UNITED STATES DEPARTMENT OF AGRICULTURE

PUBLIC HEARING

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

DOCKET NO. 16-0016 AO-FV
AMS-SC-16-011; SC16-989-1

TUESDAY,
MAY 3, 2016

The hearing came to order at 9:00 a.m. at the Hilton Garden Inn located at 520 West Shaw Avenue, Clovis, California, Bobbie J. McCartney, Chief Administrative Law Judge, presiding.

BEFORE:

BOBBIE J. MCCARTNEY

Chief Administrative Law Judge
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JUDGE McCARTNEY: I'm Judge McCartney.

This is a public hearing. The Docket Number is 16-0016AO-FV.

I note that some of the pleadings have the AO and the FV before the number docket. I encourage you to put the number first.

Simply because as a matter of the official record, the hearing clerk will file it by number. So, if you want to be sure that your dockets are properly filed, I encourage to put the number first.

I have given the court reporter a heading from the pleadings so that all of the reference numbers, including the AMS and other related numbers for tracking will be included in the record by the court reporter.

Now it may seem redundant, but those of you who have a copy of the proposed Rulemaking Notice in front of you, I am going to be reading into the record the summary. And I do that for a
number of reasons. While it may seem inefficient at the present time, I assure you five years from now you will welcome having that in the transcript without having to look for an Exhibit or an unattached document.

Also, it helps to bring everybody on the same page as to why we are here today. That is to identify with particularity and specificity the focus of the issues that we're going to be addressing in this proceeding.

All right, while it's an informal, non-adversarial proceeding, the matters relevant to the Secretary must be material, relevant and not unduly repetitious. So, these will help us with that structure.

Once I complete that, I will be asking for notices of appearances. I want everyone in the room to provide their appearance. But I want those who intend to examine witnesses to state that purpose on the record so that I can be clear as to who's here and why.

Also, you may note that the Rules
provide that the name, address, and the
occupation are to be provided on the record by
all witnesses. I'm going to assume that you have
all provided your contact information to the
court reporter.

If you have not done so, you are
directed to do so before you leave the room
today. It is very difficult to keep track of
who's participating and in what capacity without
the address and contact information. But yet, it
is very time consuming.

And I think some -- in this current
day and age, perhaps a little difficult for
witnesses to give personal information like
address information on the record.

So, I find that giving business cards
or just simply filling out a small sheet with
that information and delivering it personally to
the court reporter is a far better process. With
the added benefit she gets your names spelled
right.

(Laughter)
JUDGE McCARTNEY: This is always a nice thing. All right. So, with that I am turning my attention to what will be a foundational Exhibit entered into the record. So, don't feel like you have to take notes. But, as I indicated, I'm reading it for future judicial reference.

This is a public hearing to receive evidence on proposed amendments, to Marketing Order Number 989 that regulates the handling of raisins grown in California. Five amendments are proposed by the Raisin Administrative Committee, which is responsible for local administration of the Order.

These proposed amendments would authorize production research, establish new nomination procedures for independent grower member and alternate number of seats, add authority to regulate quality, add authority to establish different regulations for different markets, and add a continuance referenda requirement.
In addition, the Agricultural Marketing Service proposes two amendments. These amendments would remove Order language pertaining to volume regulation and reserve pool authority. And would establish term limits for committee members.

In addition, AMS proposes to make any such changes as may be necessary to the Order to conform any amendment that may result from the hearing. These proposed amendments are intended to update the Order to reflect past changes in the industry and potential future changes, and to improve the operation and administration of the Order.

Are there any questions, issues or concerns with the respect to the nature of this public hearing and why we're here today?

(No response)

JUDGE McCARTNEY: All right. Then moving forward with notices of appearances, I would like to begin with the USDA on my left.

MS. CHILUKURI: Good morning, Your

I'm a trial attorney with the Office of the General Counsel. And I represent the USDA at this hearing. And I will be examining witnesses.

MS. SCHMAEDICK: Good morning. My name is Melissa Schmaedick. M-E-L-I-S-S-A-S-C-H-M-A-E-D-I-C-K. I am a Senior Marketing Specialist with the U.S. Department of Agriculture. And I also will be asking questions today.

MR. QUINONES: Hello, Your Honor. My name is Geronimo Quinones. G-E-R-O-N-I-M-O-Q-U-I-N-O-N-E-S. And I am a Senior Marketing Specialist. And I will also be asking questions.

MR. McFETRIDGE: Good morning. My name is Marc McFetridge. M-A-R-C-M-C-F-E-T-R-I-D-G-E. I'm an Agricultural Economist with the Promotion and Economics Division, part of Agricultural Marketing Service for the USDA. And I will also be asking questions of the witnesses.
MS. STOBBE:  Good morning. My name is Maria Stobbe. And that's S-T-O-B-B-E. And I am a Marketing Specialist with USDA.

And I oversee the raisin program. And I may be asking questions today. Thank you.

JUDGE McCARTNEY: All right. I'm going to turn to my right. And we're going to move down the table. And then I'm going to start from left to right in the back.

MS. POWELL: I'm Debbie Powell. D-E-B-B-I-E P-O-W-E-L-L. I'm the Interim Present and General Manager for the Raisin Administrative Committee.


MR. SCHUTZ: My name is Monte Schutz. M-O-N-T-E S-C-H-U-T-Z. And I am the Chairman of the Raisin Administrative Committee.

MR. SPATE: I'm Steven Spate, S-T-E-V-
E-N S-P-A-T-E. I'm employed by the Raisin Bargaining Association as a Rural Representative. I'm also the Chairman of the Board of the California Raisin Marketing Board and also a farm for grapes for raisins.


MS. ZYL: Good morning, my name is Sonet van Zyl. That's S-O-N-E-T V-A-N Z-Y-L. And I'm an Assistant Professor in Agriculture at Fresno State, representing usually table grape production and raisin production.

JUDGE McCARTNEY: Sir?

MR. GOTO: Good morning. My name is Glen Goto. G-L-E-N G-O-T-O.

JUDGE McCARTNEY: Actually, could you step up to the podium, to the mic?

MR. BARSERIAN: Good morning, Your Honor. My name is Kalem Barserian. I am a member of the Raisin Administrative Committee. Also, a raisin grower, consultant to Lion Raisins. And I'll be giving testimony in favor of Propose Number Two.

JUDGE McCARTNEY: Thank you.

COURT REPORTER: Can you restate your name please, sir?


JUDGE McCARTNEY: Sir?


I will be presenting testimony during the hearing on Proposal Number Six. Strike that. Six, Seven and Eight. Yes, to reiterate, that will be Six, Seven and Eight. Thank you.

JUDGE McCARTNEY: Thank you. I'll move from the back and then.

MR. SMUTNY: Good morning. My name is Jeff Smutny. S-M-U-T-N-Y. First name Jeff, J-E-F-F. I am with USDA, Marketing Order and Agreement Division.

MS. HALE: Good morning. My name is Essence Hales. E-S-S-E-N-C-E H-A-L-E-S. And I'm an Agricultural Economist with the Promotion Economics Division of the Agricultural and Marketing Service.


JUDGE McCARTNEY: Everyone in the room must note an appearance, please.

MR. SOMMERS: My name is Peter
1 Sommers. S-O-M-M-E-R-S. I am here as an
2 observer with the California Marketing Field
3 Office. And I oversee pistachios and olives.

4 JUDGE McCARTNEY: Great. Thank you.
5
6 MS. WRAY: Good morning. My name is
7 Debbie Wray. It's D-E-B-B-I-E W-R-A-Y. And I'm
8 a Senior Marketing Specialist with the Marketing
9 Order and Agreement Division, the USDA. And I
10 work out of the Portland, Oregon office.

11 JUDGE McCARTNEY: Thank you. All
12 right. Now, I'm going to be moving into some
13 preliminary matters. Including rules for the
14 conduct of the hearing.

15 And that might seem a little strange
16 because most of these rules are common courtesy.
17 But nevertheless, I find it helpful to take a few
18 moments of our time so that we're all on the same
19 page moving forward.

20 Then we'll be moving into the proposed
21 schedule for the day. I think it's very helpful
22 for people to know when they can expect a break
23 and to plan accordingly.
Now, I will say that my primary purpose is to facilitate the taking of evidence in this public hearing. Not to be draconian or difficult in any way.

So, if anyone needs an exception to a rule or has concerns with the rules, speak up now. Let me know if you have special issues.

Anyone who comes in late must come to the microphone and identify themselves for their notice of appearance on the record.

MR. MILINOVICH: Hi, my name is Jeff Milinovich. I'm with Central California Raisin Packing.

JUDGE McCARTNEY: Thank you. All right. So, rules for the conduct of the hearing. As I said, most of these are just common courtesy. I'm just going over them so we're on the same page.

All cell phones on silent mode. All right. And I -- some Judges prohibit you having your cell phone with you. I use my cell phone for a number of reasons, including staying on
track.

So -- and I know emergencies do happen. So, just put them on silent mode. Also, if you have to answer a call, get up and leave the room to do it. Please, none of this high pitched whispering, I'm in a hearing, I'll get to you later.

(Laughter)

JUDGE McCARTNEY: Okay. It disturbs everyone just as much as if you took the call. You see that you've got a call coming in and you really feel like you must take it, you can't wait for the break, don't bother excusing yourself, just quietly and courteous remove yourself from the room.

Now, having said that, if something happens while you're absent that is on you. I'm not going back revisiting. And you're not going to be able to ask witnesses redundant questions because you chose to take a call during witness examination time.

All right. No food or drink other
than -- this is my big concession. Usually it's just water. But we're going to let coffee in this time.

(Laughter)

JUDGE McCARTNEY: Because I need coffee too. So, usually it's nothing but water. And please, no gum. You cannot even imagine how distracting it is for me to have to watch someone chewing gum in the audience while I'm trying to listen to a witness testify.

And it's very rude to the witness to have to deal with that. All right.

No extraneous material in the hearing room. If you must read your newspaper, do it in the lobby, not while we're examining witnesses.

This also goes for your Facebook, for your news alerts on your cell phone, or anything else that you might be interested in other then what our witnesses are here to give testimony on.

Now, I know that many of us have ADD and it's very hard to give our full, undivided attention to a witness giving testimony. But we
can do that for the duration of this proceeding.
And that's what I'm asking of everyone. It's common courtesy.

If it were you on the stand, you would want that. And so, I'm asking on behalf of the witnesses.

Professional courtesy at all times.
You may enter and exit the room quietly and discretely. You do not need to ask my permission to do so.

Please refrain from speaking over a witness. If this is a common occurrence, I will indicate so on the record. It's very disruptive.

Please, if you ask a question, let the witness finish his or her response.

If you feel that the witness is being unresponsive and is just using the time to bolster his or her position, direct your objection to me. And I will address the issue.

Witnesses are required to address questions to the Judge. I do not -- witnesses are here to answer questions as a general rule.
I do realize this is a non-adversarial public hearing. But, you know, encouraging dialog versus testimony, is something that I'm responsible for moderating.

So, the witness has a question, they are to direct that question to me. And then we will clarify it with counsel as necessary and appropriate.

Please be punctual. I realize that sometimes we're late. We have very good reasons. But we're not in Washington, D.C. with metro problems killing people. Okay?

(Laughter)

JUDGE McCARTNEY: There should really be very few times that the traffic is an issue or you have other such similar matters that distract from you being punctual.

All right. It's very important given the number of witnesses that are testifying that if you intend to examine a witness that you be in the hearing room at all times while the witness is under oath. All right, direct and cross
If you decide to remove yourself while a witness is under oath giving testimony and then you come back in the room and want to examine the witness, please be advised, no redundant or repetitive questions will be permitted. And you're not going to find out until you get the transcript what he or she had to say. So, I strongly urge you to remain in the room at all times if you have a witness that you are interested in examining.

Exhibits, properly marked. Exchanged in advance whenever possible is extremely helpful. If the Exhibit is a foundational document or has otherwise been stipulated to, please let me know in advance as you hand a copy to the court reporter so it can be reflected in the record.

This saves time because then I'm not expecting you to lay a proper foundational predicate for the document. It's a foundational document, public record, and/or has been
stipulated to by all impacted parties.

It saves a lot of time. And it saves time for the court reporter too.

Please be advised too that with respect to Exhibits, it is my duty and responsibility to certify the transcript to the Secretary. Which will include the Exhibits.

So, to ensure that I can do my job properly, I expect all attorneys and participating parties to track their Exhibits. I usually have an end of the day Exhibit recounting.

But, because this is a relatively short proceeding and it is non-adversarial, I will simply do it before I close the record at the end of the process. But, please be advised, you should have a running list.

It is surprising how fast this process takes over. And you've offered something. You didn't formally, you know, it wasn't formally received into evidence and then I close the record, I'm back in Washington, D.C., and an
issue arises later about the admissibility of the Exhibit.

That is not going to happen to you. Because I'm going to make sure that when I leave and this record is closed, everyone has had an opportunity to put his or her Exhibits into the record. And they've been properly received.

All right. Any questions, issues or concerns with respect to the procedural protocol applicable to this process?

(No response)

JUDGE McCARTNEY: All right. I assume then by your silence you are acquiescing. You will be held accountable.

All right. So, turning our attention to the schedule. My effort here is to try to give everyone kind of notice about breaks, et cetera. If they're real issues or concerns, we can go off record and talk about it.

And I'll tell you, I really believe in the strength of agreement. So, when the parties have all come to an agreement about scheduling
issues, admission of Exhibits, anything of that
nature, I'm going to defer to the collective
agreement of the parties.

My job is to resolve disagreements.

So, when we have problems and people are not on
the same page, then I will move the process
forward.

So, what I'm proposing here is going
to give us maximum utilization of the court
reporter. But with deference to the fact that
she does get tired. And you know, that we all
want a really good transcript here. And we want
to be sensitive to our court reporter's physical
needs as well.

So, here's what I'm proposing. An
hour and a half, 15 minute break. That's 9:00 to
10:30. A break from 10:30 to 10:45. Reconvene
at 10:45. Go to 12:15.

I propose an hour and 15 minutes for
lunch. That gives you time to check your emails,
make a few phone calls, have a bite to eat.

We reconvene at 1:30, we go until
3:00. From 3:00 to 3:15, a 15 minute recess. At 3:15 we reconvene. We recess at 4:45.

This is a proposed schedule only. It is subject to the needs of individual witnesses and/or the court reporter.

So, if you have a witness that needs to leave earlier and that witness needs to be taken out of order, anything like that, then just have your representative bring that to my attention.

All right. Does this sound like a schedule that everyone can live with?

MALE: Yes.

JUDGE McCARTNEY: All right. All right, thank you for speaking on behalf of the group. I am very serious about the time frames. Okay.

Because I have found that it is very difficult for even the best court reporter to keep track of testimony when they're going too long without a break. And yes, my cute little stand I got it in New York, I recommend it to
everyone.

All right. Now I'm going to turn my attention to introductions by the Representatives. Are there any issues, questions, or concerns about the procedural protocol before we begin?

(No response)

JUDGE McCARTNEY: All right. I'm going to start with Counsel for the USDA.

MS. CHILUKURI: Yes, Your Honor. So I have some preliminary matters that I'd like to address on the record. Notice of the Hearing was published in the Federal Register on April 22, 2016.

And in that Notice it states that all of the USDA employees involved in the decision making process are prohibited from ex parte communications regarding the merits of the Proposal with any interested party.

So, we cannot -- USDA employees cannot discuss the substance or the merits of the Proposals with you off the record. However, if
you have procedural questions such as the order
of witnesses, scheduling, things like that, we
can discuss those types of issues.

I'd also like to note that we have a
sign up list next to Ms. Debbie Wray, near the
entrance of the room. And if you'd like to sign
up as a witness, please do so over there.

I'd also like everyone to know that
all Exhibits that are admitted in the record will
be posted to AMS' website. And the address for
that is https://www.ams.usda.gov/rules-
regulations/moa/fv. And this sheet that has the
website address, I'll put that at the back of the
table as well.

JUDGE McCartney: And do you have an
extra one for the court reporter?

MS. CHILUKURI: Yes.

JUDGE McCartney: Do you want to hand
it to her now? Thank you.

MS. CHILUKURI: And now, Your Honor,
we'd like to mark some Exhibits for addition to
the record. And so these four Exhibits are
foundational Exhibits that are referenced in the regulations.

And Exhibit 1 is a copy of the Federal Register Notice of this proceeding. Which was published on April 22, 2016.

(Whereupon, the above-referred to document was marked as Exhibit No. 1 for identification.)

MS. CHILUKURI: And I'd like to clarify some of the statements made in the Notice of Hearing. I think when you started your introductory statements you were correct in everything that you said as to what the hearing will address.

But the Notice of Hearing misstates things in certain places. So, I would just want to make clear of that.

JUDGE McCARTNEY: I think that's a very good idea.

MS. CHILUKURI: Make clear of what we intend to do. So, at one point the Notice of
Hearing states that the Raisin Administrative Committee recommended Proposal Six and Seven. That is not correct.

And as indicated by you, Judge McCartney, and elsewhere in the Notice of Hearing, the USDA has recommended those Proposals. And will be testifying on those Proposals later in the hearing.

And I would also like to clarify that Proposal Eight by the USDA is to make changes as may be necessary to the Order to conform to any amendment that may result from the hearing. But, we'd also like to correct minor inconsistencies and typographical errors in the Order as part of that Proposal Eight.

And finally, I would like to note that USDA has a modified Proposal in connection with Proposal Seven to establish term limits. And the modified regulatory language for Proposal Seven will be available on the back table near Ms. Wray.

If anyone would like to take a look
before Mr. Durando, he will be the one who is

testifying on that Proposal, before he testifies

on that Proposal later in the hearing.

JUDGE McCARTNEY: All right. So, does

the modified proposed rule making address all of

the issues that you've read into the record with

-- or will an errata be issued?

MS. CHILUKURI: I think we intend to

issue that as an Exhibit. Or enter that as an

Exhibit when Mr. Durando testifies.

JUDGE McCARTNEY: Does it encapsulate

all of the modifications and/or corrections that

you've read into the record?

MS. CHILUKURI: It does as it relates

to Proposal Seven.

JUDGE McCARTNEY: Uh-huh.

MS. CHILUKURI: I didn't use that to

address what I thought were minor

inconsistencies. For instances, as it relates to

whether or not Rath made the Proposals versus

USDA, since I thought I could do that on the

record.
JUDGE McCARTNEY: All right. Anything else then?

MS. CHILUKURI: And Exhibit 2, what we've marked as Exhibit 2 is a Certificate of Mailing. Indicating that the Notice of Hearing —

JUDGE McCARTNEY: Excuse me for interrupting counsel.

MS. CHILUKURI: Um-hum.

JUDGE McCARTNEY: I just want to make sure we have a consistent —

MS. CHILUKURI: Yes.

JUDGE McCARTNEY: Identification process. Exhibit, what's your preface lettering? Exhibit 1? I mean is this —

MS. CHILUKURI: Oh, I'm sorry, I thought we had pre-marked that. So, we're doing it by 1. I apologize for that.

JUDGE McCARTNEY: Okay.

MS. CHILUKURI: So, we will do that now.

JUDGE McCARTNEY: And I don't really
have a problem with people being expected to mark their own Exhibits, including myself. Except the court reporter.

The one that's handed to the court reporter should be marked. Because I don't want her taking her time, when she should be taking testimony, to mark Exhibits.

MS. CHILUKURI: Yes. I apologize for that. So, Exhibit 1 is the Notice of Hearing.

What will be marked as Exhibit 2 is --

JUDGE McCARTNEY: You have no preface to -- so like USDA? Or anything?

MS. CHILUKURI: No, we don't.

JUDGE McCARTNEY: Or just numerical?

MS. CHILUKURI: It will just be sequential.

JUDGE McCARTNEY: Okay. All right.

MS. CHILUKURI: What we'll mark as Exhibit 2 is a Certificate of Mailing. Which indicates that the Notice of Hearing was sent to interested persons. Yes.

(Whereupon, the above-
referred to document was
marked as Exhibit No. 2 for
identification.)

MS. CHILUKURI: Then Exhibit 3 is a
Certificate indicating that the press release has
been issued regarding this hearing, yes.
(Whereupon, the above-
referred to document was
marked as Exhibit No. 3 for
identification.)

MS. CHILUKURI: And then what we'll
mark as Exhibit 4 is a Certificate of Officials
Notified Concerning this Hearing. And in this
case the Governor of California has been notified
concerning this hearing.
(Whereupon, the above-
referred to document was
marked as Exhibit No. 4 for
identification.)

JUDGE McCARTNEY: All right. And so
what measures have you taken to ensure that
everyone who needs to has access to review these
documents? You've set up -- you have -- you're not handing everyone a copy, that's fine.

But they have access to the documents?

MS. CHILUKURI: Right. So, the website as I indicated, all those Exhibits will be posted. And if they -- if people would like more copies, I think we have a few copies in the back of different Exhibits.

But if people would like more copies, if they want to see, please let us know. And we'll ensure that more copies are made.

JUDGE McCARTNEY: Well, particularly if any of these documents are going to be utilized to examine a witness. I want to be sure that they have access to that before they approach the witness.

All right. So, make that clear to counsel. And they will make copies available for you. Otherwise, we'll assume you have your own.

All right.

MS. CHILUKURI: And I move for those four Exhibits to be admitted to the record, Your
Honor.

JUDGE McCARTNEY: Any objections?

(No response)

JUDGE McCARTNEY: Exhibits 1 through 4 as identified are hereby admitted.

(Whereupon, the above-referred to documents were received into evidence as Exhibit Nos. 1, 2, 3, and 4.)

MS. CHILUKURI: Okay. So, we have one witness that we'd like to call at this time. And generally USDA likes to present data information regarding the commodity that the hearing is going to address.

And at this time we'd like to call Marc McFetridge to present this information.

JUDGE McCARTNEY: All right. So, someone has just joined us from the room. All right, an appearance, sir? Name?

MR. REINHART: Jeffrey Reinhart.

JUDGE McCARTNEY: Occupation?
MR. REINHART: Government employee.

JUDGE McCARTNEY: Purpose for being here?

MR. REINHART: Training.

JUDGE McCARTNEY: Excellent. Have a seat. All right. So, you're prepared to call your first witness?

MS. CHILUKURI: Yes.

JUDGE McCARTNEY: All right. Now, here's a proposal that I'd like to make. I find that given the number of witnesses here that sometimes the witnesses prefer a collective swearing in versus being sworn in each time a witness takes the stand.

So that has been a very effective process. If I have no objections, I'm going to do a collective swearing in. Is that acceptable?

(No response)

JUDGE McCARTNEY: All persons who intend to give testimony under oath, please stand. Raise your right hand.

Do you solemnly swear the testimony
that you are about to give in this proceeding
will be the truth, the whole truth, and nothing
but the truth, so help you God?

(Chorus of yeses)

JUDGE McCARTNEY: When you take the
stand, your representative will ask, have you
been previously sworn. And you are to
acknowledge that on the record as you take the
stand.

Counsel, call your first witness.

MS. CHILUKURI: Marc McFetridge.

WHEREUPON,

MARC McFETRIDGE

was called as a witness by Counsel for the USDA
and, having been first duly sworn, assumed the
witness stand, was examined and testified as
follows:

DIRECT EXAMINATION

BY MS. CHILUKURI:

Q So, as Ms. Schmaedick is handing out
the documents, let's just get started with some
introductory questions. So, Mr. McFetridge, you
have previously been sworn in. Is that correct?

A That's correct.

Q Okay. And what is your duty station?

A My duty station is Washington, D.C.

Q And what is your occupation?

A My occupation is an Agricultural Economist.

Q And how long have you been an Agricultural Economist at the USDA?

A I have been an Agricultural Economist since 2009. So, that would make it almost seven years. It will be seven years in July.

Q Okay. And have you participated in hearings like this before?

A I have.

Q And you have prepared two documents for this hearing, correct?

A That is correct.

Q So, those two documents would be what's been marked as Exhibit 5? And what's been marked as Exhibit 6?

A That is correct.
Q And Exhibit 5 is what you intend to read into the record, your written statement?
A That's correct.

(Whereupon, the above-referred to document was marked as Exhibit No. 5 for identification.)

MS. CHILUKURI: And Exhibit -- what is Exhibit 6?

MR. McFETRIDGE: Exhibit 6 is some charts that I have prepared based on the data that has been released by the National Agricultural Statistics Service.

(Whereupon, the above-referred to document was marked as Exhibit No. 6 for identification.)

MS. CHILUKURI: And did you personally prepare these documents?

MR. McFETRIDGE: I did.

BY MS. CHILUKURI:

Q And you understand that USDA is making
Proposals in this hearing, correct?

A    That is correct.

Q    But this data you've prepared, anyone
can use this data? USDA, proponents, opponents?

A    That is correct.

Q    Okay. Please, when you're ready, 
please proceed to read your written statement.

A    My name is Marc McFetridge. I've 
worked for the U.S. Department of Agriculture, 
USDA since 2006. I work for the Marketing Order
Administration Division from July 2006 through 
December 2009.

From December 2009 to the present I've 
worked for the Promotion and Economics Division 
as an Agricultural Economist where my duties 
include preparing economic and statistical 
analysis which are used by government officials 
to help minister Federal programs for fruit and 
vegetable programs. A large part of my work is 
related to Federal Marketing Order issues.

I received a Bachelor's Degree in 
Agriculture Business Management in 2001 from
Oregon State University. And a Master’s Degree in Agriculture and Resource Economics in 2004 from Oregon State University.

JUDGE McCARTNEY: Excuse me, sir. One moment. I want clarification from the court reporter about your process for dealing with --

COURT REPORTER: Sorry.

JUDGE McCARTNEY: I'm inquiring about your process for dealing with testimony that's being read into the record. I know they're offering this as a separate Exhibit.

Do you type it contemporaneously with the testimony? Or do you simply admit the Exhibit and do not read it into the record and then go back?

COURT REPORTER: I admit the Exhibit and note a direct examination and go back and reinsert it there.

JUDGE McCARTNEY: At a later time.

All right. So, just to be sure. That's fine. As long as we're really clear about this witness and this witness' Exhibits.
COURT REPORTER: Um-hum.

JUDGE McCARTNEY: So that when you go back later we have a clean transfer.

COURT REPORTER: Yes, ma'am.

JUDGE McCARTNEY: All right. You may proceed.

