     FDA and the CDC brought in at various times,  
5     is similar to the type of tiered approach that  
6     you're talking about?

7                     DR. GUNTER:  Those agencies are  
8     regulatory --

9                     MR. HAMIL:  Uh-huh.

10                    DR. GUNTER:  -- and this tiered  
11     approach would be a tiered approach in an  
12     educational way, not a regulatory way.

13                    MR. HAMIL:  Got you, got you.  
14     Okay.  Third question, trying to understand  
15     this regional thing about the deer.  I want to  
16     change animals, okay?  You're familiar with  
17     giardia?

18                    DR. GUNTER:  Yes.

19                    MR. HAMIL:  Okay.

20                    JUDGE HILLSON:  Can you spell  
21     that, please?

22                    MR. HAMIL:  G-i-a-r-d-i-a, I

1 believe. It is a -- a bacteria that is  
2 endemic in bears. And so we have a problem in  
3 areas where there are bears that someone will  
4 drink water that is untreated and they will  
5 catch giardia. So would this be an example  
6 you might have a metric in the mountains of  
7 North Carolina where we have lots of bears  
8 where you would test for giardia?

9 DR. GUNTER: Would what be a  
10 metric for that?

11 MR. HAMIL: Because of the fact  
12 that we have bears and just that you would  
13 establish a metric where you test for giardia  
14 where in a place like Texas where there aren't  
15 any bears to speak of or in the plains, you  
16 know, you wouldn't need to make that type of  
17 a test?

18 DR. GUNTER: That's -- I guess  
19 that could be a possibility, but I'm not a --  
20 I'm not a food microbiologist.

21 MR. HAMIL: Yeah.

22 DR. GUNTER: So I don't know what

1 the -- what the level of giardia from bears --  
2 what level of risk is giardia from bear  
3 excrement in -- for example, in irrigation  
4 sources used in North Carolina.

5 MR. HAMIL: Thank you. The last  
6 is back to this understanding of science  
7 based. Are you familiar with a recent paper  
8 published by the Center for Science and the  
9 Public Interest which talked about the ten  
10 riskiest common foods?

11 DR. GUNTER: I am.

12 MR. HAMIL: Okay. And you  
13 remember that number one on that risk -- the  
14 way which they described it was leafy greens?

15 DR. GUNTER: Yes.

16 MR. HAMIL: Okay? Would you say  
17 that their methodology of describing that  
18 based upon outbreaks, not cases or anything  
19 else, but on outbreaks, would be -- would be  
20 an accurate reflection that of the ten foods,  
21 that leafy greens was the riskiest?

22 DR. GUNTER: I think I would have

1 to refer that question to a food  
2 epidemiologist. I don't feel like I'm  
3 qualified to -- to make a judgement call based  
4 on that.

5 MR. HAMIL: Thank you very much.

6 JUDGE HILLSON: Are there any  
7 further questions for Dr. Gunter?

8 MR. BATTLE: Patryk Battle. Thank  
9 you, Dr. Gunter. I have two questions. The  
10 first question regards a handout that was  
11 given out by an extension educator at the  
12 Organic Growers school this spring. And it  
13 was a GAP type educational program. I don't  
14 know if it was exactly GAP's or not, but it  
15 was similar and the person doing it also does  
16 GAP training. And that handout had a little  
17 quiz for the -- kind of test your knowledge  
18 either before or after. I would have to think  
19 because I only saw the handout. And one of  
20 the questions was organic food is less likely  
21 to be contaminated -- or to cause a food  
22 outbreak contamination because of the methods

1 used in producing it. And the answer was  
2 false. And I was surprised to see that. I  
3 don't know if that's true or not, but I have  
4 my suspicions as I made plain in my  
5 presentation. But I wondered if you know if  
6 that was a science based conclusion, that  
7 there's research that proves that?

8 DR. GUNTER: I believe that there  
9 is; although I don't have the citations in  
10 front of me. There have been some studies  
11 that show that organic food is not riskier or  
12 less risky than conventionally produced food  
13 in terms of fresh produce safety.

14 MR. BATTLE: Thank you. Also, at  
15 the same time, I brought in the president --  
16 vice president of E.M. America. Are you  
17 familiar with what E.M. is?

18 DR. GUNTER: No.

19 MR. BATTLE: E.M. is a formula of  
20 microbes that this company sells that was  
21 developed by a Japanese scientist. And it's  
22 used for a very wide variety of purposes,



1 agriculture health, it's -- you know, the  
2 National Sanitation Foundation proved you can  
3 ingest it. And this vice president went up to  
4 the presenter afterwards and said that he was  
5 working on an organically certifiable food  
6 safety antimicrobial product. And she was all  
7 excited until he told her that it was microbe  
8 based. And then she basically just turned  
9 away from him and didn't say another word. Do  
10 you believe it's possible to control  
11 pathogenic contamination on surfaces and  
12 utensils and tools with a microbial product?

13 DR. GUNTER: That's a question  
14 that's outside of my area of scientific  
15 expertise. I would be interested in hearing  
16 more, but -- but I'm not qualified to answer  
17 that question. That's a -- that's basically  
18 a food microbiologist's area of expertise,  
19 which we do have food microbiologists as part  
20 of the Task Force, so I can put you in touch  
21 with them. I'd be happy to.

22 MR. BATTLE: Yeah, I'd like to

1 find out. Thank you.

2 DR. GUNTER: Sure.

3 JUDGE HILLSON: Any further  
4 questions for Dr. Gunter? Ms. Schmaedick?

5 RECROSS-EXAMINATION BY USDA:

6 MS. SCHMAEDICK: Melissa  
7 Schmaedick, USDA. Dr. Gunter, do you have a  
8 copy of the proposed language in front of you?

9 DR. GUNTER: No, I don't. I do  
10 now.

11 MS. SCHMAEDICK: Thank you. Could  
12 I ask you to look at proposed section 970.75.

13 DR. GUNTER: Yes.

14 MS. SCHMAEDICK: This section is  
15 entitled "Research and Prevention." Could I  
16 ask you to read the section briefly and then  
17 I'll ask you a question?

18 DR. GUNTER: Do you want me to  
19 read that out loud or just read it to myself?

20 MS. SCHMAEDICK: No, just read it  
21 to yourself.

22 DR. GUNTER: Okay.

1 MS. SCHMAEDICK: In your opinion,  
2 would this language allow for the committee to  
3 conduct the type of scientific research that  
4 you're -- that you just spoke of?

5 DR. GUNTER: It doesn't appear  
6 that this is research like I had spoken about  
7 earlier. It appears like this is market  
8 research, so for the development of new  
9 marketing channels or advertising routes for  
10 products, not for food safety related  
11 research.

12 MS. SCHMAEDICK: And if the -- if  
13 the authority for research were added, would  
14 this would be a good place to put it?

15 DR. GUNTER: If this research  
16 section were expanded to include fresh produce  
17 safety related research, this would be an  
18 appropriate place.

19 MS. SCHMAEDICK: Thank you, no  
20 further questions.

21 JUDGE HILLSON: Any other  
22 questions? Okay, Dr. Gunter. Thank you very

1 much for your testimony.

2 DR. GUNTER: Thank you.

3 JUDGE HILLSON: And you may step  
4 down. And Mr. Johnson? Did you bring  
5 testimony, Mr. Johnson?

6 MR. JOHNSON: It's just oral.

7 JUDGE HILLSON: Okay. That's  
8 fine.

9 NED JOHNSON, being first duly  
10 sworn, was examined and testified as follows:

11 JUDGE HILLSON: Okay. Could you  
12 please state your name and spell it?

13 MR. JOHNSON: My name is Ned, and  
14 that's spelled N, as an Nathaniel, e-d;  
15 Johnson, J-o-h-n-s-o-n.

16 JUDGE HILLSON: Okay. And you may  
17 testify.

18 MR. JOHNSON: Okay. I am the  
19 publisher and editor of a very small  
20 newsletter called The Community Farm and  
21 Table. It was originally started 11 years ago  
22 by a gentleman named Jim Slooter up in

1 Michigan. And the main purpose of the  
2 newsletter is to serve small farmers who  
3 operate community supported agricultural type  
4 operations and to further the support by the  
5 consumer in sourcing more local food and  
6 bringing it from family farms to community  
7 tables.

8           That gives you an idea of the  
9 types of readers that we have. Most of them  
10 by -- it's a fairly small circulation, but  
11 about three-quarters of our readers operate  
12 CSAs. The balance of them usually sell retail  
13 and virtually none of them are big operations  
14 or big businesses by any definition that you -  
15 - you want to define it by.

16           As a sideline here, I am president  
17 of Highlands BioProduce, Incorporated, which  
18 is a small CSA operation in the Tri-Cities  
19 area of northeast Tennessee, southwest  
20 Virginia. We only have about six steady  
21 growers in our operation and we're about 50/50  
22 on who is certified organic or not. We all,

1 and I think that includes everybody in this  
2 room since that's what it's all about, agree  
3 that food safety is critical.

4 My personal concern here is that  
5 it will drive to one size fits all. And any  
6 marketing agreement, marketing order or USDA  
7 or FDA reg needs to take small growers,  
8 whether they're organic or not, into account.  
9 There have been very -- a lot of good points  
10 here today for doing that by the opponents to  
11 this proposed marketing agreement. I'll make  
12 it short and say whatever is decided, may it  
13 leave small farms a chance at least to survive  
14 and at least hopefully thrive.