MR. McFETRIDGE: For this hearing on California Raisins, I prepared a report titled The U.S. Raising Crop Years 2000 Through 2014. The data source is the National Agriculture Statistic Service, NASS, the USDA.

The purpose of this report is to introduce U.S. Government data and other relevant information into the hearing record. These graphs are intended to be used by all parties involved in the hearing in discussing and analyzing the merits of the various proposed amendments.

Data for the 2015/2016 crop year will not be available until July 2016 when NASS will release the Non-Citrus Fruit and Nut 2015 Summary.
In the report graphs are shown for U.S. raisins. Raisins are primarily produced in California's San Joaquin Valley and are sun dried.

Bearing acres. The graph on page four shows the total bearing acres. Bearing acres reached a 15-year high during the 2000/2001 crop year at 280 thousand acres for the total U.S.

Since the 2000/2001 crop year, bearing acres have trended downwards. For the 2014/2015 crop year, bearing acres reported at 190 thousand acres.

Acreage is down five percent compared to the 2013/2014 crop year. And down eight percent compared to the previous five-year average.

Yield. The graph on page five shows the average raisin yield. The average yield has varied greatly over the past 15 crop years. With the 15-year average yield being 9.7 tons per acre.

Average yields reached a high of 11.4
tons per acre during the 2002/2003, 2008/2009 and
2013/2014 crop years. The lowest yield occurred
during the 2006/2007 crop year at 7.95 tons per
acre.

The 2014/2015 crop year had a yield of
9.28 tons per acre. Down almost 19 percent from
the 2013/2014 crop year. And down eight percent
compared to the previous five-year average.

Quantity of dried raisins. The graph
on page six shows the total quantity of dried
raisins. As expected, the quantity of dried
raisins has seen a significant reduction
following the downward trend of bearing acres in
the past 15 crop years.

The graph also shows the typical
cyclical nature of raisins. Where one year will
have a large crop of raisins, followed by a
smaller crop the next year.

The quantity of raisins reached a high
during the 2000/2001 crop year at 484 thousand
500 tons. For the 2014/2015 crop year, the
quantity of raisins was reported at 328 thousand
600 tons. Down 17 percent compared to the 2013/2014 crop year. And down nine percent compared to the previous five-year average.

Prices received by growers. The graph on page seven shows the average price received by growers. Prices subsequently increased as the supply of raisins has trended downward the past 15 crop years.

The season average price received by growers was the lowest during the 2002/2003 crop year at $393 per ton. In the past 12 years, the price of raisins has increased by more than three and a half times the prices received by growers in 2002/2003 crop year.

The season average price for raisins in the 2015/2015 crop year was reported at $1,820 per ton. Up 12 percent compared to the 2013/2014 crop year. And up 15 percent compared to the previous five-year average.

Total value of production. The graph on page eight shows the total value of production for raisins. The total value of production was
calculated by taking the quantity of raisins, multiplied by season average price received by growers.

The total value production has followed a similar upward trend as grower prices. The total value production was the lowest during the 2002/2003 crop year at $172,487,700. For the 2014/2015 crop year, the total value of production for dried raisins was $598,052,000. More than triple the value of the 2002/2003 crop.

The total value production for the 2014/2015 crop year was down seven percent compared to the 2013/2014 crop year. But up compared to the previous five-year average.

I apologize for numbers so early in the morning. So, hopefully nobody fell asleep through my testimony.

Any questions?

MS. CHILUKURI: Okay. Thank you.

Thank you Mr. McFetridge. I have no questions.

I'd like to move those Exhibits, what's been marked as Exhibit 5 and 6 into
evidence, Your Honor.

JUDGE McCARTNEY: Any objections?

(No response)

JUDGE McCARTNEY: There being none noted, Exhibit 5 and Exhibit 6 are hereby admitted.

(Whereupon, the above-referred to documents were received into evidence as Exhibit Nos. 5 and 6.)

MR. McFETRIDGE: Are you guys going to let me off easy?

JUDGE McCARTNEY: Sir, I know you're hopeful. But I'll ask it.

(Laughter)

JUDGE McCARTNEY: Are there any further questions for this witness?

MR. SPATE: Can I ask one question?

JUDGE McCARTNEY: Yes, sir.

MR. SPATE: On one of the Exhibits.

JUDGE McCARTNEY: Please identify yourself.
MR. SPATE: Steven Spate. On the yield for raisins 2000 through 2014, graph five. And it talks about yield. It is mentioning a green tonnage, not --

COURT REPORTER: Sir, could you speak in the microphone, please?

MR. SPATE: On that graph five in the yield that he just talked about under yield, he's talked -- you've mentioned yield that varies from 11.4 down to 9.7 tons. That's green yield. I just wanted to clarify that's not raisins.

JUDGE McCARTNEY: Ask the witness. You're not testifying.

MR. SPATE: Huh? Okay. I just wanted to clarify that that -- is that -- you don't state anywhere the conversion to raisin tonnage. And you just leave a statement that that yield. But you don't refer to green tonnage weight.

MR. McFETRIDGE: That's correct.

MR. SPATE: Okay.

JUDGE McCARTNEY: I'm confused by your
question. So, it is green tonnage weight?

MR. McFETRIDGE: That's correct.

JUDGE McCARTNEY: All right. Thank you.

MR. SPATE: Okay.

JUDGE McCARTNEY: Any further questions of this witness?

(No response)

JUDGE McCARTNEY: You're hereby excused.

MS. CHILUKURI: USDA does not have any more witnesses at this time, Your Honor. So, I will let the industry proceed I think with their first witness.

Would that be Monte Schutz? Okay.

JUDGE McCARTNEY: You have been previously sworn?

MR. SCHUTZ: Yes.

JUDGE McCARTNEY: Yes.

WHEREUPON,

MONTE SCHUTZ

was called as a witness by Counsel for the
Industry and, having been first duly sworn,
assumed the witness stand, was examined and
testified as follows:

DIRECT EXAMINATION

JUDGE McCARTNEY: Counsel, are you
prepared to proceed?

MS. CHILUKURI: Yes, we are.

JUDGE McCARTNEY: All right. Move
forward.

MR. SCHUTZ: Okay. Good morning
everyone. My name is Monte Schutz. I'm a third
generation grower from the -- a raisin grower
form the Caruthers area.

I am currently the Chairman of the
Raisin Administrative Committee since 2012. And
I have been a member on the Committee since 2002.

I'm also the Chairman of the Raisin
Bargaining Association. Which I've been a member
of that since 1992. And I also serve on the
California Raisin Marketing Board.

The production area of the California
raisins consist of Fresno, Madera, Tulare, Kern,
and Kings Counties. With the biggest production in Fresno and Madera Counties.

    JUDGE McCARTNEY: All right, sir.

Because you do not have a written statement, we must rely exclusively on the court reporter. So, read more slowly.

    MR. SCHUTZ: Okay.

    JUDGE McCARTNEY: And articulate very clearly.

    MR. SCHUTZ: Okay.

    JUDGE McCARTNEY: You may proceed.

    MR. SCHUTZ: The industry has approximately three thousand producers. The average size farm is 42 acres. They range as small as one acre to over five thousand acres.

    The growing season begins December 1 during the dormant period where we begin to prune and tie the vines. This process takes roughly about two and a half months through February 15.

    Late February, early March, buds open to new green little shoots. Smaller bunches can be found and counted by early April.
Bloom normally happens mid May depending on the weather. And it can vary three weeks. After bloom the bunches are formed and begin to grow and stretch.

The grapevines begin veraison, which means putting on the sugar or taking in sugar usually by early July. Again, weather being a factor.

And sugar content raises until optimum brix levels for good quality raisins. The minimum brix level is 18. And any number higher produces a good quality raisin.

The majority of the raisins in the Central Valley are Thompson seedless. Harvest usually begins the third week of August.

There are two methods of harvest for this variety. The traditional hand harvest. And mechanical harvest using a continuous tray method. Other varieties such as Selma Pete and Fiesta ripen sooner and can be harvested using the dried on the vine method.

Either way we only have a window of
eight to ten weeks to complete our harvest of
over 300 thousand tons due to weather and
concerns and drying time by early October. For
Thompson seedless that window is more like six
weeks.

After harvest irrigation and nutrient
applications are done. Compost and manure are
applied as well post-harvest. This completes the
growing seasons as vines begin to go dormant in
November.

The Raisin Administrative Committee
was established in 1949. And was last amended
under formal rulemaking on August 18, 1989.

The Raisin Administrative Committee is
comprised of 35 members representing producers,
ten members representing handlers of various
sizes, one member representing the Raisin
Bargaining Association, and one public member.

Members serve two year terms of office
that begin on May 1. We currently have 23
packers and 18 dehydrators.

Marketing by the RAC is focused on
providing promotional support for the 40 percent
or so of our annual production that is shipped
into export. Typically between 100 and 130
thousand metric tons each year.

Marketing activities are divided into
two different programs. The Market Access
Program, MAP, the Raisin Administrative Committee
Grant Program, and the Merchandise Incentive
Program, MIP.

Under the MAP grant program, the RAC
is able to support marketing activities in 18
countries across the globe. Which are managed by
an eight in-country international representatives
and supervised by the RAC headquarters staff in
Fresno.

The annual MAP budget is typically
three to three and a half million dollars. And
the RAC contribution to the overall program is
about another two million dollars for a total of
about five million dollars.

Those countries supported by active
marketing campaigns include Denmark, Norway,
Sweden, Finland, the UK, Germany, Mexico, China,
Hong Kong, Vietnam, Indonesia, Japan, South
Korea, Malaysia, Philippines, Singapore, Taiwan,
and Thailand.

Supported programs include
professional product development contests,
consumer sweepstakes, public relations campaigns,
social media campaigns, educational and nutrition
campaigns to teach the benefits of raisins,
support for sporting events such as marathons,
family runs, and even cooking contests.

Additionally, the RAC manages another
program called the Merchandises Incentive
Program. Which was created to encourage loyalty
to California raisins by providing funds based on
purchases and market share achievements to
importers in countries in Asia.

This program is funded by the RAC at
about a million and a half dollars per year.
Results of this program have been consistently
good as California raisins enjoy import market
shares in Asian countries between 50 to 95
percent depending on the country.

Importers use MIP funds to manage
their internally created programs to benefit
their industrial and retail customers.

California raisins can be stored up to
18 months from date of harvest in a controlled
environment either in stocks or in cold storage.

The relationship between the packer
and the grower is essentially that between a
seller and a buyer. The producers, the grower of
the California raisins, there are nearly three
thousand of them.

Once the project is grown and
harvested, the producers sell their raisins to
the 23 active handlers, also called packers. And
we also have one marketing cooperative, which is
Sun-Maid.

As far as the growing trends, the
pullouts of vineyards continue due to low prices
and low returns. Growers have options to higher
revenue crops such as almonds and citrus.

The current economic health of the
industry is not strong. And that concludes my
notes.

JUDGE McCARTNEY: Any further
questions of this witness?

MS. CHILUKURI: I'll defer to AMS.

CROSS EXAMINATION

BY MS. SCHMAEDICK:

Q     Good morning. This is Melissa

Schmaedick, USDA. Thank you Mr. Schutz for your
testimony.

I do have a couple of questions.

First for clarification. And then more

substantial questions.

You referred to a term called brix.

Could you --

A     Brix.

Q     Brix. Could you spell that and

explain what that means?

A     It's B-R-I-X.

Q     Um-hum.

A     And all I know is I have a

refractometer. And it measures the sugar content
in my grapes.

Q     Okay.

A     And when I smash the grapes and the juice on it, it reads this number and they're called brix levels.

Q     Thank you. And then you mentioned two varieties. And I wonder if you could spell the names into the record for us.

I believe you referred to a Selma Pete and then something starting with PS. I'm not sure.

A     Yes. The Selma Pete is S-E-L-M-A P-E-T-E.

Q     Okay.

A     And -- oh, the other was -- what did I mention? Fiesta.

Q     Oh, Fiesta.

A     Yes. Fiesta.

Q     Okay. I misunderstood that. Thank you.

A     And that's F-I-E-S-T-A.

Q     Okay. Thank you. And then you
mentioned a couple of promotion type programs.

One is the MAP, Market Access Program. Is that correct?

A     Um-hum.

Q     And then the other is the MIP, Merchandise Incentive Program? Is that correct?

A     The MIP.

Q     Okay. And you mentioned that the MIP is funded by the RAC. Is that correct?

A     That's correct.

Q     Okay. So, if I understand how your order works, the funding, is that sourced from the assessments that are collected from members?

A     Yes.

Q     Okay. So, the MIP program is funded by assessments. Is that correct?

A     Right.

Q     Okay. Thank you. And I believe you have two Exhibits that were handed out. Could you explain to us the relevance of these two Exhibits?

A     I'll have to see them. I didn't get
one.

Q    Oh, okay.

JUDGE McCARTNEY: Exhibit 7 and

Exhibit 8.

MR. SCHUTZ: Okay. Exhibit 7 shows

the total production for each crop year. The

value of the 100 -- this is back during the

reserve programs.

So, you have the free percent and then

the reserve percentage. And then what the 100

percent return was to the grower based off the

RBA's field price.

(Whereupon, the above-referred to document was

marked as Exhibit No. 7 for

identification.)

MS. SCHMAEDICK: Okay. Thank you.

So, this information is not USDA data? It's

industry data?

MR. SCHUTZ: Yes. It's provided by

the RBA.

MS. SCHMAEDICK: Okay. And the RBA
is?


MS. SCHMAEDICK: Great. Thank you.

And then your second handout here. I'll just read it into the record for clarification.

It's called California Raisin Marketing Board Raisin Administrative Committee.

It looks like a report with a picture of raisins on it.

Could you tell us about that Exhibit?

(Whereupon, the above-referred to document was marked as Exhibit No. 8 for identification.)

MR. SCHUTZ: Well, this is produced from our State Order Marketing Board.

MS. SCHMAEDICK: Okay.

MR. SCHUTZ: The California Raisin Marketing Board. I believe it's our annual report?

MS. ROTHWEILER: It's general
information on the industry as a whole.

JUDGE McCARTNEY: I'm sorry. You're not sworn in. The witness is the one who has to testify.

MS. ROTHWEILER: I'm sorry.

JUDGE McCARTNEY: And if he doesn't know, then I'm not sure is fine.

MR. SCHUTZ: Okay. Sorry. I don't know.

MS. SCHMAEDICK: If you take a moment to look at it, is this document familiar to you? Have you seen it before?

MR. SCHUTZ: I'm under oath? No.

MS. SCHMAEDICK: Oh, you have not.

Okay.

JUDGE McCARTNEY: Take a moment to look at it. And perhaps you've seen the content of it in other forms, other formats.

MR. SCHUTZ: Yes. I mean --

JUDGE McCARTNEY: You're not going to be held to every word of it. I think she's just trying to explore your familiarity.
Is that correct, counsel?

MS. SCHMAEDICK: Correct. And the purpose of the content. For example, does the content of this Exhibit explain in more detail information about the history and the operation of the raisin industry?

MR. SCHUTZ: Yes.

BY MS. SCHMAEDICK:

Q And does it cover for example, the processing of raisins after they're harvested?

A Yes.

Q And how about different varieties? Is that included in here? Perhaps on page nine?

A Yes.

MS. SCHMAEDICK: Okay. Thank you.

JUDGE McCARTNEY: I'm going to pause a moment here to remind representatives that you can avoid this unpleasant feeling on behalf of the witness by giving them their Exhibits ahead of time when they're going to be asked to sponsor them.

And that goes for everyone in the
room. Lesson learned. Okay.

MR. SCHUTZ: I'll take the blame. It was me.

JUDGE McCARTNEY: It is no one taking blame here. We're just trying to get a more orderly process. And we're all very happy we're not sitting in your chair right now.

(Laughter)

JUDGE McCARTNEY: No blame.

MS. SCHMAEDICK: Okay. Well, thank you, very much. I have no further questions.

JUDGE McCARTNEY: Are you moving for the introduction of those Exhibits?

MR. SCHUTZ: Yes.

JUDGE McCARTNEY: All right. So, you understand that you're the witness that they're sponsoring this -- will be sponsoring these Exhibits. And you've reviewed these documents and you're comfortable with offering those into the record?

MR. SCHUTZ: Yes.

JUDGE McCARTNEY: All right. No
objections, they're hereby admitted.

(Whereupon, the above-referred to documents were received into evidence as Exhibit Nos. 7 and 8.)

JUDGE McCARTNEY: Any further questions for this witness?

MS. CHILUKURI: Your Honor, I did have one question just to clarify on the record. I think you mentioned a term veraison?

JUDGE McCARTNEY: Please identify yourself for the record.

MS. CHILUKURI: Rupa Chilukuri. Can you tell us more what that means and how to spell it?

MR. SCHUTZ: Yes. Veraison is V-E-R-A-I-S-O-N, I believe. And that is the process when the grapes actually start taking on sugar and maturing.

MS. CHILUKURI: Okay. Thank you.

JUDGE McCARTNEY: Perfect timing.

(Laughter)
MR. SCHUTZ: Sorry.

JUDGE McCARTNEY: Any further questions for this witness?

MR. McFETRIDGE: Yes, Your Honor.

Marc McFetridge, USDA.

MR. SCHUTZ: Yes.

BY MR. McFETRIDGE:

Q Mr. Schutz, you said that you were a third generation grower. Thank you again for coming in today.

The Small Business Administration lists small growers as anybody that produces annual receipts of less than $750 thousand just for raisins. Would you classify yourself as a small or a large grower?

A Large.

Q Large, okay. Based on your expert knowledge being Chairman of the Board, you said there was about three thousand growers.

Would you be able -- or would you feel comfortable to specify if you thought most growers were small or large? Or do you feel that
that's beyond your scope?

A I think it's changing. There used to be a lot more small growers. As times have gotten tougher, the larger growers are buying the ranches from the smaller growers.

So, I think we're in a transition period.

Q Okay. The Small Business Administration also lists for handlers as anybody having annual receipts for raisins greater than $7.5 million as being larger growers. And anybody being under that number being small handlers.

Would you feel comfortable using your expert opinion saying for the ten handlers on the Board, if they're small or large?

A I would not.

MR. McFETRIDGE: All right. Thank you. That's all the questions I have. Thank you.

JUDGE McCARTNEY: All right. No further questions for this witness?
MS. SCHMAEDICK: Your Honor, I have questions.

JUDGE McCARTNEY: Melissa?

MS. SCHMAEDICK: My apologies.

Melissa Schmaedick, USDA. Mr. Schutz were you involved in the discussions and deliberations over the Proposals that the Raisin Administrative Committee is proposing today?

MR. SCHUTZ: Yes, I was.

BY MS. SCHMAEDICK:

Q Okay. And to your knowledge, are these Proposals understood by the industry participants?

A Yes.

Q And have industry participants had the opportunity to be involved if they so wish in those discussions?

A Yes.

Q And in your opinion, are these Proposals in general supported by those that you've had discussions with? In general.

A In general, yes.
MS. SCHMAEDICK: Okay. Thank you. No further questions.

JUDGE McCARTNEY: Anything further for this witness?

(No response)

JUDGE McCARTNEY: Hearing nothing further you're excused. All right. So, before we move forward with the next witness, I need to establish a more orderly process for those that are coming into the room.

Unless you have made an appearance on the record, I do want you to sign in. You don't have to sign in on the witness sheet that Ms. Wray is keeping for us.

But, I do want either a Notice of Appearance on the record or a sign in sheet. Because I need to know who is in this room and for what purpose. All right.

What's your preference, sir?

MR. SAHATJIAN: I think I'll just come and make my appearance then. My name's Richard -
JUDGE McCARTNEY: And you may explain why you're late.

(Laughter)

MR. SAHATJIAN: Oh, I didn't know that I had a time limit.

JUDGE McCARTNEY: Oh, yes. Yes.

Well, you know, 9:00.

MR. SAHATJIAN: Okay. My name is Richard Sahatjian and I'll be speaking as to two of the Proposals this morning or this afternoon. It just depends on when.

JUDGE McCARTNEY: All right. So, you're a perspective witness?

MR. SAHATJIAN: Yes.

JUDGE McCARTNEY: All right. Thank you.

MR. SAHATJIAN: Thank you.

JUDGE McCARTNEY: All right. You may proceed with your next witness. And let me just be clear here that we have admitted Exhibits 7 and 8. I have my copies back here.

All right. So, to facilitate this
process, the Exhibits should be marked and handed
the court reporter. And a copy should be made
available to the witness, which is also marked.

I don't mind doing my own homework and
marking my own. But the court reporter and the
witness should have marked copies.

Offers of assistance. Anyone here
wanting to volunteer to help hand out Exhibits?
I'm sure will be appreciated.

Are we prepared to proceed?

WHEREUPON,

DEBBIE POWELL

was called as a witness by Counsel for the
Industry and, having been first duly sworn,
assumed the witness stand, was examined and
testified as follows:

DIRECT EXAMINATION

MS. POWELL: My name is Debbie Powell.
And I'll be giving testimony today. And I will
be entering several Exhibits, including my
testimony. Which I believe is marked as Number
9. Dori, is that right? Okay.
(Whereupon, the above-referred to document was marked as Exhibit No. 9 for identification.)

MS. POWELL: Okay. I'm the interim president of the Raisin Administrative Committee, RAC. I have worked 25 years with Marketing Orders. Four with the Navel Valencia Orange Administrative Committee. And 21 with the Raisin Administrative Committee, RAC.

I am here today to testify on behalf of the RAC to provide a brief summary of the five proposed amendments. Following my testimony, other individuals will provide more detail in their testimony on each Proposal.

The RAC received a letter on July 16, 2015 from Michael Durando, Director of the Marketing Order and Agreement Division informing us the Supreme Court rules that the Raisin Reserve Program consists of a taking under the Fifth Amendment.

As a result of this ruling, USDA
notified the RAC that Agriculture Marketing Service, AMS, would be scheduling formal rulemaking hearings to consider Proposals to amend provisions in the Marketing Order related to the Reserve Program, along with any other changes recommended by the RAC.

The last time amendments were made to the Order was August 1989. On August 20, 2015, Michael Durando attended an RAC meeting where he spoke to the Committee on the results of the Horne case. Stating that amendments are in the works to remove any reference to volume control. And that a hearing for formal rulemaking would take place in early May.

He encouraged the Industry to use this opportunity to make other changes to the Order that would benefit the industry now and/or in the future.

The RAC had previously organized a key group of Committee members to form what is referred to as the Rulemaking Workgroup. The Workgroup reports to the Administrative Issues
Subcommittee. Which then any motions are
ratified by the RAC.

The Rulemaking Workgroup was changed
with reaching out to the industry to determine
what, if any amendments should be made to the
Federal Marketing Order.

The Workgroup met six times between
October 2015 and April 2016 to develop the five
proposed amendments to the Federal Marketing
Order and the supporting testimony.

I'd like to enter into the record the
one, January 27, 2016 concurrent Administrative
Issue Subcommittee and RAC meeting minutes with
attachments that include the nine points
supporting the proposed amendments. And I
believe that's marked as Exhibit 15.

(Whereupon, the above-
referred to document was
marked as Exhibit No. 15 for
identification.)

JUDGE McCARTNEY: Was this the
document?
MS. POWELL: No. It is -- it looks like this.

MS. SCHMAEDICK: Your Honor, I believe it's 15.

JUDGE McCARTNEY: Oh, 15 now?

MS. POWELL: On January 27, 2016 --

JUDGE McCARTNEY: I'm sorry, Ms. Powell.

MS. POWELL: I'm sorry.

JUDGE McCARTNEY: I need to know which Exhibit we're looking at. So, this is Exhibit 9. That's your direct testimony.

MS. POWELL: Yes.

JUDGE McCARTNEY: And Exhibit 10 is -- that would be -- and likewise the court reporter has the appropriate identified copies? Do you have your Exhibits? All right. I want to make sure.

MS. SCHMAEDICK: Your Honor, can we just go on the record and go through the Exhibits just to make sure everyone's on the same pages too? The Exhibit numbers since there's so many
here?

JUDGE McCARTNEY: Yes. Let's go off the record for a moment. Make sure everyone has the same documents marked in the same way. And then we'll go back on the record and we'll have Ms. Powell walk us through which documents.

Then you can refer to the documents in your testimony. That way everyone can be looking at the same thing.

Okay. That's a good suggestion now.

(Whereupon, the above-entitled matter went off the record at 10:11 a.m. and resumed at 10:14 a.m.)

JUDGE McCARTNEY: Okay. Are we ready to go back on the record?

MS. SCHMAEDICK: Yes.

JUDGE McCARTNEY: All right. So, what I'd like you to do then Ms. Powell, is just very briefly go through the Exhibits that you are sponsoring with the Exhibit Number and some identifying descriptive remark.

And then we'll turn your attention to
your testimony about the documents. All right?

MS. POWELL:  Um-hum. Okay. So, --

JUDGE McCARTNEY:  Exhibit 9.

MS. POWELL:  As I stated earlier,
Exhibit 9 is my testimony that I'll be giving
today. Exhibit 10 is a Marketing Policy and
Industry Statistics for the Crop Year last year I
believe, or we'll call it 2015.

And it's basically a snapshot of what
we did during that crop year.

(Whereupon, the above-
referred to document was
marked as Exhibit No. 10 for
identification.)

MS. POWELL:  The same thing in Exhibit
11. It's the same thing for the 2014 year.

(Whereupon, the above-
referred to document was
marked as Exhibit No. 11 for
identification.)

MS. POWELL:  Exhibit 12 the same thing
for the 2013 year.
(Whereupon, the above-referred to document was marked as Exhibit No. 12 for identification.)

MS. POWELL: Exhibit 13, the same thing for the 2012 year.

(Whereupon, the above-referred to document was marked as Exhibit No. 13 for identification.)

MS. POWELL: And 14, the same thing for the 2011 year. We went back five years to provide that for the Court.

(Whereupon, the above-referred to document was marked as Exhibit No. 14 for identification.)

MS. POWELL: Exhibit 15 is the concurrent Administrative Issue Subcommittee and RAC Committee Minutes for January 27, 2016. And in that I believe are the nine points that we recommended for the USDA hearing today and the
amendment process.

The minutes of the Raisin Administrative Committee April 14, 2016 is Exhibit 16. And I believe that is the minutes that -- or the meeting that we just held to request a modification to the continuance referendum. That has the information in there for that.

(Whereupon, the above-referred to document was marked as Exhibit No. 16 for identification.)