15 JUDGE HILLSON: Thank you very  
16 much for your testimony. Let me first ask the  
17 USDA panel if they have any questions for Mr.  
18 Johnson? No? Okay. Let me ask --

19 MS. DESKINS: I have a question.

20 JUDGE HILLSON: Go ahead. Ms.  
21 Deskins?

22 CROSS-EXAMINATION BY THE USDA:

1 MS. DESKINS: I just want to  
2 clarify, are you -- do you have a farm that's  
3 located in Tennessee?

4 MR. JOHNSON: Let me put it this  
5 way, up until last year I was a small producer  
6 exclusively of what we're talking about today.  
7 My wife and I decided we were a small  
8 operation, just like some of the ones that  
9 appeared here earlier today. We decided to  
10 retire last year. However, I want to continue  
11 supporting small farm operations and that's  
12 why I became the publisher and editor of this  
13 newsletter. So I presently do not grow  
14 anything except for my family.

15 MS. DESKINS: And you said you  
16 were president of a CSA?

17 MR. JOHNSON: Yes, ma'am.

18 MS. DESKINS: Okay. As the  
19 president of that organization, how many  
20 growers are in that?

21 MR. JOHNSON: There are six  
22 regular growers and as many as up to ten who

1 from time to time, depending upon what they  
2 are growing, are put into our CSA produce  
3 baskets.

4 MS. DESKINS: And how many of them  
5 would grow leafy greens as defined in this  
6 agreement, if you know?

7 MR. JOHNSON: There's only one  
8 that I'm aware of that doesn't.

9 MS. DESKINS: And do you know how  
10 much your CSA produces in leafy greens?

11 MR. JOHNSON: Well, let me put it  
12 this way, what we do is we offer a half bushel  
13 basket of whatever happens to be in season on  
14 a given week. And we operate from mid-May to  
15 mid-October. You can imagine in mid-May it's  
16 probably 90 percent green, leafy vegetables,  
17 lettuce -- lettuce -- you know, some of our  
18 customers begin to complain, "Hey, we're tired  
19 of eating all these salads and we're ready for  
20 tomatoes."

21 MS. DESKINS: How many customers  
22 would your CSA have?



1                   MR. JOHNSON: We have about three  
2 dozen. We're a small CSA.

3                   MS. DESKINS: Thank you.

4                   JUDGE HILLSON: Anything else from  
5 the USDA panel? Any questions from the  
6 proponents? Mr. Hall?

7 CROSS-EXAMINATION BY THE PROPONENTS:

8                   MR. HALL: Charles Hall, Georgia  
9 Fruit and Vegetable Growers Association. Mr.  
10 Johnson, thank you for your testimony. Under  
11 the guidelines of the marketing agreement, is  
12 it your understanding that CSAs would not be  
13 covered under the -- under the agreement?

14                   MR. JOHNSON: I honestly don't  
15 know. I could look at our CSA as being one  
16 who might want to sign up, you know, with you  
17 fellows, the big folks, but I'm sure we would  
18 choose not to do so.

19                   MR. HALL: So under the guidelines  
20 of the marketing agreement, are there  
21 suggestions from your -- your operation and  
22 the CSA that you represent for changes that

1 should -- or as we've heard from other  
2 testimony that we just -- this needs to be  
3 brought all together?

4 MR. JOHNSON: Well, I think Dr.  
5 Gunter has some excellent points, but I also  
6 think there's plenty of others, such as from  
7 the various organic growers and Carolina Farm  
8 Stewardship that have excellent points, too.  
9 The -- the thing to me is -- is -- I know this  
10 is kind of weird or funny sounding, but why  
11 can't we all come together? Now, I'm talking  
12 about big, small, the USDA, the FDA, why can't  
13 we all come together and just come out with  
14 one set of decent guidelines and -- and some  
15 of them are going to have to be regulations  
16 too, I'm sure, and let's get on with it  
17 instead of debating it forever.

18 I for years was in the regulatory  
19 enforcement business as a civilian engineer  
20 and it was in the nuclear area, by the way,  
21 which is kind of contrary to an organic grower  
22 like -- like I am. But it seems like no

1 matter what it takes, three, four years going  
2 through all kind of proposals, all kind of  
3 hearings, we -- why can't we just jointly get  
4 together and do something that's to the  
5 benefit of the consumer that gives good safety  
6 -- good safe food to the consumer?

7                   It ain't going to be 100 percent.  
8 If there's anybody in here that believes it  
9 will be, they're dreaming. But we've got to  
10 get something that will aid in assuring the  
11 consumer, whether we're large or small, that  
12 we're putting out products that are safe to  
13 consume in their home.

14                   MR. HALL: Thank you.

15                   JUDGE HILLSON: Any further  
16 questions for Mr. Johnson? Thanks a lot for  
17 your testimony. Thank you for being so -- I  
18 tried.

19 EXAMINATION BY THE PUBLIC:

20                   MR. BATTLE: I'll be brief. I  
21 just --

22                   JUDGE HILLSON: Please identify

1 yourself.

2 MR. BATTLE: Patryk Battle. And

3 I'm sorry, I didn't -- your last name.

4 MR. JOHNSON: Johnson.

5 MR. BATTLE: Johnson. Mr.

6 Johnson, you said you're sure that there would

7 have to be some regulations. I'm curious what

8 regulations you think those would be?

9 MR. JOHNSON: Well, I think Dr.

10 Gunter touched on some of them. There

11 probably, in my estimation, would be some sort

12 of tiered ones. And with the ones are

13 critical, ever how those were determined to

14 be, they need to have some background instead

15 of just being guidance. And personal opinion,

16 they got to hit the pocketbook, the deeper the

17 pocketbook, the harder the hit.

18 In other words, it seems like one

19 sure way to bring about compliance is fines

20 for those who don't meet even the basic stuff

21 once you can track down whoever was

22 responsible for it and find them and the word

1 will get around and people will start  
2 complying all on their own.

3 MR. BATTLE: You don't have any  
4 exact -- no specific ones you're thinking of?

5 MR. JOHNSON: No, sir.

6 MR. BATTLE: Okay. Thank you.

7 JUDGE HILLSON: Any other  
8 questions for Mr. Johnson. Okay, thanks for  
9 testifying, sir. The next person is Debbie  
10 Hamrick. Thank you. I'm going to mark Ms.  
11 Hamrick's written statement as Exhibit 138.

12 (WHEREUPON, Exhibit Number 138 was  
13 marked for identification.)

14 DEBBIE HAMRICK, being first duly  
15 sworn, was examined and testified as follows:

16 JUDGE HILLSON: Would you please  
17 state your name and spell it for the record.

18 MS. HAMRICK: My name is Debbie  
19 Hamrick, D-e-b-b-i-e, H-a-m-r-i-c-k.

20 JUDGE HILLSON: And you have a  
21 statement you'd like to read?

22 MS. HAMRICK: I do.

1 JUDGE HILLSON: Please proceed.

2 MS. HAMRICK: Yes. Before I begin  
3 I'd like to say thank you very much for coming  
4 to Charlotte, North Carolina. We welcome you  
5 here in North Carolina and as you heard this  
6 afternoon, produce safety is a very important  
7 topic to our state and we really appreciate  
8 you being here. My name is Debbie Hamrick and  
9 I'm the Director of Specialty Crops for the  
10 North Carolina Farm Bureau Federation. I want  
11 to make a distinction. It is not North  
12 Carolina Insurance Company. The federation  
13 lobbies on behalf of rural and agriculture  
14 interests across the state of North Carolina.  
15 We do that here in our state locally,  
16 statewide, and in Washington, D.C.

17 I'm speaking today on behalf of  
18 North Carolina Farm Bureau. North Carolina  
19 Farm Bureau is the state's largest general  
20 agriculture organization with more than  
21 500,000 member families. North Carolina Farm  
22 Bureau is the second largest farm bureau in

1 the national organization with more than 6  
2 million member families. The fruit and  
3 vegetable farmers within our membership  
4 encompass the gamut of large internationally  
5 known producer/shippers to small celebrity  
6 producers of niche crops sold by a CSA and at  
7 one or two farmers' markets.

8           North Carolina is a rapidly  
9 growing state. Our population is expected to  
10 grow 50 percent by 2030. That means that open  
11 space and agriculture land is at a premium.  
12 North Carolina leads the nation in the loss of  
13 farmland to development. At North Carolina  
14 Farm Bureau we spend much of our time  
15 defending land owners' interest as they seek  
16 to use their property as working land.

17           For land owners wishing to farm in  
18 the central and western parts of the state,  
19 higher value crops such as fruit and vegetable  
20 marketed locally and regionally are very  
21 important to farm viability and thus very  
22 important to our agricultural landscape there.

1 In our eastern counties fruit and vegetable  
2 production is dominated by larger producers  
3 growing crops that feed into the eastern  
4 seaboard's produce deal. Currently, all North  
5 Carolina fruit and vegetable production is  
6 estimated at about 550 million dollars on more  
7 than 131,000 acres. That's about ten percent  
8 of all farms.

9 In my role as the director of  
10 specialty crops, I work with approximately 15  
11 individual fruit and vegetable associations  
12 across the state. Leafy greens are an  
13 important part of our total fruit and  
14 vegetable production with cabbage and other  
15 brassicas like collards being the dominant  
16 crops grown for wholesale markets. According  
17 to our State Department of Ag, North Carolina  
18 ranks sixth in the nation in cabbage  
19 production. While we have a handful of large  
20 cabbage producers, we also have a large number  
21 of small cabbage producers. Our state also  
22 boasts many smaller acreages of field lettuce



1 and larger scale producers of field lettuce  
2 and several hydroponic lettuce growers selling  
3 regionally through supermarkets.