MS. POWELL: The minutes of the California Raisin Marketing Board, April 14, 2016, Exhibit 17, contains a resolution from the California Raisin Marketing Board in support of the crop research amendment for the RAC.

(Whereupon, the above-referred to document was marked as Exhibit No. 17 for identification.)

MS. POWELL: Any questions? Okay.
JUDGE McCARTNEY: Are there any objections to the admissibility of these documents?

MS. CHILUKURI: No.

JUDGE McCARTNEY: The documents are hereby admitted.

(Whereupon, the above-referred to documents were received into evidence as Exhibit Nos. 9, 10, 11, 12, 13, 14, 15, 16 and 17.)

JUDGE McCARTNEY: Do you wish to provide further testimony with respect to the documents?

MS. POWELL: Please.

JUDGE McCARTNEY: You may proceed.

MS. POWELL: On January 27, 2016, a concurrent meeting of the Administrative Issues Subcommittee and the RAC was held where the five industry supported proposed amendments were presented, discussed and voted upon.

Two additional motions were also made
regarding the USDA Proposals. One unanimously in favor of USDA's removal of any reference to reserve or reserve pool language in the marketing order. And one that unanimously opposed any recommendations by USDA on term limits for the RAC.

The RAC voted unanimously for the following four proposed amendments. Separate nominations for independent grower member seats and independent grower alternate member seats.

The RAC has had multiple vacancies for the past five terms. 2006 to 2008 16 members all filled and 16 alternate member, 12 were vacant. 2008 to 2010, 14 members all filled and 14 alternate members, 13 were vacant. 2010 to 2012, 15 members, one was vacant and 15 alternate members, 14 were vacant. 2012 to 2014, 16 members all filled and 16 alternate members, 14 were vacant. 2014 to 2016, 15 members all filled and 15 alternate members, 11 were vacant. In an effort to encourage increased participation, it
has been thought that by allowing separate nominations for members and alternate member seats, it would encourage participation by those who wish to sit on a specific side only.

Currently independent producers, non-RBA and Sun-Maid producers, nominations are held for three districts. District One and Two has one member and one alternate each for the 2014/2016 term.

The largest District, Fresno County, for the 2014/2016 term, there are 13 member and 13 alternate member seats. Names are provided in the nomination process and placed on a ballot.

The ballots are mailed to all independent producers who vote within their own district according to where their farm is located. An example for District Three, if 13 seats for members and 13 seats for alternate members are available, you would hope to receive at least 26 different nominees to fill all positions.

However, in most cases there are too
few nominees to fill both member and alternate
members seats. If 20 names are on the one
ballot, with only 13 member seats available, the
independent producer would vote for no more than
13 names to fill the 13 member seats.

When tabulating the votes according to
Section 989.29(2)(ii), the producer receiving the
highest number of votes shall be designated as
the first member nominee. The second highest
shall be designated as the second member nominee
or alternate member nominee as the case may be,
until all nominees for all member and alternate
positions have been filled.

In other words, the top 13 who receive
the most votes will hold a member position. And
the remaining seven would hold alternate member
positions. Which would leave six vacant
alternate member seats.

If the proposed amendment passes,
instead of a single ballot for all nominations as
is currently done, there would be two separate
ballots. One for members and one for alternate
members.

   Number two, quality regulation. This is the second amendment that we're proposing.

   This would add quality to the list of attributes that can be regulated under the Order. Currently quality is mentioned in several sections of the Order.

   However, the authority to regulate quality is not expressly stated in the handling sections of the Order. This would provide flexibility to meet future regulatory needs of the industry. An example, it's been contemplated to implement testing for okra toxin.

   The third Proposal that we're -- we want to amend would be different regulations for different market destinations. This would give authority for the Committee to establish different grade, quality or condition regulations for different market global destinations allowing for different quality or grade standards to be applied to various global markets.

   This authority would allow the
Committee to develop regulation for product that is best suited for a particular market destination.

Number four, production research.

This would give authority to the RAC to conduct production research, otherwise referred to as crop research. A collective effort is the only way to address the ongoing challenges the industry faces, pest, water issues related to drought, new varietal development, et cetera.

The RAC would initiate research only in the event the CRB ceases to exist or is not financially able to fund the work.

The following amendment was first proposed by USDA. And the RAC opted to take ownership so the terms of the Proposal would best fit the needs of the industry.

This would be the continuance referendum. Currently there is no continuance referendum. This amendment to the order will provide the industry a voice in determining if the Order is favored by its constituents.
When the details of this Proposal was first developed in the Rulemaking Workgroup, the recommendation was no less than five years and no later than six years of the effective date of this part. The Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers.

Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. This recommendation was taken to the concurrent Administrative Issues Subcommittee and RAC meeting on January 27, 2016.

When this recommendation was presented, there was much discussion and several amended actions that resulted in a change to the number of years in which the referenda would be initiated. No less than two years and no later than six years.

The final vote was not unanimous. Sixteen yeses and ten nos. In that same meeting it was noted under other business the following. Discussion followed regarding the Order in which
the Proposals had been presented.

Consensus was that had the first
Proposal on the continuation been last, the
discussion might have gone a very different way
with a more unanimous vote. The referencing
being there may not be enough time to implement
Proposals One through Four within the two-year
period that the first referenda would take place.

At this time the RAC would like to
request a modification to the original Proposal
Continuance Referenda. And change the language
to read, as was originally recommended by the
Formal Rulemaking Workgroup, to the concurrent
Administrative Issue Subcommittee and RAC meeting
on January 27, 2016.

No less than five years and no later
than six years of the effective date of this
part, the Secretary shall conduct a referendum to
ascertain whether continuance of this part is
favored by producers.

Subsequent referenda to ascertain
continuance shall be conducted every six years
thereafter. The RAC met again on April 14, 2016 and voted unanimously to make the above change. Again, I'd like to enter into the record those minutes. And that would be the Number 16, April 14. And also in support of the crop research one, their amendment number 17, which is the California Raisin Marketing Board. And as stated earlier that has the resolution CRMB is supporting that.

And my last thing I talked about earlier was the Marketing Policies. I submitted five of those by year. And again that's just a compilation of what happens at the RAC each year.

And this concludes my testimony.

JUDGE McCARTNEY: All right. We're going to take a moment and cross-reference with the Exhibit number.

MS. POWELL: Um-hum.

JUDGE McCARTNEY: Okay. So, the RAC 41416 --

MS. POWELL: That's Number 16.

JUDGE McCARTNEY: Give it Number 16.
It's been offered and accepted, admitted into
evidence. All right.

CRMB 41416, what's the corresponding
Exhibit Number for that one?

MS. POWELL: Number 17 is the -- yes,
California Raisin Marketing Board, Number 17.
That one, it looks like.

MS. CHILUKURI: The last Exhibit in
the sequence?

JUDGE McCARTNEY: I don't think I have
a Number 17. I have a -- oh, I do. All right.
Thank you.

MS. POWELL: And then the Marketing
Policies are Numbers 10 through 14. 2015 is
Number 10, 2014 is Number 11, 2013 is Number 12,
and 2012 is Exhibit 13, and 2011 is Exhibit 14.

JUDGE McCARTNEY: So, Exhibits 10
through 14 are referring the RAC Marketing
Policies?

MS. POWELL: Yes. The number three in
my testimony, yes.

JUDGE McCARTNEY: Okay. So, where is
Exhibit 15 referenced in this listing?

MS. POWELL: That is in the front of my testimony right here.

JUDGE McCARTNEY: I see. You will thank me for this later.

MS. POWELL: Oh, I do.

JUDGE McCARTNEY: Because if I'm confused, I assure you the reviewing Courts will be confused. Because I'm here.

All right, so this is Exhibit 15. All right. And this is the total number of Exhibits that you are sponsoring. And they have been offered and they have been admitted into evidence.

MS. POWELL: That's correct.

JUDGE McCARTNEY: All right. Are there any further questions for this witness?

(No response)

JUDGE McCARTNEY: All right. We are right at the 10:30 mark. We have two choices here. We can move forward depending on your estimated time frame for examination.
Or we can pause and take a break and reconvene. What time frame are we looking at here for your examination?

I don't want to rush you. I just want to bring to your attention the break point.

MS. SCHMAEDICK: I would say maybe ten minutes.

JUDGE McCARTNEY: Do you want to continue or break now? The witness would choose to continue.

CROSS EXAMINATION

BY MS. SCHMAEDICK:

Q Melissa Schmaedick, USDA. Thank you for your testimony. I do have a couple of questions. Again, mainly for clarification and then for substance.

Early on in your testimony, so this is -- I'm referring back to Exhibit 9, your written, prepared statement, you made a mention of nine points. Can you tell me what nine points are?

And why they were developed?

A The nine points which are in the
Minutes of the Concurrent Admin Issue
Subcommittee and Raisin Administration Committee,
Exhibit 15.

Q     Um-hum.
A     And I believe those are the formal
rulemaking justification of the Proposals. So,
those -- we did nine points for each of the
Proposals that we're asking for.

Q     And when you say justification, does
that justification include for example how those
Proposals might benefit the industry?
A     Correct.

Q     Okay. Do those Proposals also include
any type of consideration for small businesses
and potential impacts?
A     I believe so.
Q     Okay. Thank you. My other question
for clarification would be on the third page of
your testimony under Proposal Number Two, quality
regulation.

You mention the term okra toxin. Can
you just very briefly explain what okra toxin is?
For example is it a fungus or a --

A Yes.

Q Oh, okay. Thank you. So, in terms of
general questions, you mentioned this Workgroup.
Were you involved in all of the meetings of the
Workgroup?

A Yes, I was.

Q Okay. And what was your role at those
meetings?

A As the Interim President and General
Manager, just to put -- get the constituents in
the room and discuss what Mr. Durando had ask of
us, to put together any ideas we have of amending
the Marketing Order.

Q And in your opinion, were those
meetings proactive in terms of participation and
folks being engaged in exploring potential
amendments to the Order?

A Yes, very.

Q Okay. When you spoke about Proposal
Number One, which is nomination, separate
nominations for independent growers, the member
seats and then the alternate member seats, do you have any direct experience in the process of receiving nominations, processing those nominations?

A     Yes, I do.

Q     And what is your role in that capacity?

A     I conduct the nominations.

Q     You conduct the nominations. Okay.

So, in your experience, has there been -- has it been challenging to find individuals who are willing to participate?

A     Yes.

Q     And what types of things do you do to seek out new folks?

A     Well, first we put out a notice to all the non-RBA, non-Sun-Maid growers. And we send something to their house telling them that we're going to have the nominations.

We put in the Fresno Bee. We put it in the Business Journal. We put it on our website. Put it out there as much as we can to
let them know that it's out there.

And then when we have our meeting
together we hold it for an hour. So, -- and we
give them plenty of time to get there. And then
conduct the nominee process.

Q    Thank you. And as I understand what
you've explained in your statement here, is it
possible that the uncertainty of knowing whether
an individual would end up as a member versus an
alternate, is that uncertainty perhaps causing a
reluctance to participate?

A    It could.

Q    So, does this Proposal sort of explore
an option to alleviate that situation?

A    Yes, it does. Because you would have
two separate ballots rather than one.

Q    So, if I'm understanding correctly,
the Proposal would, if it were implemented,
someone would know in advance if they were going
to be a nominee for a member seat versus a
nominee for an alternate. They would know that
in advance?
A: That's correct.

Q: Rather then currently is it kind of an unknown?

A: Yes.

Q: It depends on the votes?

A: Um-hum.

Q: Okay. Thank you. With regard to your statement on Proposal Number Four, production research. It's on page three of your statement. You mentioned a memo by the CRMB. I believe that's the California Raisin Marketing Board, is that correct?

A: Um-hum.

Q: Why is this memo important?

A: The resolution of that?

Q: Yes.

A: I think it's letting -- if the -- I think it's letting everybody know that the CRMB as it exists today is conducting that research. But, if they go away or something happens and they're not able to do it and don't have the funds for it that the RAC could do it.
And it would continue the crop research that is so important to the industry.

Q     So, would this memo or the resolution indicate that the State program is in support of the RAC's Proposal to have this authority?
A     I believe so, yes.
Q     And they don't -- in your opinion, they don't believe it to be a position of competition?
A     No. Because it would only happen if the CRB did not have the funds or ceased to exist.
Q     Thank you. And will there be other witnesses that speak to this issue?
A     Yes.
Q     Okay. Thank you. The last question I have is regarding the continuance referenda. And you explained that over the course of the past couple of months there's sort of been a switch from what the Workgroup had originally proposed, the five years, too then a two years, which was approved by the full RAC.
And then it was sort of switched back to the five. And my understanding based on your statement is that the switch back to the five, is that because the industry believes that it needs more time to see if these Proposals are working?

A     That's correct.

Q     In the event that they're accepted and implemented?

A     Yes.

Q     Okay. And then again, just to clarify, in your statement you do have some alternate language. Is that the language that you would like to see adopted?

A     Yes.

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

JUDGE McCARTNEY: Is there anything further for this witness?

MS. CHILUKURI: Yes, Your Honor. So, I'd just like to clarify for the record, I understand the way that you've listed your Proposals, it's different then what's in the
Notice of Hearing.

So, I think Ms. Schmaedick referred to a Proposal One. But that's different then what's in the Notice of Hearing. So, I wanted to clarify that for the record.

MS. POWELL: I believe so.

MS. CHILUKURI: I also had another --

JUDGE McCARTNEY: Well, you clarified it by muddying it. So, --

(Laughter)

JUDGE McCARTNEY: It's an excellent point. And I want the witness too cross-reference so that a reviewing authority can follow which Proposals you were addressing.

MS. POWELL: When I talked about the nominations, in my notes, that is number one. And I don't remember what that was in the Federal Register.

Okay. Number one in the Federal Register is production research. In mine it's number five.

COURT REPORTER: Excuse me, could you
speak into the mic.

MS. POWELL: In the Federal Register
the crop research is number one. In my testimony
it's number five. Number two is nominations. In
my testimony it's referred to as number one.

Number three is authority to regulate
quality. In mine it's number two, my testimony.
Number four is establish different regulations
for different markets. In mine it's number
three, my testimony.

And number five is the continuance
referenda. And in mine it's the continuance
referenda, number five. So, one out of five.

MS. CHILUKURI: Okay. Thank you.

JUDGE McCARTNEY: Thank you for that
clarification.

MS. CHILUKURI: And on page two of
your testimony, near -- this is the second
paragraph up. You say when tabulating the votes
according to Section 989.29(2)(ii), I just want
to clarify the section and make sure that it's
correct.
MS. POWELL: Yes.

BY MS. CHILUKURI:

Q So, can you take a look at the Notice of Hearing, in that Proposal? I would think that it would be 989.29(b)(2) and then (ii).

So, let me know if you agree with that. And this is Proposal Number Two in the Notice of Hearing, relating to independent grower member seats and independent grower alternate member seats.

A Right. Correct.

Q Okay. Thank you. And turning to Proposal Number One, relating to production research. That's on the next page of your testimony.

You state the RAC would initiate research only in the event the CRMB ceases to exist or is not financially able to fund the work. Can you talk a little bit more about whether or not either of those situations, either ceasing to exist or not being financially able to fund the work, whether or not it's eminent?
Well, we just went through the CRMB, the California Raisin Marketing Board just went through a referendum and it passed. So, for another five years.

So, -- but what is also happening is we have a few lawsuits pending. So, we have not collected assessments in three years? In three years. So, we're basically operating on our reserve cash that we have in there.

So, with the passing of that, the Committee -- or the Raisin Marketing Board will meet again and decide what we're going to do moving forward.

If the hearings that -- or the lawsuits that go through, if we don't win, then we'll appeal. If they win then, you know, appeal back and forth.

So, it could be two to three years from now when we do that. So, that's why we may not have the funding. But, if that happens, the RAC might have it and vote it in.

So, then that's what's meant by that.
Okay. Thank you. And just to understand, you testified about RAC's Proposals. And you mentioned USDA's Proposals as well. But, I'm going to ask again.

What is your understanding of the industry's position on USDA Proposal Six relating to the removal of the reserve pool and volume control authority?

A I think they're supporting that. To eliminate it.

Q And what is your understanding of the industry's position on Proposal Seven relating to term limits?

A They are opposing that.

Q Okay. And are there any -- do you have any idea as it relates to the industry's position on Number Eight?

A No.

MS. CHILUKURI: Okay. Okay. Thank you very much.

JUDGE McCARTNEY: Is there anything further for this witness?
(No response)

JUDGE McCARTNEY: Hearing nothing further, you're hereby excused. All right. So, we're going to take a 15 minute recess. I'm just going to make it 20 because no one's going to be here in 15 minutes.

(Laughter)

JUDGE McCARTNEY: So, we will reconvene at 11:00.

(Whereupon, the above-entitled matter went off the record at 10:40 a.m. and resumed at 11:00 a.m.)

JUDGE McCARTNEY: We're ready to move forward with the next witness.

Would you please identify yourself, sir.

MR. SPATE: I'm Steven Spate, a grower and also Raisin Bargaining Association Grower Representative.

JUDGE McCARTNEY: All right. And I understand that you will be sponsoring several exhibits today. Could you identify those for me?
MR. SPATE: Yes. Exhibit 18 is a copy of my testimony.

Exhibit 19 is the Annual Report for the California Raisin Marketing Board.

And the reason for these is to reference crop production research as noted in each of these reports in order that I'll mention. So it gives you examples of the type of production research that we're proposing to implement at the RAC when needed.

So anyway, the Exhibit 20 would be the 2009-10 Annual Report for the California Raisin Marketing Board.

The Exhibit 21 is the '10-'11 Annual Report, Annual Report.

Exhibit 22 is the '11-'12 year.

Exhibit 23 is the '12-'13 year.

Exhibit 24 is the '13-'14 year.

And Exhibit 25 is the '14-'15 crop year.

(Whereupon, the above-referred to documents were
marked as Spate Exhibits 18 through 25 for identification.)

JUDGE McCARTNEY: All right. Moving to Exhibit 18, I understand that's your statement.

MR. SPATE: Yes, it is.

JUDGE McCARTNEY: Do you wish to proceed with that?

MR. SPATE: Yes.

WHEREUPON,

STEVEN R. SPATE

having been previously duly sworn, was called as a witness here, and was examined and testified as follows:

TESTIMONY OF STEVEN R. SPATE

MR. SPATE: Again, I'm Steven Spate.

And this is my testimony in regards to the RAC Formal Rule Proposal Number 1.

JUDGE McCARTNEY: And you have been previously sworn?

MR. SPATE: Yes, I have.

JUDGE McCARTNEY: Continue.
MR. SPATE: And this is to allow for production research at the RAC.

Again, I'm Steve Spate, currently the Chairman of the California Raisin Marketing Board, CRMB, the past Research Subcommittee Chairman of the CRMB. I'm also a member of the Raisin Administrative Committee. And also an employee of the Raisin Bargaining Association, the RBA, where my position as grower representative has me in close contact with the needs of our grower base. Also, and most importantly, I'm a third generation raisin grower, currently farming over 200 acres of grapes for raisin production.

The purpose of this proposal, which I support, is to give the RAC the ability to conduct crop production research, not as the primary source, but only in the event that the CRMB either ceases to exist or is not in a position financially to support that activity. The raisin industry is in a situation where important research projects are not being
proposed to the industry due to lack of funding from the raisin industry as a whole.

The CRMB would be the normal funding source for industry-wide support of important crop production research up until approximately three years ago when assessments were suspended awaiting the results of litigations the Board is currently undergoing.

Also, the CRMB currently has a referendum every five years. If the CRMB ceases to exist, the industry would lose the ability on a collective effort to continue crop production research. And, in fact, with no current budget at the CRMB to fund projects, we are not able to support important production research that would be valuable to the industry as a whole.

One key item I believe you should understand, research does not happen without some financial support, and growers individually are not in a position to support research.

What this proposal would allow is for the RAC to set up similar criteria where requests
for proposals would be sent out in certain
categories of need such as development of
improved raisin grapes for mechanical harvest,
including types resistant to powdery mildew;
nematode-resistant rootstocks; early ripening
varieties; control of pests, including vine
mealybug; weed control; also water management,
fertilization, just to name a few.

Future research could potentially
impact growers in multiple ways, such as reduced
pesticide usage or possibly safer and more
economical products.

Also, in regards to labor, if a viable
new variety were discovered with the potential to
be harvested with fewer laborers needed, it would
help all growers farm the crop more economically
and also keep the price of raisins competitive in
the marketplace.

If this proposal were to be accepted
and went to implementation, I believe it would be
a very easy process to transition, since many of
the CRMB Research Committee board members are
also on the current Raisin Administrative Committee, and they are familiar with the procedures of requests, budgets and implementation of research projects. The RAC would establish a budget for research and the USDA would have oversight.

If assessment rate needed to be increased to cover the costs, it would go through the RAC Committee, then rulemaking as well as public comment prior to implementation.

On April 14th, 2016, the California Raisin Marketing Board voted and unanimously passed a resolution supporting these efforts by the RAC. This is the resolution:

The CRMB is in support of the efforts of the Raisin Administrative Committee to include a provision in the Federal Marketing Order 989 for approved production research in the event that CRMB may cease to exist or does not have the budget funding to support production research efforts. The CRMB feels strongly the need to have important production research funded into
the future on a collective, industry-wide basis, and believe this will not take place without wide industry support by either the CRMB in our working capacity or the RAC, who is also an organized industry group that could facilitate the ongoing needed research efforts.

On a final point, the best way to financially support production research is from a broad-based group. And RAC is the best alternative if CRMB is unable to fund the future research.

Thank you.

JUDGE McCARTNEY: Did you have any additional comments you wanted to make regarding any of the other exhibits that you are sponsoring?

MR. SPATE: I wanted to kind of go into you have multiple items in here that are copies or examples of the type of research that we would like to have the ability to do and continue to do for production research. But one I would like to kind of expound on that I didn't put in my
comments is we currently have a new variety
that's recently been released; it's called
Sunpreme.

And it's really evident that the needs
of the industry for further research on that
item, on how it performs on different rootstocks
and different canopy management systems is very
important to the industry. And, in fact, it's,
it's not being funded right now. And so I
believe that growers could make mistakes in how
that is put on rootstocks or even potentially
overcropped. And it may not dry on its own as
it's been released to do.

So I believe that's one specific
instance where we're losing the ability currently
to fund an important project.

JUDGE McCARTNEY: Are there any further
questions for this witness?

EXAMINATION ON BEHALF OF USDA, AMS

MS. SCHMAEDICK: Melissa Schmaedick,
USDA. Thank you for your testimony. Thank you
for joining us today.
So in your statement you have made a reference to the Raisin Bargaining Association, RBA. Could you briefly explain what the RBA is as an organization? I'm not familiar with it.

MR. SPATE: Well, the Raisin Bargaining Association is a group of growers that joined together to, one of the key focuses, to price the raisin product each given year with the processors that handle the product. And we also sit on the various committees, including RAC and CRMB, where other important decisions are made that impact the industry.

MS. SCHMAEDICK: Okay.

MR. SPATE: We are a grower group, a grower cooperative of growers just.

MS. SCHMAEDICK: And so you mentioned that you're a grower representative.

MR. SPATE: Uh-huh.

MS. SCHMAEDICK: And that you, you state that you are in close contact with the needs of the grower base. What types of activities? How does that happen?
MR. SPATE: Well, in communication with growers as they call and referencing what items are going on in the industry. And I'm also out in the field meeting with our growers on individual basis, as needed. I'm also in recruitment of new growers who are independent growers.

So my job is to basically take in information from growers and bring back to our board of directors anything that's important at the time, so. That's more, take calls from growers on their concerns.

MS. SCHMAEDICK: Thank you.

And so based on your interaction with the grower base would you say that the growers are aware of the proposal for production research?

MR. SPATE: Yes.

MS. SCHMAEDICK: And how has, in your opinion how has that proposal been received? Is it supported?

MR. SPATE: Yes. It's been supported
based on the fact that growers are very concerned that we, we are at a time right now without funding on the CRMB side because of budget concerns that we're, especially in regards to certain items that need research right now that we just don't have the ability to fund as an industry group.

MS. SCHMAEDICK: Right. And on that subject, I think you made some references but just to clarify, are there current research projects that have essentially been suspended because of lack of funding?

MR. SPATE: Yes. They have just termed out. So we just, I don't think we have any current proposals going through on the research side.

MS. SCHMAEDICK: And you mentioned a new variety. I believe it was Sun Cream?

MR. SPATE: Sunpreme.

MS. SCHMAEDICK: Sunpreme?

MR. SPATE: Uh-huh.

MS. SCHMAEDICK: Could you spell that,
please?

MR. SPATE: S-U-N-P-R-E-M-E.

MS. SCHMAEDICK: P-R-E-M-E. Thank you.

And I'm just curious, you mentioned something about a concern, a concern over the use of this new research, but the potential for it to be improperly used. Is that because of an educational component that's lacking?

MR. SPATE: It is. The new variety was developed to dry on its own without the need to cane cut it. It was developed on its own root so it hasn't been tried on rootstocks, nor has it been tried on various canopy systems.

And so the issue is some growers may, when it's available, put it on a rootstock that then changes the trait and it doesn't dry on its own. The whole reason for the new variety is to try to reduce labor and make it an easier process to dry the grape on its own. So if we put it on either a larger canopy system it may have an impact on how that functions, and it may not do as it was, so to speak, as it was designed and
MS. SCHMAEDICK: So would it be accurate to conclude that because this research has been somewhat suspended midway and that the outreach and educational process has not been fully realized that if this proposal were to be implemented it would have a very direct benefit?

MR. SPATE: It could have a very direct impact depending on how quickly it could be implemented. I mean I think even at today's time there could be potential mistakes made by growers in the industry if they put it on different rootstocks or different trellis systems. But that research still needs to be done.

MS. SCHMAEDICK: And another question I have is, on the first page of your statement it says, "One key item I believe you should understand, research does not happen without some financial support. And growers individually are not in a position to support research."

So to me this indicates some sort of importance to the collective action that occurs.
under this program. Can you give an opinion on that?

MR. SPATE: That's absolutely. I mean growers are not financially in a position to, to devote dollars individually to this type of research. It's costly and you need a grower group with a funding mechanism in order to fund that type of research.

MS. SCHMAEDICK: And in your opinion does this type of collective action also have very direct benefits to perhaps smaller business entities who are perhaps more at a disadvantage?