4           While cabbage is currently the  
5 dominant leafy green, at one time North  
6 Carolina was a leading lettuce producer in the  
7 United States. According to Dr. Bill Jester  
8 from North Carolina State University, and I  
9 quote him, commercial lettuce production  
10 flourished in the Cape Fear region around  
11 Wilmington beginning in the late 1800s and  
12 continued until the 1950s when vacuum cooled  
13 lettuce from California began to dominate the  
14 eastern market.

15           A few growers in southeastern  
16 North Carolina, specifically Castle Hayne,  
17 continue to produce romaine and leaf lettuce  
18 today. In 1992 several processed salad  
19 companies entertained the prospect of sourcing  
20 lettuce from North Carolina and the rest of  
21 the eastern seaboard. 14 growers in five  
22 counties produced 110 acres of contract head

1 lettuce in 1993 and 1994. Unfortunately, that  
2 company decided to discontinue their vegetable  
3 production and concentrate on their primary  
4 business which was at the time sugar cane.

5           From 2003 to 2005, another salad  
6 company put together a deal in eastern North  
7 Carolina. In the spring of 2003 more than 80  
8 acres of romaine was produced. Yields were  
9 good, but the company was unable to buy all  
10 the lettuce due to oversupply. Over 60 acres  
11 of romaine was produced by four growers in the  
12 spring of 2004 and sold to a number of  
13 companies. The prices were extremely good and  
14 the growers were pleased.

15           And I realize to those of you who  
16 are familiar with west coast lettuce  
17 production, and I've toured a lot of -- a lot  
18 of fields in Salinas Valley, you know, these  
19 acreages are really small, but for us they  
20 were big and it represented a tremendous  
21 potential. And the point of this history is  
22 simply that as macro and micro economic

1 factors come into play over time, production  
2 of crops shifts from region to region. North  
3 Carolina was no longer competitive with west  
4 coast production and so we lost that.

5 North Carolina, like neighboring  
6 states, is not only approximate to the main  
7 market in the United States, but we enjoy an  
8 average of 40 to 60 inches of rain a year,  
9 depending on tropical storms.

10 We believe that implementing a  
11 National Leafy Greens Marketing Agreement at  
12 this time is premature in light of pending  
13 food safety legislation in the US Congress.  
14 It's my understanding that today the Senate  
15 Health Committee conducted a food safety  
16 hearing. As a matter of fact, our new  
17 division director for the NCDA and CS Food and  
18 Drug Division, Dan Regan, was testifying to  
19 that committee. The legislative outlook at  
20 this point is unclear and proponents for the  
21 Leafy Greens Marketing Agreement on a national  
22 level have been unable to speak to the issue

1 of how the National level Leafy Greens  
2 Marketing Agreement will fit with future  
3 legislation.

4                   We're concerned that leafy greens,  
5 which are currently dominated by western US  
6 producers and marketers may be carved out of  
7 the pack and put under the wing of USDA to the  
8 long-term detriment of producers in the  
9 eastern United States, including North  
10 Carolina.

11                   Proliferation of food safety  
12 metrics. Some North Carolina fruit and  
13 vegetable farmer members have expressed  
14 concern that they need fewer, not more food  
15 safety program with which they must comply.  
16 The National Leafy Greens Marketing Agreement  
17 proponents have stated publicly that  
18 implementing a national system will not halt  
19 the proliferation of food safety metrics or  
20 the development of super metrics that would  
21 far exceed any industry wide or governmental  
22 standards. Given the FDA regulations that

1 they're most assuredly coming and that  
2 individual retail companies will continue to  
3 develop programs to differentiate their supply  
4 from that of competitors, we question the need  
5 for yet another program.

6           So with these two major concerns  
7 about the entire agreement in place, if USDA  
8 doesn't move forward with the National Leafy  
9 Greens Marketing Agreement, we believe that  
10 important changes should be made.

11           Under 970.40 at the administrative  
12 committee. The role of the administrative  
13 committee is paramount. It's my  
14 understanding, after participating in  
15 conference calls regarding the National Leafy  
16 Greens Marketing Agreement and reading the  
17 federal register notice, that the National  
18 Leafy Green Vegetable Administrative Committee  
19 will administer the program.

20           Advisory groups, such as a  
21 technical review board and market review board  
22 and other subcommittees will be established.

1     However, these advisory boards have no voting  
2     power. We do not believe that the current  
3     constitution of the committee as proposed in  
4     the federal register notice serves North  
5     Carolina producers or our consumption market;  
6     therefore, several important changes to the  
7     administrative committee must be made.

8             One, re-weight the seats to  
9     reflect the market. The committee would be  
10    established with 23 members across five zones  
11    with four additional members. In essence, the  
12    committee composition would codify the  
13    existing structure of leafy greens production  
14    in the United States. Zones one and two,  
15    which have just 21 percent of the US  
16    population, aka, the leafy greens market,  
17    would receive ten of 23 possible seats while  
18    zones 4 and 5 with 60 percent of the leafy  
19    greens market receive just six of 23 seats.

20             As stated previously, North  
21    Carolina was an important source of lettuce  
22    for eastern consumption markets decades ago

1 and is currently an important supplier of  
2 cabbage. Given that macroeconomic parameters  
3 such as energy costs and water availability  
4 are likely to change and will directly impact  
5 future production, we believe that codifying  
6 an existing industry structure for food as  
7 important to the health and diet of Americans  
8 as leafy greens is not wise policy. We  
9 believe the administrative committee needs to  
10 be re-weighted so that the voices of leafy  
11 greens producers and others within the  
12 consumption markets are equally as important.

13 Two, fewer handler seats and add  
14 other stakeholders. Handlers comprise 13 of  
15 23 seats; however, the emphasis of the  
16 National Leafy Greens Marketing Agreement is  
17 food safety, yet there are no seats on the  
18 committee dedicated to scientists or other  
19 stakeholders with firsthand knowledge and  
20 background in produce safety. We believe this  
21 is a serious oversight. While proponents have  
22 stated that the technical review board will

1 develop audit metrics, that board has no  
2 voting rights and simply quote, assists the  
3 committee. We believe that excluding the  
4 voice of science from the committee that  
5 oversees a potential National Leafy Greens  
6 Marketing Agreement is a serious oversight  
7 that needs to be addressed.

8           Three, the zones need to be  
9 reworked. We've already heard about that  
10 today. Currently the zones for the committee  
11 are grouped north to south creating zones with  
12 widely varying production characteristics.  
13 Zones need to be reworked so that states with  
14 like production characteristics are grouped  
15 together.

16           We urge you not to dismiss these  
17 comments on reworking the committee  
18 composition as the National Leafy Greens  
19 Marketing Agreement moves forward. As  
20 written, the National Leafy Greens Marketing  
21 Agreement proposed rule of codifying an  
22 existing industry structure and place a



1 critical issue such as the safety of leafy  
2 greens with a group has a vested interest and  
3 outcome and a likely vested interest in  
4 maintaining the status quo. We do not believe  
5 that the current committee composition will  
6 allow the committee to make decisions in the  
7 best interest of the country from the  
8 standpoint of facilitating competition and  
9 start up production.

10           While North Carolina has been an  
11 important lettuce supplier in the past, our  
12 request would be regarded as low priority  
13 pitted against the needs of larger producing  
14 states such as Arizona or California, who are  
15 guaranteed seats.

16           970.69, the official mark. The  
17 official mark should be used in trade only.  
18 Paragraphs, paren, a and b provide wording  
19 instructing signatories to comply with this  
20 section; however, the language does not  
21 prohibit the use of the mark on packaging that  
22 may be conveyed to consumers. Using the mark

1 on packaging conveyed to consumers will create  
2 confusion by implying that leafy greens from  
3 small local producers who do not sell products  
4 with the mark is somehow less safe. If the  
5 mark appears at the consumer level it may also  
6 create a false sense of security.

7                   Currently, to my knowledge, there  
8 is no metric that can definitely prove leafy  
9 greens safety. Just as proponents have argued  
10 that small producers affect the market when  
11 they produce unsafe product, bagged salad with  
12 a national level mark implying safety could  
13 harm small producers at the local and regional  
14 level.

15                   970.75, research and promotion.  
16 We believe it is inappropriate to use the  
17 funds to promote leafy greens produced under  
18 audit metrics of the agreement. Funds should  
19 be used to increase the safety of leafy greens  
20 and to administer the program, not for  
21 marketing promotion to consumers. The  
22 implication would be that greens produced

1 outside of the agreement were less safe, which  
2 is unfair and not correct.

3           To conclude, we believe that  
4 implementing the National Leafy Greens  
5 Marketing Agreement at this point in time is  
6 premature. North Carolina has been an  
7 important producer of leafy greens in the past  
8 and continues to produce major quantities of  
9 cruciferous crops such as cabbage and  
10 collards. If the USDA moves forward with the  
11 National Leafy Greens Marketing Agreement, we  
12 believe that the administrative committee must  
13 be reworked. We believe the official mark  
14 should be used in trade only and not promoted  
15 to consumers.

16           Finally, we believe funds should  
17 be used for the further safety of leafy greens  
18 and not to promote the program to consumers.  
19 And again, thank you for coming to North  
20 Carolina to conduct a hearing.

21           JUDGE HILLSON: Thank you for your  
22 testimony, Ms. Hamrick. I'm going to receive

1 your written testimony as Exhibit 138.

2 (WHEREUPON, Exhibit Number 138 was  
3 submitted into evidence.)

4 JUDGE HILLSON: I'll let the USDA  
5 panel have any questions for you. Ms.  
6 Schmaedick?

7 CROSS-EXAMINATION BY THE USDA:

8 MS. SCHMAEDICK: Melissa  
9 Schmaedick, USDA. Thank you, Ms. Hamrick, for  
10 your testimony. The first question that I  
11 have for you is regarding your comments on the  
12 administrative committee. Do you have a  
13 discussed revision of how you may allocate the  
14 fees to the administrative committee?