MR. SPATE: It could. I mean because it's, in this if it has impacts to the amount of labor needed in the future it definitely could have impacts to help both large and small growers. But it potentially could have a greater impact, in a positive way, to the small grower.

MS. SCHMAEDICK: Thank you.

And my last question is about the, sort of the funding process. On page 2 of your statement you say, "The RAC would establish a
budget for research. USDA would have oversight.

If assessment rate needed to be increased, it
would go through a process."

So is that currently how the
California Raisin Marketing Board operates?

MR. SPATE: Yes. We, we operate on an
assessment base and then go through budgets to
establish a certain amount of budget funding for
research proposals ongoing.

MS. SCHMAEDICK: And so in your opinion
this process, the process that you currently
follow under the state program would be the same
under the federal program?

MR. SPATE: I believe it would be very
similar, yes.

MS. SCHMAEDICK: Okay. So my question
is, there's a certain amount of awareness and
familiar -- well, not to be redundant, but
awareness about how assessments tie into the
budgeting process and, therefore, potential
funding of research. And that's well understood
in the industry. Is that correct?
MR. SPATE: Yes.

MS. SCHMAEDICK: So if in the event that there was an increase in the assessment rate, would the industry understand the correlation between that increase and then the use of those funds for research projects?

MR. SPATE: I think the industry would. And, in fact, I mean when you talk about potential funding we're not talking about a massive change to the assessment rate. Currently with potentially 300,000 ton of raisins, as an example, if you had a dollar, one dollar increase to the assessment rate it would generate $300,000 on an annual basis. And that would be well over a good amount of money to devote to this.

And I'm not saying that that's the number, I'm just saying that would be a, a good number to still have research ongoing.

MS. SCHMAEDICK: And in your opinion there would be industry support for that increase because of the potential value of the research?

MR. SPATE: Absolutely.
MS. SCHMAEDICK: Okay, thank you.

And my last question is about your role with the state program. And I just wanted to clarify again. Earlier under Ms. Powell's testimony there was an exhibit that was entered, I believe it was Exhibit Number 17, which was a resolution passed by the California Raisin Marketing Board in support of this proposal.

So just to clarify that in your opinion and in your role with the state program there, is there any sense of unease or competition, or is there full support?

MR. SPATE: There was unanimous support for in the event that we don't have funding to continue this type program to have that ability on the Raisin Administrative Committee.

MS. SCHMAEDICK: Okay. Thank you.

Those are all of my questions.

MR. SPATE: Thank you.

JUDGE McCARTNEY: Any further questions for this witness?

EXAMINATION ON BEHALF OF USDA, OGC
MS. CHILUKURI: Rupa Chilukuri, USDA.

Mr. Spate, thank you for your
testimony. I had a question for you just about
just what is your understanding of the role of
USDA and the Secretary as it relates to this
proposal if the authority is in place?

MR. SPATE: I would say oversight I
mean is the basic role. To oversight the having
this implemented into the RAC program.

MS. CHILUKURI: Okay. And I also have
a question for you generally as it relates to the
other RAC proposals. What are your, what is your
position or opinion on those proposals?

MR. SPATE: I'm in support of all I
think except one. I don't remember the number.
I'm not in support of term limits.

And in regards to that issue I, I
truly believe that you have individuals that are
interested and impactful in the industry that are
involved in this industry. And there's ample
opportunity for others to get involved. You
don't have to term limit the individuals that are
interested in serving in order to try and get new ideas in.

The potential is there for others to get involved if they so choose. And I just don't see the reason to implement a limit on a person's term.

MS. CHILUKURI: Okay. And just to clarify, so you're in support of all of the proposals, both RAC's and USDA's proposals, except for USDA's proposal in connection with term limits?

MR. SPATE: If you could go over them individually to refresh my memory?

MS. CHILUKURI: Certainly. Let me just refer to my Notice of Hearing so I'm 100 percent accurate.

So the first proposal is what you just testified about, is to authorize production research.

MR. SPATE: Uh-huh.

MS. CHILUKURI: The second proposal is to separate nominations for independent grower
member and independent grower alternate member seats.

MR. SPATE: Uh-huh.

MS. CHILUKURI: The third is to add authority to regulate quality.

Proposal 4 is to add authority to establish different regulations for different markets.

Number 5 is to require continuance referenda.

Number 6 is to remove volume regulation and reserve pool authority.

And Number 7 is to establish term limits.

And we also have a Proposal Number 8 that's to correct minor errors and to conform the order as needed.

MR. SPATE: Yeah, I would, I would say all except for the term limits I would support.

MS. CHILUKURI: Okay, thank you very much.

JUDGE McCARTNEY: Anything further for
EXAMINATION ON BEHALF OF USDA, AMS

MR. McFETRIDGE: Mark McFetridge, USDA.

In your testimony you stated that you are a third generation raisin grower.

MR. SPATE: Yes.

MR. McFETRIDGE: Based on the Small Business Administration that states that if you have annual receipts for producing raisins of less than $750,000 annually you'll be classified as a small grower. Would you say based on that definition you are a small or large grower?

MR. SPATE: I think it varies on a given year. But I'm probably right at that number, so currently a large, so over that.

MR. McFETRIDGE: Would you say over the, you know, span of 10, 15 years what would you say on average, you would be large or small?

MR. SPATE: In past history probably small.

MR. McFETRIDGE: Okay. Thank you.

A few more quick questions. I know this witness?
this was kind of discussed before. But just to,
just to make sure that the hearing record is
really fleshed out, for funding for the
possibility for the RAC to have this crop
production research, where do you think the
funding would come from?

MR. SPATE: From the assessment.

MR. McFETRIDGE: From the assessment.

MR. SPATE: Whatever assessment rate
that was voted on by the RAC.

MR. McFETRIDGE: Okay, thank you.

Do you see any possibility where
outside funding could be a possibility of it
being accepted? Is that part of the California
ability; do they have the ability to accept
outside funding also, or is it all from
assessment rates?

MR. SPATE: Currently from assessment
rates.

MR. McFETRIDGE: I will not pursue
that.

Based on your, your opinion, do you
feel that the possibility of an increased assessment rate would outweigh, the negative impact of an increased assessment rate would be outweighed by any type of added benefit that this research would possibly produce?

MR. SPATE: You're asking if we increase an assessment would outweigh?

MR. McFETRIDGE: The need --

JUDGE McCARTNEY: Well, excuse me. You're assuming a fact not in evidence, that there would be a negative impact of the assessment. And so far the witness has only testified to de minimis assessments as an example.

So assuming arguendo there were a negative impact from a de minimis assessment, is it your opinion that the benefits would outweigh?

MR. McFETRIDGE: Yes.

JUDGE McCARTNEY: Is that your question?

MR. McFETRIDGE: Yes.

MR. SPATE: Yes, I believe the benefits
would outweigh because I think it would be a very minimal increase in assessment in order to have a budgetary item for production research annually.

MR. McFETRIDGE: Thank you.

Just one more quick question. Based on your opinion, do you feel that the ability to have crop production research helps to keep raisins competitive in the dried fruit marketplace domestically and worldwide?

MR. SPATE: Yes, I do.

MR. McFETRIDGE: Thank you.

I have no further questions.

MR. SPATE: Thank you.

JUDGE McCARTNEY: Any further questions for this witness?

(No response.)

JUDGE McCARTNEY: Any objections to the admissibility of Exhibits 18 through 25 which this witness is sponsoring?

(No response.)

JUDGE McCARTNEY: There being no objections, the exhibits are hereby admitted.
(Whereupon, the above-referred to exhibits, previously identified as Spate Exhibits 18 through 25, were received in evidence.)

And you are excused, sir.

MR. SPATE: Thank you.

JUDGE McCARTNEY: Thank you for your testimony.

(Witness stands down.)

JUDGE McCARTNEY: You may proceed with the next witness.

Please identify yourself for the record and affirm that you have been previously sworn.

MR. STARK: My name is Rick Stark.

And, yes, I have been previously sworn.

JUDGE McCARTNEY: Thank you.

WHEREUPON,

STEVEN R. SPATE

having been previously duly sworn, was called as
a witness here, and was examined and testified as
follows:

JUDGE McCARTNEY: Would you please
identify for the record the exhibits that you
wish to sponsor this morning?

MR. STARK: Yes. I have my prepared
statement as Exhibit 26.

And then I have an additional Exhibit
27 that is an outline of some additional remarks
I would like to make.

JUDGE McCARTNEY: All right. 27 is
this document?

MR. STARK: Yes.

(Whereupon, the above-referred to documents were
marked for identification as
Stark Exhibits 26 and 27.)

JUDGE McCARTNEY: You may proceed. You
may proceed.

TESTIMONY OF RICK STARK

MR. STARK: Okay, thank you.

My name is Rick Stark. I am the
Manager of Grower Relations and the Secretary for Sunmaid Growers of California. I have been with Sunmaid for 28 years. I have served on the Raisin Administrative Committee since 1998, and the California Raisin Marketing Board since 2009.

I'm the past Chairman of the National Grape and Wine Initiative, a grape industry organization representing raisins, table grapes, juice grapes and wine grapes, in developing, overseeing, promoting and assisting in securing research funding.

I serve on the California State University Fresno Viticulture Oenology Research Center Industry Advisory Board. And I am the Raisin Commodity Chairman for the Fresno County's Farm Bureau.

I have seen firsthand the importance of crop production research in the raisin industry. Research has led to improved water efficiency and fertilization, integrated test management, earlier ripening varieties, and advanced high-yielding trellising systems that
benefit our growers every day. Such research has been funded by the California Raisin Marketing Board in the past. However, this new language would give the Raisin Administrative Committee, RAC, the authority to fund such crop production research in the event that the CRMB, California Raisin Marketing Board was unable to do so.

CRMB has been unable to fund crop production research since 2012 due to ongoing litigation. By giving the RAC the authority to fund crop production research, critical issues such as vine mealybug control, development of mildew-resistant vines, and improved dried-on-the-vine technology could continue uninterrupted.

Research programs are typically ongoing and little is accomplished with on again/off again efforts. Developments through crop production research have made the California raisin industry successful. With higher efficiency, higher yields, and reduced pesticide residues, producers have become economically sustainable, while handlers and consumers have
benefitted from lower pesticide residues and higher raisin quality.

Crop productions research can improve grower returns by increasing yields through reducing input costs or improving quality and cleanliness.

Research is expensive and a long process. Small businesses don't have the resources to undertake such research. This is why continuous industry effort is valuable.

Benefits of the research would be realized by producers, handlers and consumers. The benefits would include higher yields, lower input costs, lower or more effective chemical use, and improved raisin quality.

A crop production research program would only be implemented if CRMB was unable to do so. As a former member of the CRMB Research Committee, I participated firsthand on an industry process in soliciting and evaluating research proposals and then making budget recommendations to the full CRMB and prioritizing
these expenditures versus other marketing efforts. Good industry consensus was reached. I would expect the same if operated under the proposed RAC authority.

Compliance would include USDA oversight similar to all other RAC actions. USDA would be included in the review and approval of any proposed research project as part of the budget review process.

At this point I'd like to make some other comments on Exhibit 27.

The research that we're talking about here are not gigantic projects that are very expensive and take on a life of their own. They're typically very targeted projects that have grown from grower needs through the University of California Cooperative Extensive Field Farm Advisors. And so with just a minimal amount of money we've been able to get a tremendous amount of very effective research done.

That's why we're here today: the
research is not continuing. And it's, like Steve indicated, Sunpreme is something that we need some research on to get it off the ground, and that's not taking place.

You know, we looked back and estimate that we've had 65 years of research between the old CALRAB, California Raisin Advisory Board, and CRMB. And during that time there have been, we estimate, somewhere around 1,700 pages of research that have been done. It's quite a legacy, but it needs to continue.

Some of the projects that have been done -- and I know Steve introduced some exhibits -- but to show how targeted some of these projects are:

The raisin maturity study; raisin storage; studies on mold damage; bulk handling of raisins; costs of production; development of new raisin varieties; trellising, training and pruning systems for new DOV raisin variety production and mechanization; grapevine nutrition; insect control; predator insect
reducers; nematode-resistant root stock.

JUDGE McCARTNEY: Remember, the court reporter does not have this in front of him.


Farm drying of boxed raisin; bud studies and yield predictions; training and trellising for mechanical harvesting; rodent repellant study; development of airstream sorter; water use in grapevines measured by weighing lysimeter; study of pneumatic pruning; management of vine mealybug. These are all, all, like I said, not expensive projects, but very beneficial to the growers and to the consumer at the other end.

We've had a tremendous legacy of farm advisors that have done a lot of work on these projects. They were not only good researchers but they were good communicators. And so they were able to -- they had the trust of the grower community and they were able to extend the research and get it into the hands of the growers
that needed this information. And that's just as important component of research as just the research itself.

And so, you know, we are very thankful and have been very fortunate to have people like Pete Christiansen, Kent Dane, Walt Bentley, Bill Peacock, George Levitz, Fred Jensen, Mick Dekusian and Mike McHenry that have worked on these projects.

JUDGE McCARTNEY: And, again, you're referring to Exhibit 27?

MR. STARK: Yes.

JUDGE McCARTNEY: All right.

MR. STARK: And, you know, Steve referenced Sunpreme as a new variety. And I would do a disservice to Dave Ramming with the Ag Research Service through the USDA for all the work that he's done in creating that variety, and also his work on DOVine and Sunpreme, and before him, Fiesta.

Where I may differ just a, just a teeny, tiny bit with Steve is, yeah, it's,
research is expensive to do as an individual but we have had instances where a couple of growers have taken projects and were able to bring them to fruition. And I mentioned Earl Rocca with continuous tray and Lee Simpson with overhead DOV.

But the problem is when you have growers that are undertaking these kinds of projects is that A) because of the money and the resources it takes a lot more time for them to get a project to a point where you're going to see industry adoption. And they don't have the money for that extension component that you were able to get through the university. But nevertheless, it's research that's been done and it's been very helpful to the industry.

And with that, thank you, and I'll take any questions.

JUDGE McCARTNEY: Any questions for this witness?

EXAMINATION ON BEHALF OF USDA, AMS

MS. SCHMAEDICK: Melissa Schmaedick,
USDA. Thank you for your testimony.

A couple of clarifications. When you were speaking to Exhibit 27 with regard to the research that Mr. David Ramming did, was that DOVine?

MR. STARK: DOVine.

MS. SCHMAEDICK: Could you spell?

MR. STARK: D-O-V-I-N-E.

JUDGE McCARTNEY: Okay. And partly I ask these questions so that we have the correct spelling on the transcript.

MR. STARK: Certainly. And I think you already got Selma Pete earlier.

MS. SCHMAEDICK: Selma Pete.

And then you mentioned a grower researcher by the name of Lee Simpson that did something with DOV?

MR. STARK: Right. He was the gentleman that started using overhead DOV as a drying system, as a trellising system.

MS. SCHMAEDICK: So DOV means what?

MR. STARK: Dried on the vine.
MS. SCHMAEDICK: Dried on the vine.

Okay, thank you.

With regard to your prepared testimony, Exhibit 26, you mentioned that you are the Manager of Grower Relations and Secretary for Sunmaid Growers of California.

MR. STARK: Yes.

MS. SCHMAEDICK: In that capacity have you had the opportunity to discuss this proposal for crop production research with growers?

MR. STARK: Yes.

MS. SCHMAEDICK: What has been the response that you've gotten?

MR. STARK: Growers have been supportive of research, you know, all these years. Through the CRMB's program they -- and even CRMB, they actually gave the funding through the assessment for that research.

The research that we're proposing here would be through the packer assessment, so it wouldn't, it wouldn't necessarily be a grower assessment. So, but yes, they've been
supportive.

MS. SCHMAEDICK: So just to clarify if I'm understanding what you just said, under the state program the assessment is collected at the grower level?

MR. STARK: Correct.

MS. SCHMAEDICK: But under the federal program it's collected at the handler level?

MR. STARK: That's -- the, as I understand it, there is no way to collect an assessment from the grower through the federal order.

MS. SCHMAEDICK: Okay. But in your opinion, the discussions with other growers regarding this proposal, the response has been positive?

MR. STARK: Very supportive.

MS. SCHMAEDICK: Thank you.

And also in your -- on the first page of your testimony you state that the CMRB(sic) has been unable to fund crop research, crop production research since 2012.
So again, I believe I asked this question earlier, but are you aware of suspended research? And has that had a negative impact on the industry?

MR. STARK: The main -- there's two really. We talked about Sunpreme and that any research efforts had stopped there. But in addition to that we had funded every year for development of new varieties, and that, that has stopped as best I know. It certainly isn't continuing because we haven't funded it. So any, any work that those scientists are doing, they're targeting more for table grapes and for wine grapes, I'm assuming.

MS. SCHMAEDICK: I see. Thank you.

So you also mentioned consumer benefits and you directly link that to lower pesticide residues and higher quality raisins. And then later you refer to improved raisin quality.

Could you explain, I'm not super familiar with what makes a great raisin a great
raisin, could you explain that?

MR. STARK: Well, you might actually get some differences of opinion on that. But, you know, really there's a machine called the airstream sorter that is --

JUDGE McCARTNEY: Can you speak a little louder?

MR. STARK: Oh sure.

There is a machine that USDA developed called the airstream sorter. And that measures two things: it measures how many raisins are what they call substandard, which would be a skin with no sugar in it and/or a B grade and better raisin which is the high quality raisins.

If you look at the watering methods that we have today and the fertilization methods that we have as a result of the research that's been done, our quality continues to improve as well as our yields.

MS. SCHMAEDICK: Thank you. So a higher quality raisin would that have a higher sugar content or is it related to size or?
MR. STARK: It's related to, if you go back to the -- it was based on, used to be based on a visual observation, okay. And then the visual observation graded out A, B, C and substandard. And B grade and better are those that graded out higher. And the airstream sorter -- I'm not the scientist on this -- but I believe it's on the specific gravity and the amount of wind resistance, it drops a measured amount of raisins into an air chamber and the good ones fall to the bottom and the less-than-good ones go over to the other side, and they weigh them.

MS. SCHMAEDICK: Thank you.

And so, again I'm trying to focus in on that consumer benefit resulting from potential research, so in regards to the lower pesticide residue, could you speak to that?

MR. STARK: Sure.

JUDGE McCARTNEY: Well, could I just follow-up a moment on that question?

All right, so with respect to key characteristics that a layperson could notice
with respect to better quality or B and over
rated, would they be considered plumper, juicier,
bigger? Yeah, I mean what, what kind of field
layperson benefits that manifest themselves in
the scientific measurement that you've just
described could one expect from the benefits of
the R&D?

MR. STARK: If I had to give it one
attribute, I would say plump. So it would be
plumper because the thin ones, the substandard
are pretty flat and they tend to fly like little
kites.

JUDGE McCARTNEY: So and what kinds of
attributes contribute to plumpness, in terms of
increased moisture retention?

MR. STARK: Sure could.

JUDGE McCARTNEY: The methodology for
drying it on the vine? What kind of things?

MR. STARK: Yeah, they would, they
would have higher sugar content and --

MS. SCHMAEDICK: Mr. Stark, I'm sorry
to interrupt, could you talk into the microphone.
MR. STARK: I'm sorry.

JUDGE McCARTNEY: You know, if you want to move the microphone over here.

MR. STARK: Yeah, it might help.

JUDGE McCARTNEY: Just pick it up and just put it right here. So that way you're facing into it as well.

MR. STARK: Yeah.

JUDGE McCARTNEY: There we go.

MR. STARK: So anyway, they would have a higher sugar content. They would have more soluble solids, you know. Just the structure of the, of the grape itself was stronger.

MS. SCHMAEDICK: Thank you.

And then with regard to lower pesticide residues, I myself, I'm a consumer and so I can understand the benefits of lower pesticides, but could you explain how research ties into resulting in a better quality product for consumers in that way?

MR. STARK: Sure. By growers understanding and getting the information from
the research about the different chemicals and
what have you, I've seen a change in 25 years
from harsher materials that were hard on
beneficial insects and, you know, a variety of
other problems shall we say, to a lot safer
chemistry, a lot more targeted, a lot easier on
beneficials. And so it's cut some of the need
for some of the pesticides down. And it's
changed to softer chemistries that are safer.

MS. SCHMAEDICK: Would the development
of different varieties that are maybe resistant
to pests or disease or those types of issues,
would that be another way to benefit the
consumer?

MR. STARK: Sure. And there's been a
tremendous amount of effort put into particularly
powdery mildew, probably the number one disease
that we have to treat for. And so there's been a
lot of effort put into developing a grapevine
that will be resistant. And that's not just with
raisin grapes but that's with all grapes.

MS. SCHMAEDICK: Thank you.
Jumping to the second page of your testimony, you outlined the process that the state program currently follows in terms of identifying research and then incorporating the potential costs of those research projects into the budget and then, ultimately, into an assessment recommendation. Is that correct?

MR. STARK: Uh-huh.

JUDGE McCARTNEY: The witness nodded.

MR. STARK: Yes. I'm sorry.

JUDGE McCARTNEY: That's in the affirmative.

MS. SCHMAEDICK: Then you mentioned compliance. Can you explain what you mean by compliance? Is it, is it ensuring that the budget numbers are adhered to or that the research is executed successfully? What type of compliance are we talking about?

MR. STARK: Compliance would be making sure that the budget was adhered to.

MS. SCHMAEDICK: So and in your opinion this process that is currently followed by the
state program, it would be followed by the federal program?

MR. STARK: Yes.

MS. SCHMAEDICK: And is it your understanding that if this authority were granted under the raisin marketing order that ultimately USDA would be responsible for overseeing and approving selection of projects?

MR. STARK: You -- well, I would assume that it would be similar to others. And as a, as a committee we would make recommendations to the Secretary. And the Secretary would have the right to approve or disapprove any recommendation that we made.

MS. SCHMAEDICK: Right. Thank you for that.

My last question. And I did ask this of the previous witness as well. But on the first page of your testimony, towards the bottom, you state that "small businesses don't have the resources to undertake research. This is why a continuous industry effort is valuable."
Are you speaking to the benefits of, again, this, this concept of collective action, the industry working together as a whole towards an accomplishment?

MR. STARK: Yes. Because as a, as a grower you may have one particular issue that you, you want to work on. You probably don't have the expertise to do that yourself. And you would have to pay somebody to do that. And that gets very expensive. And so a collective effort would be able to bring a lot more resources that were a lot more qualified or bring you quicker results and more comprehensive.

MS. SCHMAEDICK: Thank you.

I have no further questions.

JUDGE McCARTNEY: Anything further for this witness?

EXAMINATION ON BEHALF OF USDA, OIG

MR. McFETRIDGE: Marc McFetridge, USDA.

Just quick clarification question.

In your testimony you didn't state that you were a grower. Are you currently a
raisin grower or no?

MR. STARK: No, I am not a grower.

MR. McFETRIDGE: Thank you.

Your testimony states that you're a Manager of Grower Relations. Based on your dealings with the growers for Sunmaid, would you feel comfortable talking about their, their definition, the Small Business Administration definition if they would be small or large growers, or would you not feel comfortable stating that?

MR. STARK: We have a number of each. You know, we have, Steve outlined the gamut of growers, and our, our numbers would be similar to that.

MR. McFETRIDGE: Thank you.

I guess would you say majority would be small, majority would be large? What would you say?

MR. STARK: I would say that the majority of the actual -- the number of growers would be small.
MR. McFETRIDGE: All right, thank you.

JUDGE McCARTNEY: Within the meaning of that definition?

MR. STARK: Within the meaning of that definition.

MR. McFETRIDGE: Thank you. Do you need me to repeat the definition?

MR. STARK: No.

MR. McFETRIDGE: Just one more quick question.

In your testimony you talked about compliance, how USDA would have oversight. Is this, would this be considered an additional step comparative of how it's currently being run under the California program?

MR. STARK: I don't think so. I think that it would be very similar.

MR. McFETRIDGE: It would be very similar.

So you don't see any issues with having USDA as oversight for compliance?

MR. STARK: No.
MR. McFETRIDGE: All right, thank you.

Thank you very much.

EXAMINATION ON BEHALF OF USDA, OGC

MS. CHILUKURI: Rupa Chilukuri, USDA.

Mr. Stark, so I just want to clarify if the authority were to be implemented, when it would work. So if, if CRMB is in place and exists as an entity and is funding research, would the RAC also be funding research?

MR. STARK: No. It's, the intent is that as long as CRMB is functioning and has the funds and the ability to fund research and is making those decisions then they would be the primary funding agency. In the event that they were unable to fund or ceased to exist, then the RAC would have the option then to bring projects forward and fund them.

MS. CHILUKURI: Okay. And how familiar are you with the other proposals that RAC has recommended?

MR. STARK: Pretty, pretty familiar.

MS. CHILUKURI: And what is your
position --

JUDGE McCARTNEY: That was a pretty

broad question. Do you have a time frame?

During his lifetime or?

MS. CHILUKURI: Well, it would be these

proposals that are in this Notice of Hearing.

JUDGE McCARTNEY: Oh fine. We'll get

specificity. These proposals.

MR. STARK: These proposals, okay.

JUDGE McCARTNEY: As set forth in the

Exhibit 1, Proposed Rules.

MS. CHILUKURI: And what is your

position on those proposals as set forth, by the

RAC?

MR. STARK: Okay. The only proposal

that we would not support would be on term

limits.

MS. CHILUKURI: Okay. And just to

clarify --

MR. STARK: We agree with --

MS. CHILUKURI: -- USDA proposed that.

MR. STARK: We would support then the
MS. CHILUKURI: And do you think if authority was put in place to support production research, do you think there is a connection between that and some of the other proposals that RAC has put in place? For instance, the authority to add quality or the authority for different market regulation, could production research help as it relates to those types of proposals?

MR. STARK: You never say never. There could be, there could be some ties there on quality and figuring out some, some way to measure quality or a quality that we aren't currently measuring today that could need some additional research. So, yeah, there, there could be some ties.

MS. CHILUKURI: Thank you.

I think the previous witness had mentioned ochratoxin. Do you think that is one instance in which this type of research could assist as it relates to that quality? I think
they had mentioned it in the quality regulation setting.

MR. STARK: Right. Ochratoxin is a, I think it's a fungus, but it's a food safety issue is why it's so important. It's very, very important in Europe. And so there could be some research that would need to be done as to what, what measurements we're getting compared to what measurements are coming out of other, other countries.

MS. CHILUKURI: Thank you.

JUDGE McCARTNEY: Anything further for this witness?