15 MS. HAMRICK: I've been thinking  
16 about that all day anticipating that you would  
17 ask that question. And I imagine that the  
18 proponent group, the folks who are actually  
19 going to being paying the assessments will  
20 have a lot to say about that specific comment  
21 that well, that's taxation without  
22 representation.

1           And I think maybe in putting the  
2 administrative committee together we need to  
3 look at how we established our government,  
4 where we have a Senate with certain  
5 representation and we have a House with other  
6 representation and perhaps look at putting  
7 together an administrative committee that has  
8 more along the lines with representing the  
9 market as well as the production areas.

10           Because the truth of the matter is  
11 we may not be producing all of the leafy  
12 greens we consume here on the east coast, but  
13 -- different area of USDA just announced, I  
14 think it was last week or ten days ago, that  
15 you're studying the potential for local market  
16 production of fruits and vegetables in the  
17 northeast all the way -- I was sad. It ended  
18 at Virginia. I thought, "Come to North  
19 Carolina. We've got so much going on here."  
20 But even you guys are looking at the local  
21 production and we need to have the market base  
22 represented as well.

1 MS. SCHMAEDICK: When you say  
2 market base, are you talking about --

3 MS. HAMRICK: East coast.

4 MS. SCHMAEDICK: Are you talking  
5 about production, consumption which part of  
6 the market?

7 MS. HAMRICK: Consumption.

8 MS. SCHMAEDICK: Consumption,  
9 okay. Would you then conceive of a  
10 potentially larger committee, larger than 23  
11 members?

12 MS. HAMRICK: Wow. Larger -- 23  
13 is very large for getting real work  
14 accomplished. That would be difficult, I  
15 think, to have it larger than 23.

16 MS. SCHMAEDICK: So it's your  
17 recommendation then to --

18 MS. HAMRICK: Cut the committee,  
19 to cut handler seats. And I stated that in my  
20 next point, to cut handler seats.

21 MS. SCHMAEDICK: And keep the  
22 total number the recommended 23, but to

1 reallocate them based on  
2 consumption --

3 MS. HAMRICK: Consumption as well  
4 as other seats, for example, for scientists,  
5 folks that don't have a dog in the fight, so  
6 to speak, or are not trying to protect a  
7 market, and to give them voting power. The  
8 technical review committee is one of the least  
9 developed sections within the entire federal  
10 register notice that was published. And I was  
11 extremely disappointed in that. I was also  
12 extremely disappointed in the fact that the  
13 technical review committee has zero voting  
14 power.

15 And that's where, when I've asked  
16 questions of the proponent group in conference  
17 calls, they were always rolled off to, "The  
18 technical committee is going to be doing this.  
19 The technical committee is going to be doing  
20 that." However, the technical committee has  
21 zero voting rights. And a marketer who has a  
22 vested interest in protecting their

1 infrastructure, which they should, their  
2 businesses, they have great jobs, I'm not  
3 putting marketers down, they're the ones that  
4 have the voting power to dismiss or adopt what  
5 the technical committee develops.

6 MS. SCHMAEDICK: Is it your  
7 understanding that the business committee  
8 would have the ultimate authority to decide  
9 whether or not metrics were implemented?

10 MS. HAMRICK: Yes, ma'am. That's  
11 the way I read the federal register notice.  
12 I'm open to comments from the proponent group  
13 if I misunderstood something. But that is  
14 exactly how I read it. And I'm not a lawyer,  
15 so -- but that's what I read.

16 MS. SCHMAEDICK: Thank you. Your  
17 comments with regard to 970.75, research and  
18 promotion. Am I understanding your comments  
19 correctly that you support research that was  
20 focused on let's say growing practices or  
21 possibly the handling practices and how they  
22 might fit in to the over -- concern of food



1 safety or minimizing contamination, but that  
2 you do not support any type of marketing  
3 promotion?

4 MS. HAMRICK: Yes, ma'am. You  
5 have interpreted my remarks correctly.

6 MS. SCHMAEDICK: Okay, thank you.  
7 And you make one statement that I was hoping  
8 you might just expand on a little bit. It's  
9 on the second page of your testimony under the  
10 heading "Premature." It's the last sentence  
11 there, "We are concerned that leafy greens,  
12 which are currently dominated by Western US  
13 producers and marketers need to be carved out  
14 of the pack and put under USDA to the long-  
15 term detriment of producers in the eastern  
16 United States North Carolina." Would you just  
17 explain what you mean by that?

18 MS. HAMRICK: Absolutely. It's  
19 not clear how the National Leafy Greens  
20 Marketing Agreement would mesh with HR-2749,  
21 which has passed the house, or S-510, which  
22 may or may not move in the Senate. We're not

1 sure what's going to get passed. And it's  
2 absolutely unclear which is going to move. So  
3 meanwhile we have a leafy greens industry  
4 that's working to implement their own -- their  
5 own thing. And the rest of us outside of the  
6 leafy greens industry, which would be covered  
7 with the handlers who signed the proponent's  
8 agreement, the national agreement, will fall  
9 into -- the rest of us are all in the same  
10 bucket and these guys are over here doing  
11 this.

12           Is that going to create a long  
13 term hindrance for -- for us bucket over --  
14 the rest of us in the bucket with FDA  
15 regulation? It looks like FDA is going to be  
16 regulating on farm production. That's --  
17 that's where the concern is, is that will USDA  
18 somehow afford extra protection for the leafy  
19 greens industry who have signed onto the  
20 national level agreement? And extra  
21 protection in that they may be following  
22 metrics or guidelines that are not comparable

1 to the metrics or guidelines that would be  
2 forced onto other producers that are not part  
3 of the national level agreement.

4 MS. SCHMAEDICK: Okay.

5 MS. HAMRICK: Does that make  
6 sense?

7 MS. SCHMAEDICK: I think so.

8 JUDGE HILLSON: You don't have to  
9 answer that.

10 MS. HAMRICK: I was a journalist  
11 for 20 years so I seek to understand the way  
12 that other people think, honestly, so I only  
13 ask that question --

14 MS. SCHMAEDICK: I have no further  
15 questions. Thank you.

16 MS. HAMRICK: Thank you.

17 JUDGE HILLSON: How about the rest  
18 of the USDA panel? Are there any other  
19 questions? Ms. Carter?

20 MS. CARTER: Antoinette Carter  
21 with USDA. I have one question for you. In  
22 your statement you give pretty much a lot of

1 detail with regards to the makeup of the North  
2 Carolina Farm Bureau -- the membership and the  
3 number of farming operations, what leafy  
4 greens products are produced in this  
5 particular state. Can you tell us between  
6 what -- how many of your family farm members  
7 actually produce leafy greens --

8 JUDGE HILLSON: I'm not sure your  
9 microphone is on.

10 MS. CARTER: Sorry about that. Do  
11 I need to repeat that?

12 JUDGE HILLSON: No.

13 MS. CARTER: Thank you. Can you  
14 tell us how many of your member farm  
15 operations actually produce leafy greens  
16 products? Do you have that information  
17 available?

18 MS. HAMRICK: I'm smiling because  
19 I came out of the publishing industry where we  
20 had total demographics on every reader of all  
21 of our magazines. And we were working to  
22 implement such a detailed system a year and a

1 half ago and it crashed on us and it burned  
2 and I do not know how many of my farmers  
3 produce leafy greens.

4 I could tell you one of the  
5 state's largest leafy greens producers was  
6 here earlier today. He is a member. Many of  
7 the smaller guys who have testified today are  
8 members of the North Carolina Farm Bureau  
9 Federation. I have two other of the state's  
10 largest leafy greens, and these are going to  
11 be mainly cabbage producers in the east, one  
12 of the largest lettuce producers is a member  
13 of mine. But I can't tell you a definitive  
14 number. I do not have -- we do not have such  
15 sophisticated data set on our members. And I  
16 -- I miss that. I would like that.

17 MS. CARTER: Thank you. That's  
18 all I have.

19 JUDGE HILLSON: Anything else from  
20 the USDA panel? How about the proponent's  
21 panel? Do we have any questions from these  
22 gentlemen?

1 MR. GUENTHER: Sure.

2 JUDGE HILLSON: You don't have to.

3 It's not a requirement.

4 MR. GUENTHER: I've got that  
5 through the day as I look at our flights  
6 coming up.

7 JUDGE HILLSON: Please identify  
8 yourself. Mr. Guenther again.

9 CROSS-EXAMINATION BY THE PROPONENTS:

10 MR. GUENTHER: Let's see, question  
11 on the zones. You had mentioned that zones  
12 would be reworked --

13 THE REPORTER: I can't -- I can't  
14 hear you very well because we have so much  
15 background noise going on. I don't know if we  
16 can close that. Could you start over?

17 MR. GUENTHER: Sure.

18 THE REPORTER: Could you start  
19 your question over?

20 MR. GUENTHER: Robert Guenther,  
21 United Fresh Produce Association. Your  
22 proponents -- need to be reworked and zones

1 needed -- are needed to be reworked to --  
2 together. Do you see -- I think it's a  
3 similar question to what the USDA asked. Do  
4 you then foresee -- you know, there's five  
5 zones now. Do you see more zones with that  
6 process?

7 MS. HAMRICK: I'm trying to  
8 mentally map out where the zones -- zones 1  
9 and 2 are pretty easy to map out mentally  
10 because they're -- they're a little more  
11 sensical. The further east you come it seems  
12 that they're just nonsensical; they're  
13 illogical to somebody from the east coast.