(No response.)

JUDGE McCARTNEY: Any objections to the admissibility of the sponsored Exhibits 26 and 27?

(No response.)

JUDGE McCARTNEY: There being none, those are admitted.

(Whereupon, the above-referred to exhibits, previously identified as
Stark Exhibits 26 and 27, were received in evidence.)

This witness is excused.

(Witness stands down.)

JUDGE McCARTNEY: All right, so off the record a moment.

(Whereupon, at 11:54 a.m., the above-entitled matter went off the record, and went back on the record at 11:55 a.m.)

JUDGE McCARTNEY: We're back on the record.

All right, please identify yourself and affirm that you have been previously sworn.

MS. VAN ZYL: My name is Sonet Van Zyl. And, yes, I've been previously sworn.

WHEREUPON,

SONET VAN ZYL having been previously duly sworn, was called as a witness here, and was examined and testified as follows:

JUDGE McCARTNEY: And does the court reporter have your contact information?
MS. VAN ZYL: Yes, she does.

JUDGE McCARTNEY: All right, thank you.

You may proceed.

MS. VAN ZYL: I have one exhibit that's been entered already as Exhibit 28, which is my witness statement.

(Whereupon, the above-referred to document was marked as Van Zyl Exhibit 28 for identification.)

TESTIMONY OF SONET VAN ZYL

MS. VAN ZYL: My name is Sonet Van Zyl and I am an Assistant Professor of Viticulture at California State University Fresno. I have been with the Department of Viticulture and Oenology at Fresno State for five years.

Previously I worked at the University of California Davis as a researcher while also taking my Ph.D. degree in viticulture. I was also employed as a researcher at the Agricultural Research Counsel in South Africa where I was part of the New Cultivar Development Team for Table
Grapes and Raisins. I have an extensive
background in table grape production, raisin
production, and processing, as well as grapevine
rootstock development, grapevine cultivar
development and grapevine genetics.

I have served as a Alternate Public
Member and later as the Public Member on the
California Raisin Marketing Board since 2012, and
recently as the Public Member on the Raisin
Administrative Committee, that's since 2014.

As a researcher I apply for research
funding on a regular basis to commodity groups,
federal and state agencies, and private industry
organizations. Performing crop research creates
a constant, a constant flow of new knowledge that
I can rely or relate to students in the
classroom. As a teacher, research activities
ensure that students learn about the newest
technologies for the future in the grape
industry.

Fresno State is the only university in
the United States that offers and extensive class
on raisin production and processing, and actively involves undergraduate students to participate in research activities.

Over the years, crop research has benefitted the raisin industry by introducing new and highly successful raisin cultivars, for example Fiesta, DOVine, Selma Pete, and the most recent cultivar, Sunpreme. Research has also resulted in the development of new rootstocks, hastened disease management strategies, mechanization practices, and optimal cultivation techniques for each specific raisin cultivar.

Crop research is an ongoing practice to find solutions to problems, and will often lead to new questions that need answering through additional or expanded research projects. Climate change also lead to questions about drought and salt-tolerant rootstocks and cultivars, water management strategies and adaptive cultivar practices.

Any interruptions in these kinds of research projects create gaps in data sets and
are impossible to fill in. In 2012, the CRMB funded a joint research project between Fresno State and U.C. Davis to investigate newly released grapevine rootstocks, their performance and affinity to Selma Pete raisins. This project was funded for two years out of the requested three years.

As with any crop research project, at least three years of repeated research is needed to develop statistically sound data. If the Raisin Administrative Counsel was given the authority to fund crop research, we will be able to finish that project and give raisin growers valuable information regarding which rootstocks to use with Selma Pete to get optimum yield and quality for the best possible price point.

Sunpreme, the newly released raisin cultivar from the USDA created an exciting new research path since it's the first nature dry-on-the-vine, or DOV, cultivar. As the first natural DOV cultivar a number of questions arose. For example, how do growers cultivate Sunpreme for
optimum yield and quality? And what does the training and trellising systems look like?

But since its release in 2013, the CRMB was not able to fund any research projects regarding Sunpreme. Although an initial lack of plant material also contributed to the delay in research opportunities, a new vineyard has been established that will be able or will be ready soon for research activities. If the RAC is given the authority to fund crop production research we, as the researchers, can initiate trials sooner to answer grower questions regarding Sunpreme.

As a researcher, I am involved in research subcommittees for other commodity groups. I have served as a member of the CRMB Research Subcommittee in 2012. Past research activities proved how the raisin industry has adapted to new cultivars, technology and cultivation practices. It will continue to benefit all parties involved in the raisin industry if the RAC is given the authority to
fund crop research while the CRMB is currently unable to do so, or in the unlikely event that the CRMB ceases to exist.

    Thank you for your time. Any questions?

    JUDGE McCARTNEY: Any questions for this witness?

    EXAMINATION ON BEHALF OF USDA, AMS

    MS. SCHMAEDICK: Melissa Schmaedick, USDA. Thank you for your testimony.

    You just mentioned that you are involved with research for other commodities. What other commodities are you involved with?

    MS. VAN ZYL: Table grapes specifically. I also work on rootstock development and some wine grapes as well.

    MS. SCHMAEDICK: Thank you.

    You mentioned in your testimony that, okay, there was a 2012 project funded by the state program and you needed three years of data but you only got two?

    MS. VAN ZYL: Yes. That project was
funded through the CRMB. I came on board --
that's right after I started working at Fresno
State -- I came on board I believe in the second
year of funding. But at Fresno State we applied
for three years and got two of those years. I
was lucky to get some additional funding through
other sources to be able to finish the project,
but that third year of data is still lacking at
the moment for us.

MS. SCHMAEDICK: So my question is if,
if this authority were implemented under the
federal program would you have to start over
again and do three years or can you pick up?

MS. SCHMAEDICK: There will be a gap in
the data which makes it a little harder. But
since the block has been established, it's still
existing at the moment, the rootstocks are there,
the cultivar is there, Sunpreme -- or not
Sunpreme, sorry -- Selma Pete in this case, we
will be able to use the same block, the same
facility to continue another year on the
research. It's only in the event that the block
would be removed by the grower that we will have
to start over most probably.

MS. SCHMAEDICK: And the block refers
to a parcel of land?

MS. VAN ZYL: Yes. A block is like a,
like a orchard. It's a piece of land that's been
planted to grapes. We call them blocks usually.

MS. SCHMAEDICK: Okay, thank you.

And can you give any examples of
research that you've been involved with that
you've actually seen a really positive impact on
the industry? For example, you've mentioned the
development of new varieties, can you explain an
experience like that?

MS. VAN ZYL: Oh, for sure. In terms
of new varieties I, as I mentioned also in my
statement, I did work in South Africa for a
company that does the same type of breeding
techniques for grapes. And it's interestingly
enough that cultivars that's been developed in
the United States are out in other countries,
they're all sought after.
So for me, being here now, to see what the industry here is actually accomplishing, it actually spills over to other countries. And that means the United States is at the forefront of it. And to be able now to work with the people who develop those, it is a great experience at this point. But definitely something like Fiesta is not only in the United States but cultivars everywhere else as well.

MS. SCHMAEDICK: Thank you.

In your work as a --

JUDGE McCARTNEY: Pardon me. I'm sorry to interrupt.

Could I ask a related question? So do you have any opinion as to the benefits of these proposals with respect to the competitiveness of the U.S. raisin industry with regard to these outside markets?

MS. VAN ZYL: I believe the U.S. is at the forefront. And working as a researcher in another country as well, okay, there's different circumstances. Where I work in South Africa we
do not have the labor problem in South Africa so
no one ever went to mechanized raisin production
as they did here. So if anything would happen,
for instance, in South Africa, they would be far
behind.

The United States has already been
through all of that. They have systems in place.
They have training trellising systems for
something like mechanized viticulture.

I believe that it will take a long
time for a lot of countries to really pick up. I
know Turkey is -- U.S. still is the largest
producer of raisins in the world. Turkey is not
far behind. They sometimes talk that they might
overtake. But beyond that, all the other
countries are really far behind in production and
even in research projects.

JUDGE McCARTNEY: So am I to understand
your testimony correctly that a disruption, a
major disruption in research and development in
the U.S. raisin industry would have a negative
impact, not just in the U.S. but worldwide?
MS. VAN ZYL: For sure.

MS. SCHMAEDICK: Thank you.

In your experience with raisin production research have you ever been involved with research that might have an impact on challenges that would fall under the umbrella of food safety issues, so, for example, a contaminant, control of a contaminant?

MS. VAN ZYL: Personally, no, I have not worked with any of those.

MS. SCHMAEDICK: Okay. Would you, again your opinion as a researcher and as a scientist, would it be important to have the ability to study those challenges and support the industry's ability to control and minimize those contaminations?

MS. VAN ZYL: Yes, definitely. You never know what the next problem might be or the next food safety problem is going to be. So rather be prepared and get those research going, especially on things that we know at the moment. Yes, I definitely support that.
MS. SCHMAEDICK: So you mentioned on things that we know at the moment. Can you give an example? Are there --

MS. VAN ZYL: Any kind of contaminant. For instance, we've read about instances where spinach was contaminated at some point. There is all kind of food safety issues. And since raisins are also made out in the field, there is dust out there. There is a way to process them inside but we need to make sure that we take all the actions to create a safe product.

MS. SCHMAEDICK: Thank you.

So in your opinion this, this authority would help provide that tool to create that type of research in the event that the state program was not able to do that?

MS. VAN ZYL: Yes, it will.

MS. SCHMAEDICK: Okay, thank you.

I have no further questions.

EXAMINATION ON BEHALF OF USDA, OGC

MS. CHILUKURI: Rupa Chilukuri, USDA.

Ms. Van Zyl, you talked about I guess
the benefits that producers and handlers would
have as a result of this proposal. Can you talk
a little bit more about the impacts that maybe I
as a consumer would experience?

MS. VAN ZYL: There is a lot to say and
not too much time for that. In terms of you as
the consumer, I'm a consumer as well. Believe
me, I eat a lot of raisins. I believe sometimes
that consumers don't always know exactly where
their products come from. And for us to be able
to go out there as researchers, and especially
like the previous witnesses stated, with
extension people out there giving the results to
growers, people reaching markets, people going
out to the consumers relaying information about
the products is what we definitely will be able
to continue.

MS. CHILUKURI: Thank you.

JUDGE McCARTNEY: Anything further for
this witness?

(No response.)

JUDGE McCARTNEY: Any objections to the
admissibility of Exhibit 28?

(No response.)

JUDGE McCARTNEY: There being none, the exhibit is hereby admitted and the witness is excused.

(Whereupon, the above-referred to exhibit, previously identified as Van Zyl Exhibit 28, was received in evidence.)

(Witness stands down.)

JUDGE McCARTNEY: We are recessed until 1:30.

(Whereupon, the above-entitled matter went off the record at 12:09 p.m. and resumed at 1:32 p.m.)

JUDGE McCARTNEY: We're on the record.

Please call the next witness.

MS. SCHMAEDICK: Kalem Barserian.

JUDGE McCARTNEY: Sir, please state your name for the record, and affirm that you've been previously sworn.
MR. BARSERIAN: My name is Kalem Barserian. And I have been sworn in.

JUDGE McCARTNEY: Thank you.

WHEREUPON,

KALEM BARSERIAN

having been previously duly sworn, was called as a witness here, and was examined and testified as follows:

JUDGE McCARTNEY: And which exhibits are you prepared to sponsor this afternoon?

MR. BARSERIAN: Well, mine started out as Proposal Number 1 but I think it's now something different.

JUDGE McCARTNEY: It's moved all the time.

MR. BARSERIAN: It's moved.

JUDGE McCARTNEY: All right, sir.

Thank you.

MR. BARSERIAN: And I'm also doing the one on term limits. And since I have just a little bit to say about that I will give my testimony on the independent grower nomination
first. And then when all the questions are finished on that I'll, I'll talk on my position on the term limits.

JUDGE MCCARTNEY: Excellent.

MR. BARSERIAN: Which is very short.

JUDGE MCCARTNEY: So to make sure we're all on the same page, what exhibit numbers are we looking at? Exhibit 29 would be your first statement.

MR. BARSERIAN: Twenty-nine.

JUDGE MCCARTNEY: Right. Is that the only document that you are proposing?

MR. BARSERIAN: And what's the other one then for the term limits?

JUDGE MCCARTNEY: You didn't have it prepared. But I have.

MR. BARSERIAN: Well, I did have. But I don't know -- I did send it in but it's a short statement on the term limits.

JUDGE MCCARTNEY: All right, we'll have you read it into the record.

MR. BARSERIAN: Okay.
JUDGE McCARTNEY: All right. So at this point you only have Exhibit 29?

MR. BARSERIAN: Yes.

JUDGE McCARTNEY: All right.

(Whereupon, the above-referred to document was marked as Barserian Exhibit 29 for identification.)

You may proceed, sir.

TESTIMONY OF KALEM BARSERIAN

MR. BARSERIAN: Okay. My name is Kalem Barserian and I reside in Fresno, California. I am 78 years old and have been involved in the California raisin industry my entire life.

For the past 50 years I have served in several capacities within the California raisin industry. My first paying job within the raisin industry, if you don't count picking trays for raisins on the family farm, was the auditor and then controller of the Federal Raisin Administrative Committee.

After four years at the RAC, I was
hired as the CEO of the Wine and Raisin Bargaining Association, which was for 18 years. In this capacity I served as a RAC Bargaining Association member. In the early 1970s we held elections in different districts and didn't distinguish between Sunmaid, RBA and independent growers. Whoever got the most growers out to the district meetings won the member seat and alternate seat.

This became very brutal for the growers and they asked that they change it by grower percentages so that each segment have the rightful -- have their rightful share. If I'm not mistaken, it was changed in 1976.

1978 I purchased 40 acres of open land and planted a Thompson Seedless vineyard. In 1987, I left the RDA to become a raisin processor, and have been doing the same ever since, along with maintaining my status as a raisin grower.

In 2001, the Lion Raisin Company hired me as their G.M., where I remained until 2010.
Since then I've represented Lion as both grower and processor.

Over the past 40 years bulk co-op percentage of the industry has reduced to where the independent grower now represents 16 votes, Sunmaid 10 votes, and RBA 9 vote, grower votes of the 35 seats available going into the 2016 elections of the RAC. The word "independent" means just that: most growers do not wish to take of their time to serve the industry.

The RAC does a very good job of announcing the independent nomination meetings, but to no avail. For example, we just held nomination meetings for the three districts. I attended the Fresno County meeting where there were to be nominated -- nominations for 14 member seats and 14 alternate member seats. A total of five people showed up.

Due to the format of the nominations, some of us would only nominate those willing to serve as a member since any more than 14 names nominated we'd be compelled competing for those
seats, and some growers only choose to be an alternate. I believe the nine points of our proposal is accurate in describing how we'd get more independent growers involved in the California raisin industry.

And I could speak to the nine points.

That is my testimony, Your Honor.

JUDGE McCARTNEY: All right. I wish you would elaborate on the nine points.

MR. BARSERIAN: The nine points:

What is the purpose of the proposal?

And the proposal, as I stated in my testimony, is to increase the participation on the committee for independent growers.

Number 2, what problem is the proposal designed to address? It's basically trying to make sure that we get enough participation from both the members and the alternates where the alternates have been going vacant for several years in a row.

Number 3, what are the current requirements or industry practices relative to
the proposal? We hold a meeting. It's well announced. Growers, independent growers are just that, they're independent, they wish not to participate. And it's very difficult to get enough people to want to serve on the board. They're busy on the tractor all day long or taking care of their problems on the ranch, and it's hard to get them away to come in for a 3 or 4 hour meeting once a month or whatever the time frame is or whatever is going on.

Number 4, what are the expected impact on producers, handlers and consumers? Basically no impact on the consumer. But it would have an impact on the industry because we'd have more and a fuller representation of those that will be serving as alternates who will get to see how the system works and, hopefully, someday want to serve as a member.

Number 5, how would the proposal tend to improve returns to producers? Quantify. Independent growers would benefit from full representation on the RAC. Full representation
would give the independent growers their represented voice in the RAC decision making process and, therefore, equate to representative judiciary participation.

Six, what are the expected effects on small business? There are small independent growers that are on the RAC as either members or alternates. If independent growers were allowed to run as alternate members only this could increase the representation of small independent grower businesses.

Number 7, would the proposed increase or decrease cost to produce, as Handlers' Committee and RAC; explain? And basically there's no, you know, it's going to be no cost in the proposal that's being proposed here.

Number 8, how would the proposal be implemented? The proposal would result in a call for nominations for both independent grower members as well as their alternate members. It would be the same way it's done now. We'd attend a meeting called for by the RAC. In this case
it's at the RAC meeting -- I mean at their offices. We would attend, nominate for members and alternates separate and apart. Today it's all under one slate. And we're trying to change that to get that better representation.

How would compliance with the proposal -- Number 9, how would the compliance the proposal be effected? USDA oversees the nomination process, reviews background and acceptance statements and has selection authority.

JUDGE McCARTNEY: All right. Let's take questions on Exhibit 29 and that testimony, then we'll turn your attention to that portion of your testimony that you wish to read into the record from the other document.

Are there any questions relative to Exhibit 29?

MS. SCHMAEDICK: Yes, Your Honor.

EXAMINATION ON BEHALF OF USDA, AMS

MS. SCHMAEDICK: Melissa Schmaedick,

USDA. Good afternoon.
MR. BARSERIAN: Good afternoon.

MS. SCHMAEDICK: Thank you for your testimony.

So I just wanted to clarify that you mentioned in your prepared statement the reference to the nine points. And then you read the nine points for this particular proposal.

MR. BARSERIAN: Yes.

MS. SCHMAEDICK: And I believe that those nine points are included in Exhibit 15, which was submitted earlier today by Ms. Debbie Powell.

MR. BARSERIAN: That's correct.

MS. SCHMAEDICK: Okay, thank you.

So just to make sure I'm understanding your statement correctly and sort of the history that you've laid out, you state that prior to 1976 there -- the seats were not allocated to your three segments that you identified: Sunmaid, RBA and independents; is that correct?

MR. BARSERIAN: Yes, that's correct.

MS. SCHMAEDICK: Okay. And then you
state that -- I'll just paraphrase -- this became
very brutal for growers and they asked that the
process be changed so that each segment had their
rightful share. Is that correct?

MR. BARSERIAN: That's correct.

MS. SCHMAEDICK: Okay. So I'm
wondering if you could describe to us, you
mentioned that independents, you described them
as independents means just that, most growers do
not wish to take of their time to serve at the
industry.

But what I'm wanting to ask you about
is what is the independent perspective that is
represented by independent grower members? And
how is it different from Sunmaid and RBA?

MR. BARSERIAN: Explain. Two, it's
easy to explain. Okay.

MS. SCHMAEDICK: Please.

MR. BARSERIAN: Sunmaid is a marketing
processing cooperative. Their membership is made
up of those growers that have a membership in the
organization. Even though Sunmaid does buy on
the outside from independent growers and also the RBA, which is a bargaining association. The bargaining association acts as, one, to negotiate for a fair and reasonable price once a year. That's their main, main reason for being in existence.

So the independent grower chooses not to be a member of Sunmaid and chooses not to be a member of RBA. Could be a member of Fresno Co-op, so there's more than just one co-op in the business, and they're a marketing co-op, but a very small one, maybe 1 or 2 percent of the industry. Where Sunmaid is near 30 percent, RBA is a little bit less than that.

And then what's made up of the rest, roughly about 46 percent of the industry, are these independent growers. And they choose not to be associated with either one. But they could sell to Sunmaid for cash. They could sell to one of 20-some-odd packers for cash or terms or whatever. And they choose to take that position and not join the different organizations within
the industry.

MS. SCHMAEDICK: Thank you for that clarification.

So does that explain, again in your statement you indicate that the independent growers represent 16 votes?

MR. BARSERIAN: Yes.

MS. SCHMAEDICK: Sunmaid 10, and RBA 9.

So with that 16 votes I'm wondering if that equates to 16 member seats. Is that correct?

MR. BARSERIAN: Yes.

MS. SCHMAEDICK: And that is --

MR. BARSERIAN: And alternate seats: 16 and 16.

MS. SCHMAEDICK: Okay. And then so that 16 represents the roughly 45 percent that you just mentioned?

MR. BARSERIAN: Take 16 and divide it into 35, 35. You get your percentage. I might be off a half a percent.

MS. SCHMAEDICK: I see. Thank you for that clarification.
So in your opinion this independent voice, is it fairly significant?

MR. BARSERIAN: Well, it's significant as a percentage of the industry of Kalem Barserian speaking for them. Okay. Because some of us are out there representing the entire industry, whether independent, Sunmaid or RBA. So my position in most cases, probably 90 percent of the time, maybe 100, I'm in support of what everybody else is in support of. You know, the viable industry, making a decent return to growers, processors being healthy and making a profit in the market.

We've used this marketing order since 1949. A lot of things have changed in that 70 years since it started. We're here today with another hearing to make some dramatic changes. I might agree with them, I might not, but we're making it, for whatever reason.

But we still have to work together. We're in a 50-mile radius of where we sit is where the majority of all of our producers are
and where all of our processors are. So whatever
happens in Madera -- I say you heard it through
the grapevine -- all know about it in Selma, you
know, immediately.

So we're very close, we're a very
close knit organiz -- today we're all together,
we're all on the same page. We're Sunmaid.
We're RBA. We're independent growers. We're
processors. We're dehydrators. We're all
functioning on the well-being of this industry.
No one really is at advantage or disadvantage
unless they place themselves in that position.

MS. SCHMAEDICK: Thank you.

I'm wondering -- let me just draw on
previous statements that have been made by other
witnesses in that the member, independent member
grower seats may be filled but the alternate
seats are not always filled. But there are
regularly vacancies for the alternate member
seats. Is that correct?

MR. BARSERIAN: That's correct.

MS. SCHMAEDICK: And so in your opinion
would this proposal help fill in those vacancies and, therefore, further substantiate or round out the representation of independent growers and their voice?

MR. BARSERIAN: Well, people like me that is well integrated within the industry and talking to independent growers, I can't get them to serve as a member, which would basically require every time that we send out a notice of a meeting, they're to attend. Okay. They don't want to, at this point in their life they don't want to do it. But they would be willing to be an alternate in case Kalem couldn't be there next Tuesday at 3:00 o'clock. I could call up Glenn and Glenn will be there taking my place.

Because of the way it's now, if you nominate one more than what seat is open, that person who wanted to just be an alternate we don't nominate him, he just gets eliminated. By this change we'll now put a slate on the table of both the member and when that nomination is closed then we'll open up the alternate and
nominate the alternate.

   This was my proposal because I saw what had happened in the last several years how it's eroded to not enough people want to serve. It's just gotten worse instead of better. We've had so many growers go out, out of the business and into other things, either selling their land, planting almonds or pistachios or Clementines. We were at one time 5,800 growers in the industry. We're probably under 3,000 today, and still declining.

MS. SCHMAEDICK: Thank you.

JUDGE McCARTNEY: I'd like to ask a follow-up question about that.

   In your opinion does this modification of the process to permit alternates provide a more skilled applicant pool for when you are seeking positions on the main, the main board so that you have experience and people who are more connected to the process?

MR. BARSERIAN: That's a tough question because if you say a more skilled, I think all of
them are skilled just by being on a farm.

JUDGE McCARTNEY: In the process?

MR. BARSERIAN: But in the process, you know, a lot of them really don't know the
function of the marketing order and what it means
to their well-being. This is really more of an
educational thing, in my opinion. I mean I've
been at this, I've been on the RAC maybe 40 of
the 50 years that I've been in the business. And
I've worked at the RAC and got my education
there. So I've got this well-rounded background
within the industry, like my colleagues here
today.

Everybody in this room today took of
their time to be here. Can't get everybody to do
that. One of the fellows here had to go back on
the ranch because he's spraying today for the
sizing of his Zante currant raisins. That's how
critical "right now" is to get people, you know,
to do that.

So all this is, in my opinion, is a
learning curve for those members that, or these
alternate members that are now going to come on
the RAC and see how it functions, why it
functions, why we do the things that we do.

MS. SCHMAEDICK: Thank you for that,
that statement.

And if I'm understanding you
correctly, this proposal to allow individuals to
select to be alternates could also be seen as a
very progressive step towards creating a
training, if you will, a member-in-training.

MR. BARSERIAN: That's correct. That's
basically what I told our judge is that, you
know, I'm looking at nominating new people that
are just coming in to the farm side or they're
second generation, they've now taken over from
dad or grandpa. They're now going to stay in the
raisin business for whatever, you know, reason
they want to stay in it. And these are the new
people that we could get introduced to take over
for us.

I mean I, I'm on the last lap so to
speak. So somebody's got to take my place. I've
got a lot of experience, you know. I get laughed
at a lot for being so old, but.

JUDGE McCARTNEY: I have to say you
look pretty good for 78. Now that was very
courageous of you to offer that.

(Laughter.)

MR. BARSERIAN: Thank you.

MS. SCHMAEDICK: Thank you for your
statement.

You did mention that this was your
proposal; is that correct?

MR. BARSERIAN: Yes.

MS. SCHMAEDICK: And you were involved
with the workgroup; is that correct?

MR. BARSERIAN: Yes.

MS. SCHMAEDICK: And have you had an
opportunity to talk about this proposal with your
fellow industry growers, handlers?

MR. BARSERIAN: Every day.

MS. SCHMAEDICK: Yes.

MR. BARSERIAN: Yes.

MS. SCHMAEDICK: And what has been the
reception?

MR. BARSERIAN: Very good.

MS. SCHMAEDICK: Good.

MR. BARSERIAN: Matter of fact, I proposed some write-ins for this one that we're waiting for approval on for, not for this amendment but for going, you know, what our new board is. And so I think we'll see -- I've got about five, six names that should be included on the alternate this coming year.

But this makes it cleaner. Instead of having to have a write-in, this makes it you separate because the guy that wants to serve as a member will get to serve and the guy that wants to serve as an alternate will get to serve.

MS. SCHMAEDICK: Well, thank you very much for your testimony, for your expertise.

JUDGE McCARTNEY: Any further questions for this witness?

EXAMINATION ON BEHALF OF USDA, AMS

MR. McFETRIDGE: Marc McFetridge, USDA.

Just a few quick questions.
Based on your testimony you said that you had 40 acres of Thompson Seedless; is that correct?