14 MR. GUENTHER: Sure, sure.

15 MS. HAMRICK: And I don't know  
16 necessarily that you need more zones, but they  
17 definitely need to be reworked. Why in the  
18 world you've got North Carolina in the same  
19 zone with -- golly, what was the name, New  
20 York -- you've got the whole northeast  
21 together, then you've picked off a couple of  
22 the southern states, Alabama and Georgia,

1 Kentucky, Tennessee, and you put them in zone  
2 4. It just doesn't seem to be logical. It  
3 seems to be illogical.

4 MR. GUENTHER: That's a valid  
5 criticism --

6 MS. HAMRICK: I, you know --

7 MR. GUENTHER: -- of the zones.  
8 It was one of the most difficult parts of the  
9 process.

10 MS. HAMRICK: I'm sure it's very  
11 political.

12 MR. GUENTHER: I don't know if it  
13 was that as much as it was just trying to get  
14 production levels and -- in terms of  
15 consistency and how big they at least want to  
16 keep production. Anyway, that's --

17 JUDGE HILLSON: Anyway, you're  
18 supposed to be answering the questions.

19 MR. GUENTHER: Yeah, I know.

20 JUDGE HILLSON: Asking the  
21 questions, I should say.

22 MR. GUENTHER: That's all I have



1 for right now. Thank you.

2 JUDGE HILLSON: Anything else?

3 Mr. Hall?

4 MR. HALL: Charles Hall, Georgia  
5 Fruit and Vegetable Association. Ms. Hamrick,  
6 thank you for the testimony and thank you for  
7 offering alternatives. We've heard a lot of  
8 testimony that said it won't work, but it just  
9 won't work. So we certainly thank you for the  
10 -- for the alternatives.

11 You mentioned the legislative  
12 bills that are moving through the House and  
13 the Senate right now, 2749, 510. If the  
14 marketing agreement is not in place, how will  
15 growers have any input -- growers or handlers  
16 have any input in that -- in the legislative  
17 process with regard to structuring FDA  
18 guidance if there's not -- how will growers  
19 and handlers have input into that process  
20 within the legislative arena?

21 MS. HAMRICK: My understanding is  
22 that FDA is currently going around the country

1 conducting meetings. They came to North  
2 Carolina. Roland McReynolds mentioned that  
3 earlier. We had a great meeting for them one  
4 day where they interacted with small  
5 producers. Next on their list was Florida.  
6 United had taken them to Delaware the week  
7 before. So my understanding is that they're  
8 not waiting on the legislation.

9           We all are under the impression  
10 that they have currently the regulatory  
11 authority to exert on -- on farm food safety  
12 regulations. They've staffed up. They're  
13 moving forward. And whatever passes sounds as  
14 though they're going to be ready to plug and  
15 play with the guidance documents to begin  
16 going into the regulatory rule making process.

17           And that's when we will have the  
18 most -- the most impact, is through the  
19 regulatory -- through the rule making process  
20 and then exerting, you know, comments now and  
21 working with them as much as we possibly can  
22 to -- to help them to understand what we need

1 in order to make regulation work.

2 MR. HALL: So basically we will be  
3 depending on the FDA to write metrics or the  
4 guides or regs for food safety regulations --

5 MS. HAMRICK: Working --

6 MR. HALL: -- rather than industry  
7 developing those regulations --

8 MS. HAMRICK: Yes.

9 MR. HALL: -- and moving forward  
10 and hoping they adopt --

11 MS. HAMRICK: Working in  
12 conjunction with USDA, both of the bills have  
13 instructed FDA to work in conjunction with  
14 USDA to develop and implement metrics, my  
15 reading of those bills.

16 MR. HALL: You mentioned the --  
17 the official mark there and referenced -- you  
18 know, paragraphs A and B of 970.69. Is it  
19 your impression or opinion that A and B gives  
20 the marketing agreement the authority to allow  
21 signatories to use the mark in the trade on  
22 packages?

1 MS. HAMRICK: It doesn't prohibit  
2 it. So my brief experience with Farm Bureau  
3 is that lawyers exist for a reason and  
4 sometimes things need to be stated blatantly.  
5 And in our opinion, prohibiting that mark from  
6 conveyance directly to the consumer and making  
7 it a trademark just in the trade is very  
8 important.

9 MR. HALL: But the language does  
10 not --

11 MS. HAMRICK: It needs to prohibit  
12 the use of that mark for consumer packaging.

13 MR. HALL: I think that's it.  
14 Thank you.

15 JUDGE HILLSON: Okay. Mr. Hamil,  
16 do you have a question?

17 MR. HAMIL: I have a couple, sir.

18 EXAMINATION BY THE PUBLIC:

19 MR. HAMIL: I'm George Hamil.  
20 Nice to see you.

21 MS. HAMRICK: Hi, Harry.

22 MR. HAMIL: Ms. Hamrick, you've

1 been involved in a lot of food safety  
2 activities which I didn't hear you mention and  
3 I was thinking that the USDA might be  
4 interested in it, because you've got a lot  
5 more than it shows here in terms of your  
6 involvement in food safety. Could you give us  
7 a little bit of information about that?

8 MS. HAMRICK: I'm the co-chair of  
9 Group 3, which is a public policy group in the  
10 North Carolina Fresh Produce Safety Task  
11 Force. My -- my compatriot is a food  
12 scientist and a microbiology expert. He does  
13 the barf blog. Dr. Ben Chapman was not able  
14 to be here today, but we had a meeting in  
15 February the 23rd in Kannapolis and put  
16 together the talking points that Dr. Gunter  
17 came up with. That was a fabulous meeting.  
18 I was absolutely shocked when every grower who  
19 was there said, "We all need to be trained in  
20 food safety. No one should get a buy."

21 I left. I was -- still my -- my  
22 jaw was dropped the entire ride back to

1 Raleigh. It was a fabulous meeting. Talking  
2 points came out. It was conventional,  
3 organic, big, small, some regulators, some  
4 scientists, Farm Bureau and some -- some  
5 produce associations as well that were there.  
6 We spent the entire day talking and there was  
7 uniform agreement across the board.

8           So those talking points came out  
9 of the Group 3. Group 3 has approximately 30  
10 members. L&M is a member. Others are  
11 members. Carolina Farm Stewardship  
12 Association is a member of Group 3 and we meet  
13 regularly, as Chris said, on conference calls.

14           That's my main activity in the  
15 state of North Carolina, in addition to  
16 working with the North Carolina Farm Bureau  
17 and participating in American Farm Bureau  
18 conference calls on produce safety,  
19 encouraging them to become active and to  
20 become a proponent, which unfortunately did  
21 not happen, but, you know, so I've been very  
22 active in also reaching out to farmers across

1 the state to ensure that everyone knows what's  
2 going on.

3 MR. HAMIL: And you were involved  
4 in the recent hearings?

5 MS. HAMRICK: It was not a  
6 hearing; it was a listening session.

7 MR. HAMIL: I'm sorry.

8 MS. HAMRICK: It was a listening  
9 session.

10 MR. HAMIL: Yes.

11 MS. HAMRICK: The FDA came to  
12 North Carolina at the invitation of the North  
13 Carolina Fresh Produce Safety Task Force and  
14 I basically organized that that day for them.

15 MR. HAMIL: Thank you. Second,  
16 are you familiar with the tradeoffs that were  
17 made in the passage of HR-2749 where, I'm  
18 particularly talking about areas were cut out  
19 with exemptions between what was filed on June  
20 the 3rd and what was passed on July the 29th?  
21 Do you have some familiarity with that?

22 MS. HAMRICK: Only what I read --

1 MR. HAMIL: Only what you read?

2 MS. HAMRICK: -- in different  
3 versions of the bill. I was not in the rooms  
4 when those things were discussed so no, I only  
5 know what versions of the bill came out.

6 MR. HAMIL: Well, where I'm headed  
7 with this is is that the type of exception  
8 that you're concerned about under your section  
9 on premature --

10 MS. HAMRICK: No, sir. No, sir.

11 MR. HAMIL: Okay.

12 MS. HAMRICK: Absolutely not.

13 MR. HAMIL: Okay, thank you.

14 Third, you described the potential for leafy  
15 greens here in North Carolina and you also  
16 described the obvious difficulties that we may  
17 be looking at in terms of the cost of  
18 transportation and this sort of thing so that  
19 there may be a very -- very soon there may be  
20 a need for growers in North Carolina to  
21 convert to leafy greens. Would you give us  
22 any estimate -- or would you say that the



1 state of North Carolina is capable of  
2 producing all of the leafy greens that it  
3 consumes?

4 MS. HAMRICK: I'm going to pull a  
5 Chris Gunter and say I'm not qualified to  
6 answer that question because in order to do  
7 that I would want to be systematic in my  
8 research in truly looking at -- we have the  
9 production capability of a double crop in the  
10 east; however, we don't have varieties to do  
11 that. And so there has to be more of a market  
12 in order for the seed companies to become  
13 attracted to develop the varieties that we  
14 need to produce leafy greens in a humid  
15 climate.

16 MR. HAMIL: Would you say then  
17 that -- that a substantial amount -- a much,  
18 much larger percentage of what is consumed in  
19 North Carolina could be grown in North  
20 Carolina?

21 MS. HAMRICK: Again, it would  
22 depend on which market you're going to.

1                   MR. HAMIL: Last, would you write  
2 my presentation for the next time so it will  
3 be clearer?

4                   JUDGE HILLSON: Any further  
5 questions?

6                   MR. WILSON: Thank you, Judge.  
7 I'm George Wilson in the Horticultural Science  
8 Department at North Carolina State University.  
9 Debbie, I wanted to ask about the food safety  
10 training. I know you're a part of the same  
11 Task Force that Dr. Guenther is -- Dr. Gunter.  
12 Excuse me. And I know that he mentioned the  
13 food safety training programs, but I know that  
14 those programs have preceded him and perhaps  
15 even you. Could you tell me -- tell us  
16 approximately how many years these programs  
17 have been in operation?

18                   MS. HAMRICK: Wow. Doug Sanders  
19 started that 15 years ago and he developed  
20 Spanish language videotapes and handouts on  
21 produce safety and training on growers for  
22 produce safety. I think what's happened more

1 recently is that the Produce Safety Task Force  
2 has reworked it to be -- to be more in  
3 compliance along the lines of the FDA guidance  
4 documents that have come out and -- and more  
5 current GAPS.

6 MR. WILSON: And if my memory is  
7 correct, this is also a regional program, not  
8 just the North Carolina program? It's  
9 expanded to include several other southeastern  
10 states, is that correct?

11 MS. HAMRICK: We, with the Task  
12 Force, have been working with other states,  
13 yes, South Carolina specifically. We had  
14 training in South Carolina specifically and I  
15 believe we're invited to Virginia.

16 MR. WILSON: Thank you.

17 JUDGE HILLSON: Any further  
18 questions for Ms. Hamrick? Thank you for  
19 testifying. You may step down. I'm going to  
20 just call a three minute break and then we'll  
21 hear Mr. Hamil and then we'll wrap up unless  
22 someone else wants to testify.

1 (WHEREUPON, a brief recess was  
2 observed.)

3 JUDGE HILLSON: Let's go back on  
4 the record. Okay. Apparently our final  
5 witness is Mr. Hamil.

6 GEORGE H. HAMIL, after being first  
7 duly sworn, was examined and testified as  
8 follows?

9 JUDGE HILLSON: Okay. Can you  
10 please state your name and spell it for the  
11 record?

12 MR. HAMIL: My name is George H.  
13 Hamil, G-e-o-r-g-e, the usual spelling, middle  
14 initial H as in Harry, Hamil, H-a-m-i-l.

15 (WHEREUPON, Exhibit 139 was marked  
16 for identification.)

17 JUDGE HILLSON: And I've marked  
18 your written statement as Exhibit 139. And I  
19 understand you're going to read from the  
20 statement and add something to it.

21 MR. HAMIL: That's correct, sir.

22 JUDGE HILLSON: Why don't you

1 proceed.

2 MR. HAMIL: Thank you, sir.

3 Before I start I would like to preface it that  
4 Dr. Gunter, I was asking a question of you  
5 that I will answer myself. I have a major in  
6 mathematics and as a freshman I could have  
7 answered that question that I asked you. I'm  
8 not trying to throw a stone, but the reality  
9 is that the riskiness that they used was  
10 totally a specious form of measurement because  
11 it had nothing about opportunities involved.  
12 It had the -- it was doing strictly a raw  
13 number. It was a data number instead of what  
14 is an opportunity, which is what risk is. And  
15 that will be more evident because of my -- my  
16 testimony later on.

17 Ladies and Gentlemen, let me  
18 introduce myself. My name is George H. Hamil.  
19 I am called Harry. My wife Elaine and I have  
20 been helping rebuild local market oriented  
21 agriculture for over 14 years. Local market  
22 meaning agriculture that is oriented towards

1 the local market, okay? During that time we  
2 coordinated first the Valley Garden Market and  
3 then it's successor, producer controlled  
4 Farmers' Tailgate Market, the Black Mountain  
5 Tailgate Market for a total of 14 years. We  
6 also sell plants, produce, baked goods, and  
7 beverages at the market throughout its annual  
8 season.

9           We were also cofounders with the  
10 Appalachian Sustainable Agriculture Project of  
11 the first regional Farmers' Tailgate Market  
12 Association in our area, the Mountain Tailgate  
13 Market Association. Elaine served as its  
14 secretary for its first three years. In 2003,  
15 we purchased the existing assets and name of  
16 the Black Mountain Farmers' Market and made it  
17 into a year round store for local food.

18           In 2008, we added a small food  
19 distributor distribution division to our  
20 market so that the local blueberry grower  
21 could concentrate on growing more and better  
22 berries during our second year of exceptional

1 drought and we would do all of his sales.  
2 Since then we have added poultry raised by  
3 Ashley Farms of Winston-Salem, North Carolina  
4 and bison from Carolina Bison of Alexander,  
5 North Carolina.

6           These are second careers for my  
7 wife and me. She was a legal secretary for 17  
8 years and I worked for 35 years in the  
9 property liability insurance industry. During  
10 my insurance career I did most every aspect of  
11 insurance save actual claims handling,  
12 accounting, and information technology. While  
13 on the company side I served as the  
14 underwriting manager, the marketing manager,  
15 and the market development manager for  
16 national programs for a specialty insurance  
17 company. Later I worked for myself both  
18 regionally and as a local independent  
19 insurance agent.

20           17 of those years I also worked in  
21 life insurance and securities during which I  
22 designed, implemented, and administered a

1 section 457 deferred compensation plan for  
2 Guilford Technical Community College.

3 In addition, I have a long record  
4 of whistle blowing in the insurance industry.  
5 I tell you this so that you'll have some idea  
6 of my background and how and why I know  
7 whereof I speak to you today. I am grateful  
8 for this hearing on the National Leafy Greens  
9 Marketing Agreement because had it not  
10 occurred, I would not have understood as fully  
11 the impact of the California and Arizona Leafy  
12 Greens Marketing Agreements on growing  
13 practices and marketing.

14 Instead, I have spent at least 100  
15 or so hours specifically researching the  
16 California and Arizona Leafy Greens Marketing  
17 Agreements and the proposed National Leafy  
18 Greens Marketing Agreement because of the  
19 importance of leafy greens to the success of  
20 our market.

21 It is important to a small grocery  
22 store like ours to give people a reason to



1    come in.  They have to have a specific reason.  
2    They're not coming to us as their grocery  
3    store so they have to have a special reason.  
4    And they need to be able to depend upon that  
5    reason.  And leafy greens are a way for us to  
6    have something all the time that they will be  
7    able to walk in and know that they will be  
8    able to find a good salad or good braising mix  
9    and this sort of thing.  So it's particularly  
10   important to the financial success of a small  
11   business like our own.

12                   My research clearly shows the  
13   accuracy of the comments of those opposing the  
14   National Leafy Greens Marketing Agreement, so  
15   I won't waste any time reiterating its  
16   foolishness and specious logic.  Rather, I  
17   will point out to you the limited testimony by  
18   retailers.  As I understand it, only one  
19   supermarket, Wegmans, has spoken in favor of  
20   the agreement.

21                   If the National Leafy Greens  
22   Marketing Agreement is such a good deal for

1 retail sellers and consumers, why aren't the  
2 supermarkets here speaking in favor of it?  
3 Where we are sitting there are six major  
4 retail supermarket chains that are  
5 headquartered within 120 miles of us. None of  
6 them are here.

7 My answer is that the National  
8 Leafy Greens Marketing Agreement is of no  
9 consequence to them. Contrast this with the  
10 half dozen or so co-ops which have testified.  
11 They have testified against it. In fact the  
12 co-op's national organization is part of the  
13 National Organic Coalition, which is leading  
14 the -- the opposition.

15 The Black Mountain Farmers' Market  
16 is most similar to co-ops. We fear the  
17 National Leafy Green Marketing Agreement for  
18 the following reasons: one, the National  
19 Leafy Greens Marketing Agreement will become  
20 essentially mandatory for handlers and  
21 therefore growers. If it does, we probably  
22 will not be able to afford participation in it

1 and be unable to distribute leafy greens  
2 through our distribution division because of  
3 our size, no other reason.

4           Number two, we believe we will be  
5 unable to obtain what our customers want,  
6 namely a wide variety of leafy greens that are  
7 very fresh or picked at the apex of their  
8 quality, locally grown, and minimally sprayed.

9           Three, we believe the National  
10 Leafy Greens Marketing Agreement may make it  
11 difficult for us to find the wide array of  
12 cultivars, both heirloom and modern, of leafy  
13 greens that our customers and we desire.

14           Number four, we desire similar  
15 species of what I would call leafy greens and  
16 anybody else would, okay, that are not covered  
17 by the National Leafy Green Marketing  
18 Agreement that simply aren't available through  
19 the predominant leafy greens markets. For  
20 example, we desired to offer and our customers  
21 desire to buy bietole, selvetica arugula,  
22 creasy greens, and lamb's quarters, and other

1 wild greens.

2           Next I wish to address the issue  
3 of unintended consequences, particularly  
4 product liability insurance. Yesterday my  
5 wife and I finally had to face the change of  
6 the primary occupancy of our building from  
7 insurance agency to store for local food. As  
8 a result of a change in the commercial  
9 insurance market, the annual premium on our  
10 policy would have increased from \$759 to  
11 \$3,048 with slight reductions in coverage. As  
12 a result, we could not afford the cost of  
13 product liability insurance.

14           Thus I doubt if anyone at this  
15 hearing or who was at this hearing has a great  
16 a concern for food safety as we do save Chris  
17 Sawyer. Because everything that we have  
18 worked for 40 years to build can be lost by an  
19 error by one of our growers.

20           For a variety of reasons,  
21 including the failure of large leafy greens  
22 producers and handlers to adequately address

1 their food safety issues, but not limited to  
2 that, food borne illnesses now have the full  
3 attention of the (inaudible). Marla Clarke's  
4 success has resulted in many imitators and  
5 copiers. Combined with the inaccurate use of  
6 statistics in the current food safety  
7 legislation and regulation as I illustrated as  
8 a preface to this, the current food safety  
9 legislation regulation debate is screwed up.