MR. BARSERIAN: Just say NTS, Marc.

It's easier.

MR. McFETRIDGE: NTS. Is that correct?

MR. BARSERIAN: Yes.

MR. McFETRIDGE: So based on the Small Business Administration definition of having annual receipts of less than $750,000 would classify you as a small grower, would you say you're a small or a large grower?

MR. BARSERIAN: Small.

MR. McFETRIDGE: Small.

You also stated that you worked for Lion Raisin Company. Is that correct?

MR. BARSERIAN: Yes.

MR. McFETRIDGE: Based on the Small Business Association's definition of a large handler of having greater than $7.5 million, would you feel comfortable classifying Lion as a large or small handler?
MR. BARSERIAN: Large.

MR. McFETRIDGE: Large. Thank you.

One more quick question. Just I know we discussed about having the alternates being able to vote them in would be kind of an educational process. Do you see is that a way to open the door for, you know, kind of come in, kind of get used to the system, kind of wet their feet so to speak, and then possibly down the road they'd become more interested in serving as a member on the, on the board?

MR. BARSERIAN: We would hope so.

MR. McFETRIDGE: Okay.

MR. BARSERIAN: No guarantee that that will happen. And the same, you know, that's kind of a lead-in to the term limit situation. I don't want to get hooked by my friends from USDA. But one of the problems is that you also have processors, dehydrators that, you know, they are proprietary. You know, they're not a corporation. They're not big like Lion is a family operation but it's big. You know, we have
a lot of employees. And a lot of times we can't
-- family members don't want to serve on the RAC,
we have to get guys like me, you know, the G.M.
or someone within the organization that would
serve on the board.

        But with proprietary companies they
have a hard time getting away. So when you find
a good one you want to keep them on there. You
don't want to throw them out. Because we're
working for nothing. We're getting paid nothing
to do this. I mean I should be overseeing our
eight sales staff at Lion Raisins today but I'm
here because this is important. Somebody had to
do it. And everybody in this room is giving of
their time in one capacity or another to be here
for one, two or whatever number of days it takes.

        So we're hoping that down the road
that educational process is going to work.

        MR. McFETRIDGE: Right. Well, thank
you very much for your time. And no more
questions.

        JUDGE McCARTNEY: I have a question.
MR. BARSERIAN: Yes.

JUDGE McCARTNEY: And it may not be a popular one. But I think the record should reflect your opinion on what the negative consequences would be with respect to the term limit, given the situation you described of having difficulty reaching out and recruiting and retaining qualified people to serve.

MR. BARSERIAN: Yes.

JUDGE McCARTNEY: What is your opinion on the immediate impact if that proposal were adopted?

MR. BARSERIAN: Well, first of all, if you read the USDA proposal it's terming us out in eight years. I'll be 86. I don't know if I'll still be around when I'm 86. But --

JUDGE McCARTNEY: That's taking it very personal.

(Laughter.)

MR. BARSERIAN: Exactly. But you know, again is somebody has to replace me. I feel I've been a leader of this industry for a great number
of years. People rely on my expertise, my
ability to gather things and relay them.
Sometimes they say I spin it a little bit. Maybe
I do and maybe I don't. But I think impact-wise
eight years termed out in political life where
you're getting paid for your services is
different than this where we're giving of
ourselves.

And I just feel that the term limit is
not a good proposal for this industry because
it's so small.

JUDGE McCARTNEY: You may not be able
to answer my question, but I'm wondering does
this term -- this term limit doesn't apply to
alternates; --

MR. BARSERIAN: No.

JUDGE McCARTNEY: -- isn't that true?

So an alternate can serve in
perpetuity?

MR. BARSERIAN: Well, I don't know why

that because I mean --

JUDGE McCARTNEY: I mean if you get --
MR. BARSERIAN: -- I would say my own opinion of that is I don't see much why it wouldn't be the same.

JUDGE McCARTNEY: Uh-huh. But it's not though, is it?

MR. BARSERIAN: No, it's different.

JUDGE McCARTNEY: All right. So in your opinion does the fact that the term limit does not apply to alternates a good thing?

MR. BARSERIAN: That is a real tough question. I don't want to -- you know, it's good. We'll carry it the other way, too, and --

JUDGE McCARTNEY: But it could be better if it doesn't apply to anybody?

MR. BARSERIAN: It would be better if it wasn't applied to --

JUDGE McCARTNEY: To anybody.

MR. BARSERIAN: Yeah.

JUDGE McCARTNEY: All right, yes. I understand.

Thank you.

All right, any further questions
regarding Exhibit 29?

(No response.)

JUDGE McCARTNEY: All right. Any objections to the admissibility of Exhibit 29?

MS. CHILUKURI: Your Honor, I have one or two questions.

JUDGE McCARTNEY: Oh, I'm sorry.

MS. CHILUKURI: It's okay.

EXAMINATION ON BEHALF OF USDA, OGC

MS. CHILUKURI: Rupa Chilukuri, USDA.

So, Mr. Barserian, I just wanted to ask you as it relates to this proposal, independent, separate nominations for independent grower members and alternates, is there any cost that you, that would be associated with it?

MR. BARSERIAN: No.

MS. CHILUKURI: And would the timing of the nominations change at all?

MR. BARSERIAN: No.

MS. CHILUKURI: Okay. And during your testimony I think you said that you might agree with certain of the proposals and you might not
agree with certain of the proposals. So I want
to walk through each of the proposals and just
have on the record your opinion.

MR. BARSERIAN: Are you talking the 1
through 9 or the other five proposals?

MS. CHILUKURI: I understood it to be
what's in the Notice of Hearing, those proposals.

MR. BARSERIAN: Okay.

MS. CHILUKURI: So I'll --

JUDGE McCARTNEY: Counsel, he hasn't
finished his testimony. It was bifurcated.

MS. CHILUKURI: Yes.

JUDGE McCARTNEY: So you might want to
reserve that until he's completed his testimony
on all the points.

MS. CHILUKURI: Okay, I will do that.

JUDGE McCARTNEY: Okay.

MS. CHILUKURI: That's all I have for
now then.

JUDGE McCARTNEY: No objections to
Exhibit 29; it's hereby admitted.

(Whereupon, the above-
referred to exhibit,
previously marked as
Barserian Exhibit 29, was
received in evidence.)

So if you would turn your attention
now, sir, to the second portion of your
testimony.

FURTHER TESTIMONY OF KALEM BARSERIAN

MR. BARSERIAN: Okay. My second
testimony is, relates to term limits. I have a
very short statement on that.

Once again, my name is Kalem
Barserian. I am testifying against term limits.

First of all, we receive no pay for
taking time out of our busy lives to attend
several meetings during the course of a year. I
am a member of the RAC and have been appointed by
the Chairman to sit on seven subcommittees. Most
of us have been in a leadership role, having to
go begging to get enough people, whether they are
grower representatives or packer representatives,
to participate as members or alternate members of
the RAC.

Over my 50-plus years in the California raisin industry I have represented the RAC as an employee, CEO of the RBA, RBA raisin grower, independent raisin grower, and a raisin processor. It doesn't matter, it's always a handful of dedicated people willing to take of themselves to serve for the betterment of the entire industry.

Anyone new who wishes to serve on the RAC has never been told he or she can't. By splitting up the percentages of each group it brings a fairness to the system. Therefore, if it isn't broken, don't try and fix it.

End of testimony.

JUDGE McCARTNEY: All right. Any follow-up questions with respect to that portion of the witness' testimony?

All right, counsel.

EXAMINATION ON BEHALF OF USDA, OGC

MS. CHILUKURI: Mr. Barserian, I think I mentioned this at the outset of the hearing
that USDA has modified the proposal that was
initially in the Notice of Hearing. And you have
had a chance to look at that modified language?
And you have discussed in part --

JUDGE McCARTNEY: Let the record
reflect that was a question, not a directive.

MR. BARSERIAN: Yes, I -- Yes, I read
this.

MS. CHILUKURI: Okay. So you
understand that --

MR. BARSERIAN: Yes.

MS. CHILUKURI: -- alternates would
now be exempt from the --

MR. BARSERIAN: Yes.

MS. CHILUKURI: -- term limits
requirements? Okay.

JUDGE McCARTNEY: And I believe your
testimony was that's a good thing.

MR. BARSERIAN: Yes.

MS. CHILUKURI: Okay. And now back to
I think you had mentioned in your earlier
testimony that you might agree with certain of
the changes and you might not. So I just want to
go through the list. I imagine that you --

MR. BARSERIAN: Well, can I save you
time?

MS. CHILUKURI: Yes, you can save me
time.

MR. BARSERIAN: I'm in favor of
everything but the term limits.

MS. CHILUKURI: And you're in favor of
everything but the term limits. And you looked
at the term --

MR. BARSERIAN: Yeah. Even the USDA's
proposal to eliminate the sections of the order
that pertain to reserve pools.

MS. CHILUKURI: Okay. As it relates to
volume control -- or, I'm sorry, as it relates to

MR. BARSERIAN: Reserve pool, volume
controls, to me the same terminology.

MS. CHILUKURI: Right. I misspoke.

As it relates to term limits, you are
opposed to what's in the Notice of Hearing and
you're also opposed to --

MR. BARSERIAN: Yes.

MS. CHILUKURI: -- the modification?

MR. BARSERIAN: Yes.

MS. CHILUKURI: You have said that

eight years was too short of a --

JUDGE McCARTNEY: Counsel, so that the
record is clear, I believe the witness testified
that he did endorse the modification eliminating
term limits as to alternates, but he continues to
object to term limit application to other
members. Is that correct?

MR. BARSERIAN: That's correct.

JUDGE McCARTNEY: So he doesn't object
to all of the modifications.

MS. CHILUKURI: Okay. Thank you for
that clarification, Your Honor. I may have
misunderstood that. So I appreciate that.

And I have no further questions then.

Thank you.

MR. BARSERIAN: Thank you.

JUDGE McCARTNEY: Anything further for
this witness?

(No response.)

JUDGE McCARTNEY: All right. You are hereby excused.

MR. BARSERIAN: Thank you.

JUDGE McCARTNEY: Thank you very much for your time and your testimony.

(Witness stands down.)

JUDGE McCARTNEY: All right. Are we ready to move forward to the next witness?

Please state your name for the record and affirm that you have been previously sworn.

MR. MILINOVICH: My name is Jeff Milinovich. And I have been previously sworn.

WHEREUPON,

JEFF MILINOVICH having been previously duly sworn, was called as a witness here, and was examined and testified as follows:

JUDGE McCARTNEY: All right. Do you have any exhibits that you are prepared to sponsor?
MR. MILINOVICH: Exhibits 30 and 31 are being handed out.

JUDGE McCARTNEY: All right.

MR. MILINOVICH: And they are my testimony too.

JUDGE McCARTNEY: Both documents?

MR. MILINOVICH: Both documents.

(Whereupon, the above-referred to documents were marked as Milinovich Exhibits 30 and 31 for identification.)

JUDGE McCARTNEY: Thank you.

All right, you may proceed.

TESTIMONY OF JEFF MILINOVICH

MR. MILINOVICH: All right. My name is Jeff Milinovich. I work at Central California Raisin Packing Company in Delray, California, a family-owned raisin processing plant that has been in operation for the past 60 years.

I have been working within the raisin industry for six years, and have been serving on
the RAC board for three of those -- three of the past six. Prior to working in the raisin industry I worked two years with the USDA in the Marketing Orders Administrative Branch, currently named the Marketing Order Administrative Division.

Today I am here to talk about the proposal going before the USDA concerning changes to add the language into the marketing order to insert the word "quality" to the list of attributes that can be regulated under the order.

This proposal would also clarify the intent of Section 989.53, Research and Development; 989.54, Marketing Policy; 989.73, Reports; 989.107, Inspection and Certification; Quality Control Section 989.157 through 989.160; and Form FV-146, Certificate of Quality and Condition, which all refer to the regulation of quality under the order.

Currently, the Sections 989.58 and 989.59 of the order state that the committee has the authority to recommend the grading condition
standard regulation under the order. The attribute "quality" is not specifically mentioned.

However, other current sections of the order indicate that quality is in fact a current regulated attribute, as is stated clearly on the Inspection Certificate FV-146, Certificate of Quality and Condition.

The committee believes it is very important for us to explain the difference between quality and grade. We believe this to be important, as it has always been implied in the order we could regulate quality, as many other orders already regulate. Much of the language within the existing order makes reference to quality being implied in it.

As our industry moves forward, we believe the inclusion of the language will benefit our ability to adjust based on future issues that may come up in FDA regulation or anything else pertaining to customer concerns. This regulation would concretely insert this
authority into the order and allow us to apply
new regulation that seems fit.

The committee sees value in doing
quality checks on the product to ensure the
safety of the consumer. We think there could be
many benefits that come under doing residual
testings for such items as herbicides, pesticides
or fungicide residues. In an issue that is
already taking effect, we are regulating
ochratoxin, which was previously stated, a
naturally-occurring fungus.

A tolerance limit for this fungus is
in place for products entering many markets. And
the ability for the industry to meet those
markets' import requirements are vital to
continued trade. By implementing regulation
under the order, the industry would be certain
that this requirement would be equally applied to
all handlers of raisins within the U.S.

Many of our growers are prohibited to
use chemicals and are regulated in the field, but
this would give our products a validation that
there are no residual problems on incoming or
outgoing from the packers.

Furthermore, in the event that the
industry desires to implement further regulation
to conform to forthcoming FDA guidelines under
the Food Safety and Modernization Act, those
regulations may not fall within the traditional
framework of grading condition standards. Thus,
the authority to regulate quality would improve
the committee with the flexibility to meet future
regulatory needs of the industry.

The impact of this is very minimal.

This attribute would give the board the authority
to make changes in new regulation. Any new
regulation would need to be vetted as a proposal
approved and recommended by the RAC, published by
the USDA as a proposed rule, receive public
comment and USDA approval prior to being
implemented.

This language in the order could
create new regulations which would benefit the
industry by creating more confidence in
California raisins from the buyer -- from buyers around the world. In effect, small business owners and growers alike would benefit from the new regulation the industry finds to be important to enforce.

From the raisin community standpoint, we need to be able to market our product as a superior product to many of our foreign competitors based on the extra effort we put into these products. With California growers and handlers being held to new higher standards by our customers and by our government with the Food Safety and Modernization Act, we should promote and identify how our superior quality is a benefit to the consumer by not only being a better product and taste, but also for the safety of the families around the world enjoying our raisins.

If approved by the voters, the authority would allow the committee to make recommendations for regulations at the USDA. Any new regulations will need to be developed and
vetted as a proposal approved and recommended by the RAC, published by the USDA as a proposed rule, receive public comment and USDA approval prior to being implemented. But as of now, because it is giving no authority, no new compliance, impacts or cost.

That's the end of my first testimony.

JUDGE McCARTNEY: Do you wish to bifurcate with respect to Exhibit 31 and take questions now or do you want to do them both at the same time? It's up to you.

MR. MILINOVICH: I'll do the next.

I'll do the rest.

JUDGE McCARTNEY: All right.

MR. MILINOVICH: I mean they pertain to each other, so.

JUDGE McCARTNEY: Testimony on Exhibit 31.

MR. MILINOVICH: Okay. I'm going to now get to Exhibit 31. Add authority to establish different regulation for different marketing destinations.
This proposal would add authority for
the committee to establish, subject to the USDA
approval, different grade, quality or condition
regulation for different market destinations.
The California raisin industry has customers in
many different countries. The consumers in these
countries vary significantly.

Currently, the order does not allow
for different quality or grade standards to be
applied to those markets. The current standards
are a one-size-fits-all. This authority would
allow the committee to develop regulation for
product that is best suited for a particular
market destination. Current order language
establishes grade and condition standards for two
classifications only: Grade A and Grade B.

This proposal would result in the
addition of the authority to establish different
regulations for different market destinations
under the order. No new grades or regulations
would actually be made and the existing would
still be the norm. If any such regulation were
to be implemented as a result of the authority,
the anticipated negative impacts on growers would
be minimal, if any.

Different regulation for different
market destinations would not prevent product
from being sold into the markets. Instead, it
would match product attributes to the consumer
profile and consumer -- and customer demands of
each market. Similarly, the negative impact on
handlers would be minimal, if any. While the
potential for a positive impact would be high, as
handlers will be better able to meet customer
demand.

Consumers would likely benefit from
the proposal, as its intent is to customize
product standards to specific markets, thereby
providing customers with products that meet their
demand. The sale of a good would be received by
the country, by other countries with the
assurance that they meet their country's specific
regulations.

If regulation were implemented, it is
plausible that returns to growers would increase as regulation for higher quality products in some markets could result in higher prices paid for that product. Small businesses are expected to benefit from this committee’s ability to proactively regulate product, thereby ensuring that the domestic consumers and foreign markets are confident in California raisins.

This proposal would result in the addition of the authority to develop regulations for different market destinations. Its implementation would not result in any specific regulation per se. Therefore, the proposal does not have an economic impact at this time. If approved by voters in the referendum, this authority would allow committees, or allow the committee to make recommendations for different regulations for different market destinations to the USDA.

Any new regulations would need to be developed and vetted as a proposal, approved and recommended by the RAC, published by the USDA as
a proposed rule, receive public comment and USDA
approval prior to being implemented.

The proposal itself does not have
compliance impacts at the time.

And that's the rest of my testimony.

JUDGE McCARTNEY: All right. Are there
any questions for this witness?

EXAMINATION ON BEHALF OF USDA, AMS

MS. SCHMAEDICK: Melissa Schmaedick,
USDA. Good afternoon, Mr. Milinovich. Thank you
for your testimony.

MR. MILINOVICH: Thank you.

MS. SCHMAEDICK: I will start with
questions on your statement with regard to
quality and then I'll move on to your statement
with regard to different regulations.

MR. MILINOVICH: Okay.

MS. SCHMAEDICK: Different markets.

So, to begin with just a brief recap
of your Exhibit 30, your statement on quality,
you indicate that the term "quality" exists
throughout the order, yet the order does not
specify the actual authority to regulate quality.
Is that correct?

MR. MILINOVICH: Yes.

MS. SCHMAEDICK: In your opinion, does that imply that it has been a long term intent of the industry to be regulating quality?

MR. MILINOVICH: Yes. I think that the intent was to, is to use quality within the order. It is in other orders actually regulated. It is just not stated in the, in the section to give it the authority. And it has been the intent of the committee to regulate based on quality.

MS. SCHMAEDICK: So would it be, would it be accurate to say that in part this proposal is to clarify an intent that currently exists and has existed for quite some time within the industry?

MR. MILINOVICH: Yes.

MS. SCHMAEDICK: Okay, thank you.

I wanted to talk to you a little bit about your statement about the difference between
quality and grade. You mentioned that they're
two different things. Can you describe a little
bit in more detail what the difference is between
quality and grade?

MR. MILINOVICH: The grade, grade and
quality is specified under -- if we're looking at
it from passing and failing fruit, the quality of
the fruit could be the higher B&B or the quality
of the product going out in the market, that
would be the sugars and those attributes to it.

Grade is specific to the size -- or
the amount of maybe the sugars. So the quality --
- Sorry, let me back up.

The quality could be concerning -- or
the grade is more so the B&B and the sugars and
whether the product is failing because it's low
maturity product.

The quality could be if the product
itself has a specific attribute to it, such as we
put in there, potentially ochratoxin. It is
passing that quality test that we would
potentially perform if we enacted that regulation
with an order.

MS. SCHMAEDICK: Okay.

JUDGE McCARTNEY: I have a follow-up question about that.

MR. MILINOVICH: Okay.

JUDGE McCARTNEY: Am I correct in understanding that grade is a term of art and there are now two grades, A and B; and quality is a characteristic or trait with many nuances and is not a term of art as specifically defined in the regs?

MR. MILINOVICH: Yes.

JUDGE McCARTNEY: Thank you.

MS. SCHMAEDICK: Thank you.

And to pick up on that question, you referred to a Grade A and a Grade B. In referencing those two grade classifications are you referring to the USDA grade and size regulations for raisins?

MR. MILINOVICH: It's the, it's the bricks regulation, the B&B, which is B or better. So B standard or better. So Grade A or B usually
regulates the airstream.

So we went over it earlier where the airstream sorter it gives an evaluation of the meat or the solids within the product.

MS. SCHMAEDICK: Okay. So if you had authority to regulate quality you would be regulating different attributes that are currently -- different attributes from what are currently regulated under grade and size authority; is that correct?

MR. MILINOVICH: Yes.

MS. SCHMAEDICK: Okay. Is that what you mean when you state those regulations may not fall within the traditional framework of grade and condition standards?

MR. MILINOVICH: Yes.

MS. SCHMAEDICK: Okay. So currently under the traditional grade and condition standards that exist there isn't a tolerance for ochratoxin; --

MR. MILINOVICH: Yes.

MS. SCHMAEDICK: -- is that one of
your examples? Okay.

You also mentioned that having authority to regulate quality would be important in the context of the Food Safety Modernization Act. Can you speak more to that subject?

MR. MILINOVIĆ: As we talked about it, if there were guidelines or things that were actually implemented towards this in Food Safety and Modernization, we could potentially use the order to inspect for some of those things, if that ever came into effect.

I'm not exactly sure on all the cross that could occur between the two. But just for us to be a little bit more I guess adjustable, flexible.

MS. SCHMAEDICK: So, for example, if under the Food Safety and Modernization Act there were a need to, let's say, have a testing, sampling protocol for salmonella contamination, for example, if that were applicable to raisins at some point in the future, is it your opinion that this quality authority, the authority to
regulate quality would then allow you to develop
a regulatory program to address that?

MR. MILINOVICH: That could potentially
be something that was looked at. It would have
to be vetted through the board and through the
USDA, obviously.

MS. SCHMAEDICK: Right.

MR. MILINOVICH: But, yes.

MS. SCHMAEDICK: But that's one --

MR. MILINOVICH: Yes.

MS. SCHMAEDICK: -- potential usage;
is that correct?

MR. MILINOVICH: Yes.

MS. SCHMAEDICK: Thank you.

Your Honor, I would like to take a
pause and before I ask questions on Exhibit 31.
And I'd like to ask my colleague if he has any
questions on this particular issue.

JUDGE McCARTNEY: All right. Off the
record for a moment.

(Whereupon, the above-entitled matter
went off the record at 2:20 p.m. and resumed at


2:21 p.m.)

JUDGE McCARTNEY: Any further questions for this witness?

MS. SCHMAEDICK: On Exhibit 30?

JUDGE McCARTNEY: On Exhibit 30. No?

Turning our attention to Exhibit 31, any questions with respect to that testimony?

MS. SCHMAEDICK: Yes, thank you.

Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q     On Exhibit 31, Mr. Milinovich, you talk about the need to create, or potential need to create regulation that might be driven by a specific customer demand in a different country; is that correct?

A     Yes.

Q     And you specifically state it would match product attributes to the consumer profile and the customer demands of each market. Can you give us some examples?

A     I think this could -- if we're talking about quality, it could go into the future of the
idea of, if a pesticide was banned in a certain area, we could potentially test for it and sync up that type of quality inspection to that area, if we needed to. Or, in terms of grade, if there was a higher grade spec or a specific region had a desire for an attribute of a raisin specific, we could, hopefully, create a grade that would go into that area that would give a more -- would give more confidence in the consumer, the purchaser of that raisin.

Q  Currently, are there different product demands in different markets? Do you already see that?

A  Yes. I mean, we see raisin purchasers who only want DOV products. We see raisin purchasers who want just traditional tray-dried. Some are okay with any and everything. A lot of it depends on the consumer themselves, and some regions have specific habits. I couldn't speak to exact ones right now, but we see specific customers with very stringent specs.

Q  And, in your opinion, is there a
benefit to creating a regulatory structure then
that would ensure that product that is going to
that market destination is consistently being
subject to the same quality or grade
requirements?

A    Yes, it would be very beneficial.

JUDGE McCARTNEY: Can I ask a follow-up question about that?

Counsel has been asking you about
foreign markets, but I'm wondering about the
application to our domestic markets, for example,
raisins for children's lunches. Do you have an
opinion as to whether quality standards would
facilitate the marketing and servicing of
particularized groups within the domestic market?

THE WITNESS: I definitely think it
could. We haven't spoken of that within the
industry. It would have to be vetted by
everybody, that we wanted to hit a target market
with a type of raisin. I think it would be
driven potentially by the USDA or somebody.

But, for a lot of this, I think it's
consumer-driven more so than from the packer side. It's what we would see as packers coming from an area and letting them know. So, if somebody demanded a certain -- it's sort of -- specs are already out there, so the USDA has a spec when they're purchasing fruit from us. So we have to meet that spec.

JUDGE McCartney: Uh-huh.

THE WITNESS: What we would be doing for the -- why we're saying in regions is you could create a spec for a region that was all-encompassing, so you didn't have a lot of different specs within it.

JUDGE McCartney: Right.

THE WITNESS: So it could be regional.

JUDGE McCartney: Well, let me rephrase my question to be -- that was a very helpful response, though, however.

Drilling down to a higher level of granularity, to ensure that a domestic consumer has access to attributes and characteristics relative to the grapes that they're interested
in, i.e., the lack of ochratoxins in their grapes --

THE WITNESS: Yes.

JUDGE McCARTNEY: -- at the current time, how would a consumer group buying large quantities of grapes be reassured if Grade A and Grade B are not speaking to the regulation of traces of that substance?

THE WITNESS: If it's not specifically -- if it's not something that we're testing for and traces for, then it wouldn't be in there. But, normally -- and for some of this, in terms of the pesticides and some other things that we already are -- they are actually illegal within us. We're not applying them. And what we're trying to do is make a match to say -- it's kind of a certification to some degree --

JUDGE McCARTNEY: Exactly.

THE WITNESS: -- with some of these situations.

JUDGE McCARTNEY: A consistent standard certification --
THE WITNESS: Yes.

JUDGE McCARTNEY: -- for all consumers, domestic and foreign, to be alerted that the product has been screened for these things.

THE WITNESS: Yes.

JUDGE McCARTNEY: Is that correct?

THE WITNESS: Yes.

JUDGE McCARTNEY: All right. Thank you.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q     And are there some industry members who are currently testing for ochratoxin, for example?

A     We'd have to open that up.

Q     Okay.

A     And I'd probably have to go to our QA department and talk to them about specifics. But a lot of these things are tested for at different levels. We just want more of a solid foundation
to go off of.

Q Would it be accurate to say that this

--

A Barry is going to probably say

something.

JUDGE McCARTNEY: Well, Barry can wait

until your testimony is through.

MR. KRIEBEL: I was just going to try

to address his specific question.

JUDGE McCARTNEY: All right. And, as

soon as he's through with his testimony, you can

take the stand.

MR. KRIEBEL: Okay. No problem.

JUDGE McCARTNEY: Because, right now,

I'm exploring your understanding and appreciation

of your exhibit at 30. And you indicated that

initiative the board is looking toward is to

regulate traces box for a toxin.

THE WITNESS: Yes.

JUDGE McCARTNEY: So counsel is asking

you about your understanding about that.

THE WITNESS: Yes. And mine is that
we would look towards that specific certification
in the future. It's one of the examples of
something -- it's not found within our region and
we don't have that fungus here, so it can be
certified by us testing for it. But, right now,
there are no traces of it, so --

BY MS. SCHMAEDICK:

Q So, essentially, having the authority
to establish these regulations would also --
would it ensure that everybody is playing by the
same set of rules?

A Yes.

Q Yes, okay. Thank you. My last
question for you is, again, in relation to
Exhibit 31. At the very bottom, you explain that
this authority would allow the committee to make
recommendations for different regulations, and
any new regulation would need to be developed and
vetted as a proposal approved and recommended by
the RAC, published as a proposed rule, public
comment, and USDA approval.

So my question is, if this authority
were implemented and let's say the RAC wanted to
develop a program, a regulatory program, for
ochratoxin, in your opinion, would that process
require a very sort of thoughtful and technical,
scientifically-based process to be created and
then approved through the --

A   Yeah.

Q   -- the rule review process?

A   Yes, I would think that that's the
process that we would go through.

Q   Okay. So, again, to clarify, your
proposal is to create the authority to initiate
that process. You're not necessarily
recommending ochratoxin regulation at this point?

A   No, not at all. That's just an
example of something that we could do in the
future.

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

JUDGE McCARTNEY: Any further
questions for this witness?

MR. McFETRIDGE: Marc McFetridge,
USDA. A couple of quick questions.

BY MR. McFETRIDGE:

Q You stated that you worked for Central California Raisin Packing Company?

A Yes.

Q And that is a handler; is that correct?

A Yes.

Q Based on the Small Business Administration definition of being a small or large handler, of having annual receipts greater than or less than $7.5 million, how would you classify Central California Raisin Packing Company? Would it be a small or a large handler, would you say?

A Larger handler.

Q All right. Thank you. A couple of questions on your testimony for different regulations for different market destinations. Do you see this as a possibility of relaxing regulations for different destinations or more stringent regulations for different
destinations?

JUDGE McCARTNEY: Sir, in light of the fact that this individual is not represented by counsel, I would have to ask you to rephrase your question because I think that you have a valid question, but the way that you've currently phrased it could be confusing. So would you mind rephrasing?

MR. McFETRIDGE: All right. Let me see.

BY MR. McFETRIDGE:

Q So the proposal as you see it, do you see it as --

JUDGE McCARTNEY: Well, all right. Let me clarify my concern. I don't think the witness testified to different regulations for different markets. I think, unless I misunderstood the witness' testimony, he's talking about regulations that would permit them to ascertain, identify, and to designate attributes and characteristics to the raisins in response to different markets, not different
regulations; is that correct?

MR. MILINOVICH: It wouldn't be changing any of the regulation that we have currently. It would just be providing specific attributes of raisins to specific markets, so creating the different consumer spec based on maybe quality or size, or something like that, for a region if they -- if that's the type of raisin they purchase at this time.

So it wouldn't be changing any standard to pass a raisin or quality standard as of now. It would just be more so an attribute in creating a regional raisin, or type of raisin.

JUDGE McCARTNEY: Did that go to your concern? I didn't mean to cut you off, but I think that the way the question was previously phrased, it could lead one to assume that you were asking about different regulations for different markets, and I just wanted to be sure that I understood that the witness was not testifying to that.

MR. MILINOVICH: No.
JUDGE McCARTNEY: Did you get your question answered, though, sir?

MR. McFETRIDGE: I believe so.

BY MR. McFETRIDGE:

Q So it sounds -- your answer, basically, sounds to me that it would be -- you have a destination, and it could be possibly your -- would be able to cater to that specific consumer by possibly adding stricter regulations, possibly, to --

A For something such as maybe B or better, or cap stems, or something that they -- that's within a spec that they generally have, so it would be considered cleared through the USDA.

Q Okay. All right. Thanks. Based on your knowledge of the proposal, do you see this as a positive impact on future exports?

A Yes.

Q And do you feel that this would make the U.S. raisin industry more competitive on the world market?

A Yes.
Q    Now the term designation, do you see
that as a country or could it be like an
individual importer?

A    I saw it within this as a country, but
I guess it could be to a specific importer, if
necessary, if they've created their own -- if
they were a large enough consumer, maybe we would
do something like that. But I don't think we
would. I mean, it's generally referred to as
countries and regions.

MR. McFETRIDGE: Okay. Thank you. I
just wanted clarification on that, to see if it
was possible to have it specific for individual
importers, like you said, if they're big that it
may warrant to even look into.

I think that's all the questions I
have. Thank you.

JUDGE McCARTNEY: Any further
questions?

MS. SCHMAEDICK: Melissa Schmaedick,
USDA.

BY MS. SCHMAEDICK:
Q In an effort to clarify the waters here a bit, Mr. Milinovich, could you look at your Exhibit 31?

A Okay.

Q And I'll have you read the second sentence on that exhibit, please.

A The consumer -- all right -- the California raisin industry has --

Q I'm sorry. The second sentence, beginning with this proposal.

A Oh, this -- that's -- okay. This proposal would add authority for committee to establish, subject to USDA approval, different grade quality and condition regulations for different market destinations.

Q Okay. So, based on the previous questions and the previous testimony, I want to make sure I'm understanding correctly that this proposal would allow the creation of regulation that is supplementary to existing regulations for grade, for example, and that those supplementary regulations could be designed for a specific
target market; is that correct?

   A Yes.

MS. SCHMAEDICK: Okay. That's all I have. Thank you.

JUDGE McCARTNEY: Any further questions for this witness?

(No audible response.)

JUDGE McCARTNEY: All right. There being nothing further, you are hereby excused.

Now, Mr. Kriebel, I do have you indicated here as a witness. Do you prefer to be taken out of order so that you can respond to the question, or do you -- are you going to be able to tell me all about it when you come up?

MR. KRIEBEL: Actually, I'd like to respond while Jeff is still present.

JUDGE McCARTNEY: All right. Well, we are going to hold him here then until such time as you're comfortable that he can leave. But my question remains. You're not the next witness on the witness list, but if there are no objections and you want to be taken out of order, I don't
have a problem with that either.

MR. KRIEBEL: Could I just be taken

out of order just for this one issue on quality

standards?

JUDGE McCARTNEY: I know I'm going to

be sorry for this but, yes, I'm going to permit

you. And I can just see a very confused record

here, but --

MR. KRIEBEL: So would you care for me

to sit up here?

JUDGE McCARTNEY: Yes. If you're

giving testimony, I want you to identify

yourself, affirm that you've been sworn in, and

then -- is a question pending or do you just have

something you want to opine to those who are

present?

MR. KRIEBEL: Well, there was a

question pending.

JUDGE McCARTNEY: Okay. So restate

the question that you are going to be sharing

your --

MS. CHILUKURI: Your Honor, before we
go into Mr. Kriebel's testimony, I wanted to
check on the status of Mr. Milinovich's
testimony, whether it had been entered. I wasn't
sure if --

JUDGE McCARTNEY: Thank you for that.

MS. CHILUKURI: -- it had been.

JUDGE McCARTNEY: Were there any
objections to the admissibility of Exhibits 30
and 31?

(No audible response.)

JUDGE McCARTNEY: There being none,
they are hereby admitted.

(Whereupon, the above-referred to
documents were received into evidence as Exhibit
Nos. 30 and 31.)

JUDGE McCARTNEY: Thank you for the
reminder, Counsel.

MS. CHILUKURI: Thank you.

JUDGE McCARTNEY: All right. So are
there any objections to taking Mr. Kriebel out of
order for this specific purpose?

MS. CHILUKURI: No.
JUDGE McCARTNEY: All right. Name and
affirmation that you've been previously sworn,
please, sir.

MR. KRIEBEL: Have I?

(Simultaneous speaking.)

JUDGE McCARTNEY: Well, then --

WHEREUPON,

BARRY F. KRIEBEL

was called for examination, having been first
duly sworn, assumed the witness stand, was
examined and testified as follows:

THE WITNESS: So my name is Barry F.
Kriebel. If it's Kriebel, I'll take it, too.
That's fine. I've served as president of Sun-
Maid Growers of California since 1986, and I've
been to virtually every raisin administrative
committee meeting, work group, subcommittee in
the last 30 years.

The question that was pending to Jeff
was, do other packers test for ochratoxin, and
the answer is yes. And we do, and we have an
over 10-year history of testing for ochratoxin
for those customers, particularly in Europe, that
are concerned about ochratoxin. And that creates
pretty much random testing to validate that the
entire California raisin industry does not have a
problem with ochratoxin based on international
standards.

So I just wanted to get that point
across.

JUDGE McCARTNEY: Right. Well, so let
me ask the impacted parties here. He's up here
now. Do you want to take him out of turn or do
you want to move forward with the witness list as
currently proposed?

MR. SAHATJIAN: Are you asking me?

JUDGE McCARTNEY: Well, you're one of
the next ones up. How do you feel about it?

Let's ask you first.

MR. SAHATJIAN: I'd actually prefer to
go in front of you unless --

THE WITNESS: That's right. That's
what I assume.

MR. SAHATJIAN: -- unless you have a
preference to go first.

   JUDGE McCARTNEY: All right, Mr. Kriebel.

   THE WITNESS: No, go right ahead.

   JUDGE McCARTNEY: Okay. You're temporarily excused.

   MR. SAHATJIAN: And I have not been sworn in.

   JUDGE McCARTNEY: All right.

WHEREUPON,

RICHARD SAHATJIAN was called for examination, having been first duly sworn, assumed the witness stand, was examined and testified as follows:

   JUDGE McCARTNEY: Please state your name for the record.

   THE WITNESS: My name is Richard Sahatjian.

   JUDGE McCARTNEY: And what exhibits do you intend to sponsor first?

   THE WITNESS: I believe just one exhibit, Exhibit 32.
JUDGE McCARTNEY: And is that your statement?

THE WITNESS: It is my statement.

JUDGE McCARTNEY: All right. You may proceed.

THE WITNESS: As I mentioned, my name is Richard Sahatjian. I am executive vice president at Victor Packing, a raisin producer and handler. I also serve as a board member of the Raisin Administrative Committee, and I have a vested interest in United States agriculture and, more specifically, in the California raisin industry.

My family has farmed in California San Joaquin Valley since 1928 and started Victor Packing in 1963 to handle, process, pack, and ship California raisins throughout the world.

Much has changed in the world of food safety, food quality, and specification standards since my father and great-uncle and grandfather started Victor Packing. Adapting to a changing global commodities landscape is critical to our
industry to remain relevant, viable, and vibrant.

The proposed changes to the federal marketing order to add quality to the list of attributes that can be regulated under the order will benefit the industry in two major ways.

First, adding quality will help the California raisin industry maintain its position as the global leader for quality by setting baseline outgoing standards that all handlers must meet.

One such example is that the RAC is contemplating the need for -- I'm sorry -- the need to implement a testing and regulation program for ochratoxin that we've already beat to death, it seems like.

A tolerance limit for this fungus is in place for products entering into the European Union markets, and the ability of the industry to meet that market's import requirements are vital to continue trade with that market. Foreign markets sensitive to ochratoxin levels will be assured that California raisins are adequately regulated against it. This type of regulation
would assure customers of the industry's oversight of product quality. By implementing regulations under the order, the industry would be certain that this requirement would be equally applied to all handlers of raisins.

Second, adding quality will help the industry implement further regulation to conform to forthcoming FDA guidelines under the Food Safety Modernization Act, also known as FSMA. These regulations may not fall within the traditional framework of grade and condition standards. Thus, the authority to regulate quality would provide the RAC with the flexibility to meet future regulatory needs of the industry.

And I've got a couple of the two issues, the market-specific regulations and quality standards, so I'm going to speak briefly here to the market-specific regulations. The proposed changes to the federal marketing order to add authority to establish different grade quality and condition regulations.
for different market destinations will benefit the industry. Adding authority to establish different regulations for different market destinations will help allow the industry to tailor products to different products, depending the demands of those markets.

The California raisin industry has customers in many different countries. Currently, the order does not allow for different quality or grade standards to be applied to those markets. The current standards are a one size fits all. Yet the consumer bases in these countries vary significantly.

Current order language establishes grade and condition standards for two classifications only, Grade A and Grade B. This authority would allow the committee to develop regulation for product that is best suited for a particular market destination.

The proposed changes simply add the authority to regulate quality and establish different regulations for different market
destinations under the order. No specific regulations are being proposed at this time.

Any new regulation would need to be developed and vetted as a proposal, approved and recommended by the RAC, published by USDA as a proposed rule, receive public comment and USDA approval prior to being implemented. The anticipated negative impact on producers and handlers, if any such regulation were to be implemented as a result of this authority, are minimal, while the potential positive impact would be as high as handlers -- would be high, as handlers would be able to better meet customer demand.

With regard to quality regulations, there is the potential for increased cost to producers and handlers if new regulations were implemented -- I'm sorry -- while there is the potential for increased cost to producers and handlers if new regulations were implemented, these are expected to be minimal. California raisins are currently inspected, and the addition
of another inspection parameter is unlikely to result in significant costs.

With regard to market-specific regulations, it is plausible that returns to growers would increase as regulation for higher quality product in some markets could result in a higher price paid for that product. Consumers would likely benefit from this proposal as its intent is to customize product standards to specific markets, thereby providing customers with product that meets their demand.

Different regulations for different market destinations would not prevent product from being sold into the market. Instead, it would match product attributes to the consumer profile and customer demands of each market.

In conclusion, adding authority within the order to regulate quality and to establish market-specific regulations will help strengthen the California raisin industry. Not only will the authority to regulate quality help the California raisin industry maintain its position
as a global leader for quality, it also will allow the industry to more adeptly adapt to the changes in food safety laws, foreign standards, and customer requirements.

Further, adding authority to establish market-specific regulations will help allow the industry to tailor products depending on the demands of different markets, thereby helping the industry to be more competitive against foreign producers in those markets. I urge the USDA to move forward with the changes set forth above.

And, actually, I'll note that I had a couple of comments I wanted to make about another one of the proposals, but we can take these initially and then we'll -- kind of like Kalem had a little side note about the term limits, I believe. I wanted to speak a little bit about the continuation referenda.

JUDGE McCARTNEY: All right. So you prefer to bifurcate on the --

THE WITNESS: Yeah, I'll bifurcate.

Yeah.
JUDGE McCARTNEY: All right. Any questions for this witness regarding his statement, as codified at Exhibit 32?

MS. SCHMAEDICK: Yes, Your Honor.

Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q  Thank you, Mr. Sahatjian, for your statement, your testimony.

So my question is about the awareness of this proposal among industry members, growers, and handlers. Can you speak to that? Are folks that you're in contact with generally aware of these proposals?

A  Yeah, I believe they are. There has been publication sent out to growers. Actually, as I mentioned, we're a processing facility, so we buy raisins from many different independent growers, and we've had some inquiries from some of those growers that have received notice that these -- actually, about this hearing and about the proposed changes. And they've asked whether, you know, they need to be doing anything with
regard to them.

So I'd say yes, they've been notified, as long as they're reading their mail and as long as they're somewhat involved in the industry. There's ample opportunity to have known about it if they don't.

Q     Thank you. And, with regard to the two specific proposals that you spoke to, the addition of quality and the authority for different regulations, have you had any feedback from your fellow growers and handlers on those specific proposals?

A     Probably not from growers. You said fellow handlers. I have discussed this with fellow handlers, and it seems as though it's a pretty non-confrontational issue. It's something that seems like it can help if we want it to. And, if not, it's not going to hurt anything.

Q     Right.

A     So I probably just -- I probably answered more than you asked, but --

Q     No, no. I like those kind of answers.
It gives me more to work with, so --

A  Okay.

Q  -- thank you. So, just to continue with your last statement, you said that it wouldn't hurt if you chose not to use it. Does that mean that you understand that this is just the addition of an authority and not necessarily regulation in itself; is that correct?

A  Yeah. So, as I mentioned, as you just mentioned, this proposal is not to make any actual changes to our order, other than to grant authority for us as an industry to make changes down the line with regard to quality and market-specific regulations.

Q  Thank you. And I also wanted to talk to you a little bit about -- so, in your statement, page 2 of your statement, you state that there is the potential for increased cost to producers and handlers, but that the potential benefits would likely outweigh those costs.

What I'm just wondering, what types of additional costs could there be? For example,
would it be additional testing? Would you need
to potentially adapt a production or a handling
method to conform with a future regulation? If
you could, just give me some examples. That
would be helpful.

A     Okay. Sure. I mean, as you kind of
pointed out, this is a very broad authority, so
it can be taken either way. It can heighten or
lower standards. In the event that we decide as
an industry to heighten standards, whether that
be residue testing or maximum residue limits,
changing those or just simply doing more testing
for different chemicals, then, yes, that always
is going to cost more money. That's going to --
you know, every test that we do costs money.

So that would potentially cost us more
money to produce or to confirm that we're meeting
those levels or those additional requirements.
But, if it's something that we've decided that we
want to do, it's probably consumer-driven. So
there's probably a customer base out there that
is willing to pay more for the product that is --
you know, has lower levels of certain chemicals or pesticides or ochratoxin or whatever it might be. There's probably some sort of consumer demand for it.

So, yes, it may cost us more money but, in turn, we may be getting more return for the product that maybe some other origins may not be able to meet for one reason or another.

Q     So you just stated that this authority for different market regulations may result in a lesser stringent regulation for certain markets. Is that the intent of this proposal?

A     Well, I think the proposal is very broad, so it allows for it, is what -- and that's what I mean. I don't know if there's an end goal right now for us. But, yes, I guess, you know, if you look at the scope of the authority that we're requesting, then it would allow for both.

Q     Currently, under the order, is it correct that there's authority for grade, size, and condition; is that correct?

A     I believe it's just grade.
Q Just grade?
A Yeah. As a grade, yes.
Q Okay.
A But I don't know for sure, so I wouldn't want to be quoted on the record.
Q Is it currently allowable to, let's say, ship product to a country that does not meet grade?
A So my understanding is that it has to meet grade, okay. A or B is what we ship.
Q Uh-huh.
A Now it doesn't mean that -- if it's C or D or whatever else quality, it doesn't mean that the product is unsafe.
Q Uh-huh.
A So, for example, I believe that, to meet B grade raisins, you can't have any more than 15 cap stems per pound, okay. Every raisin originally -- or, initially, has a cap stem, okay. It's grown on a -- grapes are grown on a vine, and every grape that turns into a raisin has a cap stem. But, if you have a grade that
is, for example, 20 or 25 cap stems per pound, it's not that it's unhealthy to eat. In fact, I think cap stems have fiber in them and, you know -- I mean, there's whatever. It's not like it's an inferior product from a health perspective.

Of course, some regions have different standards. They want to see, you know, essentially, zero cap stems on raisins. But that would be on the other end. That would be the heightened, you know, regulatory standards or grade standards.

But back to the lower one. Yeah, I mean, there might be a market that doesn't care about it, that doesn't care that there is 25 cap stems per pound. And it would be more economical for processors to pack raisins that had a lower standard for that market if they had no aversion toward additional cap stems.

Q Uh-huh.

A So I guess, in theory, that could make us more competitive, whereas, you know,
currently, we wouldn't be able to even ship that product if it doesn't meet, you know, the USDA minimum standard.

Q     I see. And so, connecting that statement with your statement that said different regulations for different market destinations would not prevent product from being sold into the market, so, if I'm to extrapolate from that, essentially, you want to be able to use all raisins that are produced and ship them to whatever market accepts them in the condition that they're sent; is that correct?

A     Can you repeat what you said earlier?

Q     Sure. Sure. So, in your statement, you said that different regulations for different market destinations would not prevent product from being sold into the market.

Okay. So, extrapolating from what you just described about the ability to, let's say, have a lower grade for a particular market versus a higher grade for a particular market, is the intent to be able to utilize all raisins and
channel them to the markets that they match up to
in terms of customers?

A Yeah. Now, I mean, when I gave the
example about 25 cap stems per pound, it doesn't
mean that we can't get more of those out. I
mean, it's just that it's more efficient, maybe
you can run more product, you know, through your
equipment and maybe, you know, sell that product
to the appropriate market at a lower cost because
it's costing the producers less money to product
that. And you'd sort of match the grades for
those markets, you know, that want the different
grades.

So it's more of a tailored approach
rather than, here's -- like all of our California
raisins or either A or B standard. You take them
or leave them like that. It's more of a tailored
approach to looking at different, you know,
regional differences and demands, and matching
the product and the costing for that product to
those markets.

Q So would it be correct to say that
these authorities combined could make the
California raisin industry more competitive?

A Yes. On a global scale, yes.

Q Uh-huh. I wanted to ask you for some
clarification about the references to Grade A and
Grade B. And that's on the first page of your
Exhibit 32.

Now are Grade A -- are the
classifications of Grade A and Grade B, are they
specific to the marketing order or are they USDA
grades and standards?

A I believe those are USDA grades and
standards.

Q Okay. So my question is, if USDA
grades and standards create the lower bar
threshold, in your opinion, would this ability to
create different market regulations for different
destinations, does that allow you to go below
that minimum threshold, or are we looking at that
as a minimum and you work up above that minimum?

A I believe it would allow us the
authority to go either way, up or down.
MS. SCHMAEDICK: Okay. All right. Thank you for that clarification. I have no further questions.

JUDGE McCARTNEY: And, before you commence your questions, I would like to apologize to you for making the record even more muddy. I think that you were using the language that the witnesses were using in their statements, and I hope that you're going to ask follow-up questions because, if you don't, I have a few about why the witnesses are choosing to articulate their desire for regulation authority, which reflects more granulated standards of product attributes, why they're choosing to refer to it as different regulations for different market destinations.

So I hope your questions will so to that, sir.

MR. McFETRIDGE: You put me on the spot a little bit.

JUDGE McCARTNEY: You're up to it.

MR. McFETRIDGE: This is Marc
McFetridge, USDA.

BY MR. McFETRIDGE:

Q First, two questions. You've probably heard me talk about the Small Business Administration definitions for small and large growers and handlers. For growers, it would be a cutoff at 750,000.

You stated in your testimony that you work for a raisin producer and handler. Would you say the producer would fall under the small or large definition for a grower under Small Business Administration?

A It would be large.

Q Large? How about for the handler side of it, at the cutoff at 7.5 million, would you say large or small?

A Also large.

Q All right. Thank you. I had a quick question on the authority to establish different regulations for different destinations. Do you see this as a possibility -- I can see it as opening up, you know, a possibility to create a
higher quality product that you can possibly charge more money for, which could possibly, you know, trickle down to the grower.

Would you say that that's a possibility?

A     Yeah, absolutely.

Q     Do you also see that it possibly could open up whole new markets, you know, countries or regions that you're not able to sell to currently?

A     Yes.

Q     All right. Back to -- I know we've talked about ochratoxin a lot. And, just for my own personal interest, I know it's been stated that the European countries have been very interested in ochratoxin. Are countries in the Pacific Rim like China and things like that, have they not been as concerned about ochratoxin, or are they just --

A     I think the focus has been in Europe, but I can imagine some of the Pacific Rim countries as well having potential issues with
high levels. I mean, specifically, Japan
probably. I mean, that's a country with
typically high spec requirements, so -- and, you
know, as far as the, you know, organic levels of
pesticide residue, they're right up there with
Europe in terms of their tolerance for residue
levels.

MR. McFETRIDGE: Thank you. Your
Honor, I'll turn it over to you. I'm not sure
which questions you were going to ask, so --

JUDGE McCARTNEY: Well, thank you. I
think you did cover it pretty much.
But I did want to clarify in my own
mind the point that has been made repeatedly by
all of the witnesses, including yourself, that
any -- that regulations, as we're using that term
of art, any new regulation would need to be
developed and vetted as a proposal approved and
recommended by RAC, published by USDA as a
proposed rule, receive public comment and USDA
approval prior to being implemented.

So, when you're talking about
regulations, using that as a term of art, you're talking about APA rulemaking notice and comment in accordance with the existing practice, procedures, and protocols for regulations; isn't that correct?

THE WITNESS: That's correct.

JUDGE McCARTNEY: All right. So where my confusion came in -- and, again, I apologize -- is that those regulations, assuming that you've gone through this process and you've made recommendations to the secretary that have been implemented in a regulatory form pursuant to this process, those regulations are not destiny market-specific in the sense that these regulations only apply to China, and these regulations only apply to Japan.

No, they are regulations that apply to the entire raisin industry in the United States, but they are regulations that have been granulated to higher degrees of standard specificity of product attributes, so that the grapes -- I'm sorry -- the raisins can be
demarked and identified for specific markets; is that correct?

THE WITNESS: That's correct.

JUDGE McCARTNEY: So, where my confusion got in, got me in trouble was different regulations for different market destinations. All of my red flags went up. No, we don't have different regulations for different market destinations. We have the same regulations that are modified and granulated to reflect standards and attributes that may be delineated with respect to market destinations, correct?

THE WITNESS: Yes.

JUDGE McCARTNEY: All right. I just wanted to make sure I was understanding what's going on here. And all of those regs would be pursuant to rulemaking notice and comment, as already established practice and procedure. Okay. Thank you.

I apologize for the confusion. I interjected into the record. But I think this will be helpful in the long run.
Any further questions of this witness?

(No audible response.)

THE WITNESS: Okay. I'll jump into my next topic then, if you guys don't mind.

JUDGE McCARTNEY: Well, why don't we move to admit Exhibit 32, so I don't drop the ball like I did last time.

THE WITNESS: Okay.

JUDGE McCARTNEY: Any objections to Exhibit 32?

(No audible response.)

JUDGE McCARTNEY: There being none, it is hereby admitted.

(Whereupon, the above-referred to document was received into evidence as Exhibit No. 32.)

JUDGE McCARTNEY: Now you may move forward, sir.