10 As a long time property/casualty -  
11 - property liability professional, insurance  
12 professional, I am convinced that the  
13 commercial liability insurance market is in  
14 the process of hardening. Hardening in the  
15 insurance -- in the property liability  
16 insurance industry means higher premiums and  
17 fewer standard markets.

18 I fear that the adoption of the  
19 National Leafy Greens Marketing Agreement will  
20 be used as an easy underwriting requirement.  
21 Underwriting is a metric, okay, just like  
22 we're talking about here, an easy underwriting

1 requirement by commercial liability insurance  
2 carriers. It has been done in the past to the  
3 detriment of individual types of businesses,  
4 where our industry just got going in a  
5 direction and it bore real -- very little  
6 resemblance to reality. And I'm very  
7 concerned that the National Leafy Greens  
8 Marketing Agreement may be used as that type  
9 of an easy underwriting tool.

10           Now back to what you have in your  
11 hands. Our store, like is already occurring  
12 in California, will continue to place whatever  
13 prerequisites -- requirements -- excuse me --  
14 we deem appropriate on our suppliers to assure  
15 the safety of the food that we sell. To do  
16 otherwise would be the height of folly. We  
17 will never rely upon any Leafy Greens  
18 Marketing Agreement to assure the safety of  
19 the food we sell and it is we who are the  
20 handlers, customers, we retailers.

21           I can not imagine that any other  
22 retailer would use it. In our case today --

1     excuse me -- in our case, today the Black  
2     Mountain Farmers' Market commits to never buy  
3     leafy greens from signatories of the existing  
4     or future Leafy Greens Marketing Agreements,  
5     except upon the direct request of our  
6     customers. Furthermore, we will seek out  
7     growers and contractually commit to purchase  
8     from them so that they will grow what we need  
9     and what our customers want.

10                     Finally, we are committing to our  
11     customers that we will leave no stone unturned  
12     in obtaining leafy greens locally that are not  
13     grown under any Leafy Greens Marketing  
14     Agreement. This is a particularly significant  
15     commitment because, as I said earlier, having  
16     high -- fresh, high quality leafy greens year  
17     round for our customers is a key to our market  
18     success. We walk our talk.

19                     Our research has also empowered my  
20     wife and me to knowledgeably discuss the Leafy  
21     Greens Marketing Agreements with our  
22     customers. Since we started doing this a

1 little over two weeks ago, every one of the  
2 several dozen people with whom we have shared  
3 the information has been astonished at what is  
4 being done under the guise of food safety and  
5 wants to know what she or he can do about it.  
6 All of them desire to use their buying  
7 decisions to support growers and handlers who  
8 refuse in any way to be parties to or  
9 controlled by the California, Arizona or  
10 National -- proposed National Leafy Greens  
11 Marketing Agreement.

12           During this, Elaine and I decided  
13 to convene a healthy food coalition, for it is  
14 healthy food that we need. Healthy food is  
15 always safe. Safe food, quote, unquote,  
16 particularly as designed by regulators, is not  
17 always healthy. We have secured the domain  
18 name healthyfoodcoalition.org and an interim  
19 e-mail address healthyfoodcoalition@gmail.com.

20           The Healthy Food Coalition will  
21 not take positions on issues per se, Mr. Hall.  
22 Rather it is designed to inform the public of



1 what is actually happening in the food safety  
2 regulation and legislation arena and empower  
3 them so that they can make appropriate  
4 responses to what they learn. At present  
5 there are only a bit over a dozen people who  
6 have made a donation and agreed to the simple  
7 requirements of the coalition. We expect the  
8 Coalition to grow into the hundreds within a  
9 few weeks.

10 I do not speak for the Coalition,  
11 nor will anyone else. Rather, as people and  
12 groups within the Coalition, see opportunities  
13 to positively affect issues, they will put  
14 together projects, campaigns, petitions, et  
15 cetera, and enlist the participation of other  
16 members of the Coalition. All money we raise  
17 will be passed through to an existing national  
18 organization to support these efforts.

19 The first campaign to come out of  
20 the Healthy Food Coalition focuses on leafy  
21 greens and has the following goals: one, to  
22 inform the public about the full actual impact

1 of the California, Arizona, and National Leafy  
2 Greens Marketing Agreements, two, to provide  
3 the means for people to collectively express  
4 to supermarket chains in their vicinity their  
5 desire to minimize their purchases of leafy  
6 greens handled by signatories of existing  
7 leafy greens marketing agreements and the  
8 National Leafy Green Marketing Agreement if  
9 the AMS adopts it -- excuse me -- if the  
10 secretary adopts it.

11           The headquarters of the mainstream  
12 supermarket chain Ingall's is in my small town  
13 about 100 miles from here. I have worked with  
14 its executives at the corporate level for  
15 years. Furthermore, Food Lion, Lowe's Foods,  
16 Harris Teeter, Bi-Lo, UKrop's, Food Country,  
17 and Food City are all headquartered within 250  
18 miles of where I am seated. In addition, the  
19 number two natural foods supermarket chain  
20 Earth Fare is headquartered about 15 miles  
21 west of Ingall's and there are numerous other  
22 natural food stores and co-ops in the

1 Carolinas and Virginia.

2 Point number three, to assist the  
3 appropriate NGOs and state agencies in  
4 developing a statewide marketing plan for each  
5 of the three states individually that will  
6 stress the year round availability of locally  
7 grown salad and braising greens. No retailer  
8 in the Carolinas or Virginia should ever be  
9 forced to meet its demand for leafy greens by  
10 importing them from California or Arizona. I  
11 wrote this without being aware of Ms.  
12 Hamrick's presentation.

13 Ladies and Gentlemen, I promise  
14 you that there will be negative economic  
15 consequences for the signatories of the  
16 existing and any future leafy greens marketing  
17 agreements. This is not a threat; this is my  
18 commitment that I will work for that. More  
19 importantly, I know that the foolishness of  
20 the Leafy Greens Marketing approach, as  
21 already well described by those who have  
22 previously testified, will provide a huge

1 boost to the local food movement that I love.

2 We Carolinians and Virginians have  
3 a long record of showing good sense in  
4 situations like this. Thank you. I look  
5 forward to answering any questions you may  
6 have.

7 JUDGE HILLSON: Okay. Thanks for  
8 your testimony, Mr. Hamil. I'm going to  
9 receive your -- your written statement into  
10 evidence as Exhibit 139.

11 (WHEREUPON, Exhibit Number 139 was  
12 submitted into evidence.)

13 JUDGE HILLSON: And I will first  
14 ask the USDA panel if they have any questions.  
15 Ms. Deskins?

16 CROSS-EXAMINATION BY THE USDA:

17 MS. DESKINS: Charlene Deskins,  
18 USDA. Mr. Hamil, I'm hoping you can clarify  
19 something for us.

20 MR. HAMIL: Certainly.

21 MS. DESKINS: You own something  
22 called Black Mountain Farmers' Market?

1 MR. HAMIL: That's correct.

2 MS. DESKINS: And that's a grocery  
3 store?

4 MR. HAMIL: It's a grocery store.  
5 What happened was we had the Black Mountain  
6 Tailgate Market.

7 MS. DESKINS: I understand.

8 MR. HAMIL: Yeah. And then this  
9 man built this other thing trying to piggyback  
10 us. And so we -- we got the opportunity to  
11 buy the name and we kept the name to keep  
12 someone from trying to piggyback on the -- on  
13 the growers.

14 MS. DESKINS: You operate a  
15 grocery store?

16 MR. HAMIL: We are a store for  
17 local food.

18 MS. DESKINS: Okay. Are you --  
19 are you a producer as well?

20 MR. HAMIL: Yes, ma'am. We have a  
21 greenhouse -- small greenhouse in the area  
22 beside our store, but I am -- I am tinier than

1 everybody here by -- you know, I'm just very,  
2 very, very, very small.

3 MS. DESKINS: How much leafy  
4 greens do you produce?

5 MR. HAMIL: Right now I don't  
6 produce 300 pounds a year.

7 MS. DESKINS: And the other thing,  
8 in your testimony you said that you're only  
9 speaking for yourself?

10 MR. HAMIL: That's correct.

11 MS. DESKINS: Okay. Because later  
12 in your testimony you say "We Carolinians and  
13 Virginians." Are you speaking for somebody --

14 MR. HAMIL: No. What I was trying  
15 to say there, ma'am, was that my experience of  
16 living in the Carolinas, and I'm moving to  
17 Virginia, is that people in this area, when  
18 times get hard, tend to pull together as you  
19 have heard from numerous examples of things  
20 that have been said today, particularly Tim  
21 Will's presentation. So we tend to look to  
22 something larger than our own simple self-

1 interest in the short --

2 MS. DESKINS: So you are speaking  
3 for other people?

4 MR. HAMIL: I am not speaking for  
5 other people in a sense of at anyone's  
6 authority.

7 MS. DESKINS: Thank you.

8 JUDGE HILLSON: Other questions  
9 from the USDA panel? I'm not seeing any. How  
10 about question from -- Mr. Hall?

11 CROSS-EXAMINATION BY THE PROPONENTS:

12 MR. HALL: Charles Hall, Georgia  
13 Fruit and Vegetable Growers Association. I  
14 appreciate your testimony, Mr. Hamil. Very  
15 good, thank you.

16 MR. HAMIL: Thank you.

17 MR. HALL: Just a couple of  
18 questions in clarification so we got  
19 understanding of your -- on your operation.  
20 In the testimony at the bottom of the first  
21 page after your oral testimony --

22 MR. HAMIL: Yes.

1           MR. HALL:  -- you mention that you  
2 seek out growers and contractually commit to  
3 purchase from them the products you need.  How  
4 many different growers are you working with  
5 for leafy greens, for supplying your leafy  
6 greens?

7           MR. HAMIL:  We're -- we're  
8 currently working with about a half a dozen,  
9 all right.  What we're hoping to do is to have  
10 -- is to provide a formal contractual  
11 agreement so that they will commit to grow  
12 more with two to three.

13          MR. HALL:  And do you contract  
14 with growers or buy other produce, tomatoes or  
15 melons, from other growers also?

16          MR. HAMIL:  We are trying to do  
17 that, but it's very much in the infancy stage.  
18 That's a new idea for most of the growers  
19 because as was said by I believe it was Patryk  
20 Battle, we have a huge direct marketing  
21 opportunity.  In my county alone, Buncombe  
22 County, we have something like 18 tailgate



1 farmers' markets.

2 MR. HALL: Your -- your produce  
3 market or grocery store, do you sell other  
4 produce other than what's grown there in the  
5 area?

6 MR. HAMIL: Yes, we have in the  
7 past, okay, and we are going to discontinue  
8 selling, as I said, here, okay? We are  
9 looking for the closest that we can find.

10 MR. HALL: So but produce that  
11 many consumers want such as bananas or grapes  
12 or those types of things, you would not --

13 MR. HAMIL: We --

14 MR. HALL: -- you would not --

15 MR. HAMIL: Every once in a while  
16 we'll run across an opportunity to get some  
17 and so we will buy them where it's a good deal  
18 for our customers and we're basically, you  
19 know, shopping for them. We don't carry them  
20 on a regular basis.

21 MR. HALL: But most of your  
22 produce you're targeting to be locally

1 produced?

2 MR. HAMIL: We are a store for  
3 local food.

4 MR. HALL: Do you have -- in  
5 identifying those growers that you want to  
6 market their produce there at your store --

7 MR. HAMIL: Yes.

8 MR. HALL: -- do you anticipate or  
9 do you now have any kind of, for the lack of  
10 a better word, food safety standards?

11 MR. HAMIL: We have no written  
12 metrics, okay? We -- the number one person  
13 that I'll use as an example, okay, her name is  
14 Eileen Drescher, okay? Eileen moved from  
15 western Massachusetts down to Nebo, North  
16 Carolina, which is about 30 miles east of us,  
17 and started a new farm here. In western Mass  
18 she was on a farm -- she rented a farm that  
19 was owned by the town to keep the pastoral  
20 quality of the town. And she had a 450 person  
21 CSA. She raises the most beautiful greens in  
22 terms of a spectrum, you know, I've ever seen

1 in my life. She's stunning and she is very,  
2 very meticulous and careful and has a long  
3 history with zero incidences or problems.

4 MR. HALL: As you move forward and  
5 expand your growers, will you be doing the  
6 inspection as far as whether they're -- as to  
7 what kind of food -- food safety standards and  
8 --

9 MR. HAMIL: Yes. I would -- I  
10 would do it unless -- yeah, I would do it  
11 unless I am constrained by the underwriters of  
12 my insurance policies or some other  
13 requirement because I anticipate that there  
14 will be additional requirements that are going  
15 to be placed on the produce industry within  
16 the next year or so.

17 MR. HALL: I'm not sure I  
18 understand --

19 MR. HAMIL: I'm saying that --

20 MR. HALL: -- how you would be  
21 restrained by your insurance.

22 MR. HAMIL: Because if my

1 insurance underwriter says to me that I need  
2 to only buy through --

3 MR. HALL: I see.

4 MR. HAMIL: -- members of the --  
5 that are, you know, signatories to it, then  
6 I'm going to have to do that or I'm out of  
7 business. Now, I'm 62-years-old, Mr. Hall,  
8 all right, and I work 80 hours a week 52 weeks  
9 a year. And I -- I have to sell my -- my  
10 place, okay, my wife and I have to sell. And  
11 so we have to make it into something that can  
12 sell.

13 We are willing to go without  
14 product liability insurance, but no buyer  
15 would ever buy it and do that, okay. So we've  
16 got to do those things that will enable us to  
17 ultimately sell it over the next few years and  
18 the insurance could be a really key part of  
19 it.

20 MR. HALL: One or -- just one or  
21 two more. On the top of the second page of  
22 your testimony --

1 MR. HAMIL: Yes, sir.

2 MR. HAMIL: -- the first paragraph  
3 mentioned what is being done under the guise  
4 of food safety. Can you elaborate?

5 MR. HAMIL: For example, I'm sure  
6 you're familiar with the San Francisco  
7 Chronicle article which has been introduced,  
8 I think, as an actual exhibit in this, in  
9 which I believe one of the growers talked  
10 about a deer walking through a field and he  
11 had to cut away all -- this huge amount of  
12 product and this sort of thing. I can see no  
13 reasonable justification for that particular  
14 action, okay?

15 That article also chronicled  
16 examples of buffers, okay? As has been made  
17 from testimony from other people here, you  
18 know, a farm in my area, shoot, if it's three  
19 acres it's pretty big, okay? There's no way  
20 for buffer. And I don't know where you are in  
21 Georgia, okay, but I'm guessing it's somewhere  
22 in the center -- the central part of the state

1 so you don't have a problem with bears, okay?

2 MR. HALL: I hope not.

3 MR. HAMIL: All right? I grow at  
4 my house, okay, and I have a bear that comes  
5 through my yard regularly, okay? So I have to  
6 watch out for bear scat and dispose of it in  
7 a very careful way because it almost certainly  
8 has giardia, okay? And so it's a -- it's a  
9 different -- you know, where we are, we --  
10 it's impossible for us to protect ourselves  
11 from our wildlife.

12 When I was in Virginia about a  
13 month and a half ago, I was riding on a little  
14 road with my wife and we came around a curve  
15 and there was a cut, you know, for a ditch so  
16 that there was a field that must have been ten  
17 feet above the road, okay? Unfortunately, a  
18 fawn chose that moment to clear a five foot  
19 fence about seven feet from the edge of that  
20 hill and landed on top of us. When I went --  
21 and it broke its legs, okay, but it didn't  
22 die.

1                   And I didn't have any way to take  
2   it out of its misery so I went to the first  
3   house and as it happened a man was coming out  
4   and I said, "This is what happened." He said,  
5   "It was jumping the fence, wasn't it?" Right.  
6   You know, they can jump a 12 foot fence.

7                   MR. HALL: Right.

8                   MR. HAMIL: I can't imagine doing  
9   what Gary Scott was saying up our way. We  
10  couldn't afford the fences. And so we're  
11  going to not sell produce because a deer got  
12  into the garden?

13                  MR. HALL: That's all the  
14  questions I have. Thank you.

15                  JUDGE HILLSON: Any further  
16  questions for Mr. Hamil? Okay, thank you so  
17  much.

18                  MR. HAMIL: Thank you.

19                  JUDGE HILLSON: Thanks for your  
20  patience and thank you for testifying.  
21  According to my list we don't have any more  
22  witnesses. Does anyone else here want to

1 testify? Okay. Let me just -- before we  
2 close up the hearing, let me just go over the  
3 dates that we discussed a couple hours ago  
4 just so I'll have it back at the end of the  
5 record. We're going to assume the transcript  
6 is going to be ready on or -- on or about the  
7 13th of November, three weeks from tomorrow.  
8 The -- any proposed transcript corrections are  
9 due on December 11th. Mr. Etko and Mr.  
10 Resnick agreed that they would serve --  
11 electronically serve these documents on each  
12 other. I'm also going to add that, and you  
13 can pass this on to them, to also serve it  
14 directly on me so I'll get it at work. My e-  
15 mail address is at marc, m-a-r-c, dot,  
16 hillson@usda.gov. That way I can look at it  
17 right away since time is going to be of the  
18 essence for me.

19           Any objections or responses to  
20 those proposed corrections? It would be due  
21 on December 18th, served the same way. And  
22 finally the parties' briefs will be due on



1 January 13th of 2010. Is there any other  
2 housekeeping to talk about? If not, thanks  
3 everyone.

4 MS. DESKINS: Just for the record,  
5 where people should file the briefs. They  
6 need to file with the Office of the Hearing  
7 Clerk.

8 JUDGE HILLSON: Okay, thank you.  
9 Yeah. And I think the address -- I don't know  
10 this off the top of my head, but all briefs  
11 have to be filed with the Office of the  
12 Hearing Clerk and they need to be submitted  
13 probably by next day delivery. They need to  
14 be there on those dates -- on those dates,  
15 January 13th in particular and our mail that  
16 goes to USDA often gets irradiated and then  
17 the pages come all stuck together and we get  
18 them two weeks later so I would use an  
19 overnight delivery service to make sure that  
20 it gets there by January 13th.

21 Any party or any individual who's  
22 interested can file a brief. It's not

1 restricted to -- to the Western Growers and  
2 it's not restricted to the organic people  
3 either. It's anyone can file a brief.

4 If you're going to -- if you're  
5 going to talk you need to come up to the  
6 microphone and say who you are and talk.

7 MR. MCREYNOLDS: I just have a  
8 quick question. Is electronic delivery to the  
9 Hearing Office permitted?

10 JUDGE HILLSON: Unfortunately,  
11 it's not in the rules right now, so no. I  
12 mean, it's a good alternative and if it came  
13 in electronically and didn't come in the other  
14 way, I probably would allow it to be filed.  
15 But I won't be here so I can't speak for  
16 whoever is going to be the acting chief judge  
17 when I leave. Well, I will adjourn the  
18 hearing. Thank you very much. Off the record.

19 (WHEREUPON, at 7:13 p.m. the  
20 proceedings were adjourned.)

21

22

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