THE WITNESS: Okay. So I just want to speak to the continuation or continuing -- or continuation referenda proposal and just voice some concern I have about it, not that I'm taking
a position on it one way or another.

But I'm an advocate for our marketing order, and I believe that it's a vital regulatory framework that we are privileged to have as an industry, and it's a great tool for us as an industry to use to our advantage.

We compete on a global vine fruit market with many other countries, producing countries, and, as it's noted on the AMS website, marketing orders are industry-driven programs that help producers and handlers achieve marketing success. By working together, industry members leverage their own funds to design and execute programs that they would not be able to do as individuals. These programs operate on the local to regional to global scale and provide a comprehensive set of tools to build markets, drive increased consumer demand, and improve profitability for producers. And, as we've talked about a lot today, help in research and development as well.

The marketing order will not be a
savior to a mismanaged industry or an industry that loses consumer demand, but it can be used as a tool for an industry that should be used wisely if it's fortunate enough to have one in place.

My concern, I guess, with regard to setting up an continual referenda will be to put the existence of our marketing order in the hands of one-third of the industry. And, in our industry, as I think it's previously been alluded to, we're basically split up in three camps. It's the Sun-Maid camp, the RBA camp, and the independent producers and packing camp, okay. So the requirements for the continuation referenda every six years would be to, essentially, have two-thirds or more of the group, of the industry, be in support of it to continue the marketing order.

And, whether it's one camp or another in this case, because we're split up, basically, in three camps -- and I think that's probably somewhat unique to our industry. I guess other industries might have more or less. But I just
think that it's putting the marketing order in jeopardy by having it up for a referendum every six years.

And I don't know if anyone in this -- I mean, I would assume that everyone in this room would be in support of continuing the marketing order, but I just think it's unsafe for us as an industry to have it up on the ballot every six years.

Now, if it would be the other way around and have a discontinuation referendum, I'd be more in favor of that because then you'd have to have two-thirds in support of the discontinuation. But, by putting it -- by making it a continuation referendum, you can basically jeopardize the whole marketing order, and the success of the industry hinges upon that to a certain extent.

You put that in the hands of one-third of the whole industry, which, to me, doesn't sound right. I mean, it should be the other way around, I would think, where, you know, if two-
thirds of the industry wants the marketing order to stay, then it should stay. But it doesn't seem like that's the way it would be.

So I just wanted to voice my concern about it, just as a person interested and vested in the industry, to make sure that people are aware of what this proposal is going to do.

And that's my comment on it. If you guys have any questions, I'm happy to answer them.

JUDGE McCARTNEY: Do we have any questions of this witness?

MS. SCHMAEDICK: Yes, Your Honor.

Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Mr. Sahatjian --

A Yeah, you pronounced it perfectly.

Q Thank you. Do you happen to have access to Exhibit 1, the notice of hearing?

A I do now.

Q Okay. Thank you. So, if you were to turn to the third page, it'll have the number
23654 at the very top.

A 23654.

Q At the very top.

A Okay.

Q Okay. And so you'll see in that first column there, I'll read it from the exhibit. It says, me, add a new paragraph C, the addition, to read as follows. And then it says Section 989.91, suspension or termination.

I'm going to move down to about halfway through that paragraph C there, and it says, the secretary may terminate the provisions of this part at the end of any crop year.

And then I'll skip down to say, crop year in which the secretary has found that continuance of this part is not favored by two-thirds majority of voting producers or two-thirds majority of volume represented thereby.

So, based on that statement, I want to ask you if your understanding of the two-thirds requirements, is that attached to the entire industry or only to those participating in the
vote?

A I don't think I understand your question, but --

Q Okay.

A Can you rephrase, please.

Q Sure. Sure. So let me read this phrase again.

The secretary may terminate the provisions of this part at the end of any crop year in which the secretary has found that continuance of this part is not favored by two-thirds majority of voting producers.

A Yeah.

Q So is there a difference between voting producers and the entire universe of producers?

A Well, I think so. But, again, this would be more in line with what I'm kind of talking about. This would require -- well, this would not -- I mean, it's not requiring, but the secretary can, basically, terminate the order if two-thirds of the producers did not favor
continuance. And that's what I think is more reasonable, versus the other way around, where you have one-third that doesn't support the continuation.

Q     Uh-huh.
A     In that case, it would be terminated.
Q     And your understanding -- so let me go back to the very --
A     This is actually different than what the proposal is, right? This is not -- is that right?
Q     No, this --

JUDGE McCARTNEY: This is the final.

BY MS. SCHMAEDICK:
Q     This is the proposal.
A     Okay.
Q     As it was submitted by the RAC.
A     Okay.
Q     But I also wanted to draw your attention to the very beginning words of that sentence. It says, the secretary may terminate.
A     Yeah.
Q  In your opinion, does may -- is may an absolute?

A  No, it's not.

Q  Okay. So, if the secretary was unsure about whether or not termination was immediately needed, would the secretary, in your opinion, have the authority to maybe take a closer look?

A  Yeah. I mean, the may means just that, so --

MS. SCHMAEDICK: Okay. I just wanted to ask you for your understanding on those points of clarification. Thank you.

THE WITNESS: Okay. Thank you.

JUDGE McCARTNEY: Any further questions for this witness?

MS. CHILUKURI: Rupa Chilukuri, USDA.

BY MS. CHILUKURI:

Q  Mr. Sahatjian, I've asked other witnesses this same question. I just want to run through all of the proposals that you haven't discussed and hear your opinions about them.

So, as it relates to Proposal 1, to
authorize production research, are you in favor of that proposal?

A     Yes.

Q     As it relates to Proposal 2, separate nominations for member and alternate independent grower member and independent grower alternative member seats, what is your position on that proposal?

A     Yeah, I would favor that as well.

Q     And you discussed Proposals 3 and 4 and 5.

A     Uh-huh.

Q     What is your position on Proposal 6, to remove volume regulation and reserve pool authority?

A     I think our position is to comply with the law and the ruling set forth by the Supreme Court. So I think whatever that may be, then I'll say that we'll support that.

Q     Okay. And then, finally, for Proposal 7, to establish term limits, what is your position on that?
A I'm against the term limits they are proposing to -- I'm against the proposal to set term limits.

MS. CHILUKURI: Okay. Thank you.

THE WITNESS: Thank you.

JUDGE McCARTNEY: Any further questions of this witness?

(No audible response.)

JUDGE McCARTNEY: All right. And my records reflect that Exhibit 32 is your sole exhibit, and it has been admitted.

THE WITNESS: Thank you.

JUDGE McCARTNEY: You may be excused.

THE WITNESS: Thank you.

JUDGE McCARTNEY: Are we ready for the next witness? Now I --

MS. CHILUKURI: Your Honor --

JUDGE McCARTNEY: I'm showing that we are nearing break time, so I think that a recess would be in order unless the parties insist on moving forward because they're so anxious to hear this next witness.
All right. 15-minute recess to 3:30.

(Whereupon, the above-entitled matter went off the record at 3:16 p.m. and resumed at 3:32 p.m.)

JUDGE McCARTNEY: We have a witness who was having so much fun that he has asked to be re-called. So we are going to accommodate that request.

Please identify yourself for the record, sir.


JUDGE McCARTNEY: And you've been previously sworn?

THE WITNESS: Yes.

JUDGE McCARTNEY: All right. And so you had some clarification comments that you wished to make with respect to your testimony; is that correct?

THE WITNESS: Yes, that's correct.

JUDGE McCARTNEY: You may proceed.

THE WITNESS: So I just wanted to clarify that I do not support the language as set
forth in the proposal for the continuation referenda, and I actually read it incorrectly. And I think my understanding previously was correct, that only a third would be needed to not support it in order for the marketing order to possibly be terminated. And you did clarify that the secretary may terminate. It's not a requirement upon that vote. But I, nonetheless, would not support that.

JUDGE McCARTNEY: Yes, opening to questions.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q So, Mr. Sahatjian, is it the two-thirds/one-third that you're opposed to, or the concept of having a continuance referendum in general? For example, if the terms were different, if it was required two-thirds opposed, as I believe you recommended --

A Yes.

Q -- that would be your ideal situation;
is that correct?

    A   Well, I don't think we should have a
situation where one-third of the industry can
take down a marketing order. So, yes, to answer
your question, a discontinuation referendum in
this -- under the framework that's set forth
where two-thirds is required to pass the
referendum, I would not support a continuation
referendum, but a discontinuation referendum, I
would be okay with.

    In that event, two-thirds would be
required to -- you know, if two-thirds of the
body wants to take the marketing order out, then
that means that it's not serving the majority.

    Q   Uh-huh.

    A   In this case, you can have a situation
where the majority is being served properly by
the order, and one-third wants to take it down,
and they, in effect, can.

    Q   Uh-huh.

    A   So I wouldn't support that.

    Q   Okay. What is your opinion of the
general concept of a, in layman's terms, sort of a periodic checking-in with the growers, do you like that concept?

A     Yes, that'd be great.

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

JUDGE McCARTNEY: All right. Any further questions for this witness?

(No audible response.)

JUDGE McCARTNEY: All right. And let me make clear that, when I asked that, I mean from the audience as well. If there's anyone from the audience that wishes to ask a question, they're free to do so. My reaction to Mr. Kriebel was simply because I knew he was going to be a witness and he was going to be testifying shortly. So I don't mean to in any way discourage questions from members of the audience.

Anything for this witness?

(No audible response.)

JUDGE McCARTNEY: All right. You may
be excused.

THE WITNESS: Thank you.

JUDGE McCARTNEY: So, Mr. Kriebel, I believe it's your turn. And you have been previously sworn?

THE WITNESS: Yes.

WHEREUPON,

BARRY F. KRIEBEL

was recalled for examination, having been first duly sworn, assumed the witness stand, was examined and testified as follows:

JUDGE McCARTNEY: Please state your name for the record and give a brief description of the exhibits you'll be sponsoring today?

THE WITNESS: Yes. My name is Barry F. Kriebel and, as I mentioned previously, I've served as president of Sun-Maid Growers of California since 1986. And throughout this time, I've been a voting member of the Raisin Administrative Committee.

So the first exhibit is Exhibit 33.

JUDGE McCARTNEY: And that's your
prepared statement; is that correct?

THE WITNESS: Yes.

JUDGE McCARTNEY: Okay.

THE WITNESS: Sometimes I have a bad philosophy of ad-libbing a little bit on my prepared statement.

JUDGE McCARTNEY: It works for me.

So, and Exhibit 34 would be?

THE WITNESS: Exhibit 34 is a letter that, on behalf of Sun-Maid, is dated November 17th, 2014, directed to The Honorable Tom Vilsack as Secretary of Agriculture.

JUDGE McCARTNEY: Okay. And Exhibit 35?

THE WITNESS: Is a table of statistics actually prepared by the Raisin Administrative Committee, covering 10 years of history.

JUDGE McCARTNEY: All right. You may proceed.

THE WITNESS: Just as a little bit of background on myself, I have an undergraduate degree in economics from Stanford University and...
a law degree from Georgetown University Law
School in Washington, DC. I've been a member of
the California Bar since 1975, although I do not
provide professional legal advice in my capacity
as Sun-Maid president.

Prior to becoming president of Sun-
Maid in 1986, I provided Sun-Maid with legal
advice, including that on the federal marketing
order on raisins since 1978.

Since its establishment in 1912 and
each and every year thereafter, Sun-Maid has been
the largest processor and marketer and, thereby,
handler of California raisins. Sun-Maid operates
as an agricultural marketing cooperative
organized under the laws of the State of
California.

We continue to be the largest
processor or handler of California raisins today.
Between our grower memberships' investment in
raisin acreage and Sun-Maid's ownership and
processing and marketing facilities, we reflect
the greatest amount of investment in the
California raisin industry. As a cooperative, many of our growers would be classified as small businesses and, as such, are owners of Sun-Maid.

While we are known first and foremost for our retail Sun-Maid brand, we market approximately 50 percent of our raisin volume to ingredient customers who reflect principally the same as every other handler in the raisin industry, primarily in the cereal, baking, and confectionary business.

We market our raisins in 50 countries, and our interests generally reflect the interest of the entire California raisin industry. In the 30 years I've served as Sun-Maid president, we have marketed three million tons of raisins, generating over $3 billion of revenue for Sun-Maid, Raisin Bargaining Association, and the Independent California Raisin Growers.

Today, I wish to comment on several topics. One, against the department's proposal on term limits; two, in favor of the department's proposal to eliminate all raisin reserve language
from the marketing order; three, favor of the
addition of quality language; and four, in favor
of authority to differentiate outbound standards
for different countries.

I was not going to comment on the
continuation referendum, but I thought at the end
of my testimony, I will so later.

First, regarding term limits, the
Raisin Administrative Committee voted unanimously
on January 27th, 2016, against the USDA proposal
for term limits for RAC members. There are many
reasons for this, and many of these points have
already been addressed by prior presenters, or
will be presented by future testimony.

First, with 46 producer and handler
seats and their alternates, it's common for us to
have meetings with 100 persons in attendance.
Even the subcommittees have diverse, large and
active participation. Since we all operate
within an hour's drive of the RAC offices in
Fresno, it's easy for members and alternates to
attend meetings.
Second, with large committee and subcommittee structures, it is easy for individuals who wish to participate to be elected or appointed to a seat, or to attend meetings and be head, even if not as an appointed member or alternate. I have personally attended hundreds of RAC meetings and subcommittee meetings and work groups, and discussion is never cut off until everyone who wishes to participate has had an opportunity to be heard.

As a result, there is no reason to set term limits, which would arbitrarily force a changeover of committee participation.

Second, regarding the department's proposal to eliminate all reserve authority and language from the marketing order, Sun-Maid is in complete agreement. The fundamentals of the California raisin industry have changed substantially since its formation in 1949. To demonstrate this point, I refer to the November 17, 2014, letter, which is numbered as Exhibit 34 -- and I assume that's been -- that will be
introduced at some point -- which Sun-Maid filed
with the Secretary of Agriculture.

This petition was filed before the
U.S. Supreme Court decision in Horne. This
petition requested the secretary either to hold a
hearing, as is being done today, or, in the
alternative, for the secretary to suspend the
reserve or volume regulation provisions of the
marketing order.

The secretary has the legal authority
to make the changes the department is now
proposing by suspending this language, without
requiring the raisin industry to go through this
hearing and referendum process. And Sun-Maid
still believes that this would be a more
appropriate procedure.

Sun-Maid's petition is still pending
in the Matter of Sun-Maid Growers of California
v. The United States Department of Agriculture,
with case reference number 1:15-cv-00496 KBJ,
United States District Court for the District of
Columbia.
In the almost 40 years that I've been involved in marketing order and the California raisin industry, it's very difficult for petitioners to get the secretary to take action, even when, in this particular case, the United States Supreme Court has directed that the reserve pool should not be the law of the land. And, still, the secretary refuses to take action without the committee going through this referendum process.

That indicates also the willingness, or unwillingness, of the secretary to take action on other things such as holding a continuation referendum. The California raisin industry has not held a continuation referendum ever since its original formation in 1949. And so the industry's request to add language for a continuation referendum is that, if it's not added at this point, since 1949, it'll never be added again.

We haven't had a hearing on a marketing order since, I believe, 1989. So this
is why we've worked so closely with the rest of
the industry, to get the language for a
continuance referendum put into the marketing
order. In fact, as much as I Mr. Richard
Sahatjian, he voted in favor of the continuation
language at the April 14th, 2016, RAC meeting, as
it was a unanimous vote.

MR. SAHATJIAN: I don't think I was
there.

THE WITNESS: You were there.

MR. SAHATJIAN: What's the date?

THE WITNESS: April 14th. And I
believe that was item 16 on the record.

JUDGE McCARTNEY: Well, unless we have
an admission against interest, that's extraneous
to --

THE WITNESS: I understand.

JUDGE McCARTNEY: -- the testimony.

THE WITNESS: But my only point is
that we in the industry have worked very hard
through the working group, through the process,
to create a consensus proposal that the industry
can support.

JUDGE McCARTNEY: So, on that point,
your opinion is very valuable to the Court to
understand the nature of the proposal and why
it's so important that it be phrased the way that
it is in the notice of proposed rulemaking.

THE WITNESS: Yes. Again, since it
was not built into the original framework in 1949
and, despite the USDA having guidelines on
marketing orders that were developed, I believe,
in what, the Nixon administration in 1982, there
has been no continuance referendum in the entire
history of the raisin order. And, unless it's
inserted, developed at this point, it's unlikely
it'll be included in the lifetime of anybody in
the room.

JUDGE McCARTNEY: All right. So let
me just follow up on a question on that.

You were in the hearing room during
the examination and the testimony that was
provided by previous witnesses on this proposal;
is that correct?
THE WITNESS: Yes.

JUDGE McCARTNEY: So do you agree --

THE WITNESS: Some of them.

JUDGE McCARTNEY: All right. Were you here for today's testimony?

THE WITNESS: Not all. I arrived about 2:00.

JUDGE McCARTNEY: Okay. So do you agree or disagree with the mechanism regarding the impact of the two-thirds majority as it's currently stated in the suspension or termination language under Proposal 5?

THE WITNESS: I agree with the precise language that is in Proposal 5 yes.

JUDGE McCARTNEY: All right. And why do you agree with the precise language with respect to the two-thirds majority?

THE WITNESS: Several reasons for that, okay. One, it's a standard protocol, as I understand it, within the department. Nothing special, unique developed by the California raisin industry. It's common for marketing
orders generally.

Secondly, this has been an industry of consensus-building. If you look at the history of the votes at the RAC, in most cases, they are virtually unanimous. Now, it may take us awhile to get to that point but, generally, we work out our differences in the working groups, the subcommittees, at the full committee, even bringing something back to the full committee, and a second time.

The third thing is, I'll disagree somewhat with Mr. Sahatjian's statement that the industry is really broken down into three groups in the terms of independents, Raisin Bargaining Association, and Sun-Maid, because Sun-Maid, as a cooperative, we're really half-processor, handler, and we're half-grower. We're not 100 percent grower, and we're not 100 percent handler. I don't own acreage. I mean, I work for processors, but I -- I mean, for producers, but I primarily work for global customers.

And, as a result, the interests of
Sun-Maid on behalf of global raisin customers,
are essentially affiliated the same way with the
other handlers, because we sell generally to the
same customers. We all want prosperity for
handlers. We all want prosperity for raisin
growers.

So I don't -- oftentimes, we have an
interest that can go as to looking at the
broadest scheme as to whether it's to the best
interest of the producer, best interest of the
handler, or it's a compromise position for the
best interest of the total industry.

And I think that is our viewpoint if
and when this referendum continuation language is
adopted. That's the way Sun-Maid, both producers
and as a cooperative, would look to the current
state of the industry, whether the marketing
order served the best interest of the totality of
the industry.

And, lastly, I think the two-thirds is
an appropriate vote. I mean, it's the basic
requirement for setting the marketing order up in
the first place. And, if the producers and the handlers don't continue to support it to the same degree every so many years, then they've done something wrong.

I mean, one of the key things that we're here today on the Marvin Horne Supreme Court case, had we been more responsive to the needs of producers, the matter would have never made it to the Supreme Court in the first place. And I believe, had we had a referendum during that time frame, the industry would have been more responsive to the needs of small producers.

And I apologize for getting off-track.

Three, regarding the proposal to authorize quality regulation, this is primarily a housekeeping item. We believe the current language of the marketing order was always intended to provide for quality regulation. We do, however, recognize that the meaning of quality regulation in 1949, when the marketing order was established, was more limiting than today in 2016. For this reason alone, we support
the addition of specific authority for quality regulation.

Today, the term quality regulation means any and all regulation that's important to the customer, supply chain, end user, or the public at large. This proposal will add the term quality to a number of sections to make this authority clear.

The purpose of this proposal for quality standards is to clarify that the marketing order has an ample range of authority over both incoming natural condition raisins and outgoing processed raisins. And this may have been some confusion in the questioning back and forth, because it's very much in the growers' interest sometimes to lower the incoming quality standards, and for customers to want to increase the outgoing quality standards.

And us, as processors, we have to deal with both, look at the beneficial interests of the growers in getting product in, without the need for reconditioning or additional cost and,
yet, meet the outgoing standards that customers want around the world.

JUDGE McCARTNEY: Uh-huh.

THE WITNESS: There could be, in the future, a need to implement regulation to meet the requirements of different international markets or the domestic market such as the Food and Drug Guidelines for the Food Safety and Modernization Act. The purpose of this proposal is to provide the industry with this tool in its toolbox if needed.

Since we believe the industry already has this authority, the expected impact is minimal. Any new regulation would be developed by the industry, fully discussed, and most assuredly only be implemented if it improved the market conditions for California raisins by addressing a customer or public interest concern.

As a result, any such use of this authority would be intended to improve producer and handler returns. If there were additional inspection or regulatory cost, this should be
minimal and be offset by the marketing advantages
for small businesses and all stakeholders in the
industry.

As this proposed authority goes hand
in hand with the authority to establish different
outgoing standards for different markets, there
should be the most deliberate and cost-effective
use of this quality authority. If there's not a
value for regulation in a particular market, the
industry could differentiate market by market to
keep costs of implementation at a minimum.

Four, regarding the authority for
establishing different regulations for different
market destinations, this is a reality of the
global food business within private enterprise.
Most customers around the globe establish their
own individual specifications and define their
own key attributes of quality. This authority
would allow the marketing order quality
requirements to be more selective and precise for
individual markets.

Currently, the marketing order does
not allow for different standards for different
countries, and this would solve this deficiency.
The industry exports to over 50 countries.
Different markets have different criteria which
are now addressed handler by handler. This
authority would allow the industry to develop
differentiated standards if it determines there's
a marketing value to do so.

Unless the industry determines there
would be value to do so, the authority does not
add any further cost or regulation on the
industry or small businesses.

If approved, the committee could
develop new quality proposals by different market
destination, have these discussed within the
industry, published for public comment, and be
fully reviewed by the department and any other
necessary governmental authority before
implementation. Only then would there be
compliance impact upon implementation.

Lastly, I would like to refer to
Exhibit 35 and, in particular table 1, which
shows the varying acres of California raisin
variety grapes. And, from 2006, which is table
1, raisin variety bearing acres was 234,000 and,
as last reported in 2015, it was 190,000. And we
believe that this, again, demonstrates the shift
of economic factors since the marketing order was
formed in 1949, when we had very large surpluses.

And now we have an industry that is
very much responding to world economic
conditions, and we expect that, in the future,
supply will remain in better balance with demand
and, therefore, as a result, you don't need the
reserve pool and some of the provisions that the
secretary is proposing to be eliminated.

And there's many other statistics
through here but I think, for the record, this is
a good foundation to show the years that we had a
reserve pool, and the years beginning in 2010
when we have not had a reserve pool.

And that completes my prepared and
unprepared remarks.

JUDGE McCARTNEY: Are there any
questions for this witness?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Thank you, Mr. Kriebel, for your testimony. I have a couple of questions for you. So, with regard to the continuance referendum language, so, in the notice of hearing, we have a proposal from the RAC that proposes having the first continuance referendum within two years, and then the second and subsequent between five and six.

Earlier today — and I believe you were not here when this witness gave their testimony. But Ms. Debbie Powell gave testimony with regard to modified language, proposal to modify the language so that the first year would be at five years, and subsequent years would be between five and six. And that is captured in Exhibit No. 9.

Are you familiar with that modification?
A      Yes. And I took the previous question
to me as to the mechanics of the two-thirds vote
and that, rather than the actual date of the
hearing itself.

Q      Okay.

A      Okay. Because, yes, and the proposal
that the acting president of the RAC testified to
was voted on at the April 14th RAC meeting
unanimously, and is the one that I support
verbatim today, and is the one that was reached
after a lot of debate and discussion within the
industry, and I think demonstrates the
willingness of the industry to work together to
come up with an approach that's for the best
interest of the entire industry and for future
generation of raisin growers and handlers.

JUDGE McCARTNEY: So, with reference
to Exhibit 9, you are familiar with that exhibit?
That's the statement that was provided by Ms.
Debbie Powell.

THE WITNESS: Yes.

JUDGE McCARTNEY: And you are in
agreement, and you endorse her testimony with respect to the issue?

THE WITNESS: Correct.

BY MS. SCHMAEDICK:

Q Thank you. Now, Mr. Kriebel, were you involved with the work group that developed at the RAC proposals?

A Yes. I believe I attended every meeting of the work group. I may have missed one, but I don't remember missing any.

Q Okay. Thank you. And I was wondering if you could describe to us sort of the process of what happened. If I understood previous testimony, there was an original proposal by the work group for five years. And then, at the RAC vote, it was switched to two years with regard to the first vote. And then it was switched back to five.

Can you tell me why -- first of all, why did it go to two and then why did it go back to five? And why is five better than two?

A Well, I believe that whole discussion
just shows the openness and the diversity of
opinion at the RAC. There were people who wanted
five. Some people wanted eight. Some people who
wanted two. As Richard said, maybe some people
wanted nothing, right.

And so the January meeting where it
was moved to two, that was probably the first
opportunity for a very deep discussion at the
RAC. And there were people then who were -- who,
I think, somewhat misunderstood the meaning of
that. And I don't know if it's in your -- Ms.
Powell's testimony, that I believe the minutes of
the January meeting even reflected that, had the
continuation referendum issue come up at the end
of the meeting rather than at the beginning of
the meeting, it was very likely that the vote
would have been different.

But that's just the way the RAC
operates. We have differences of opinions. We
have full and open debate. And people change
their mind, and we try to build for a consensus.

I bet some of the political candidates today have
changed their mind. So it's government in
process.

Q    So, in your statement that, if the
subject had been brought up earlier in the
meeting, the result might have been different.
Is that an indication that there wasn't enough
time to fully vet the five-year versus two-year?

A     No. I think the meeting had a number
of issues that were new to the group. Again,
like I said, the idea of a continuance referendum
we've never had since 1949, okay. So it's new.
It may seem unnerving to some because it's new.
But we have continuance referendums in other
California raisin industries, marketing orders.

        We just have one in the state order.
I don't know if that result was put on the
record. They were put on the record? And they
were just -- they were overwhelmingly passed,
even despite the fact that we haven't been able
to collect any assessments in the state marketing
order because of litigation going on in that. We
still have overwhelming support for continuance
of the state marketing order.

That would tell you, to me, that the industry is very thoughtful when it votes, and it does value the tools in the toolbox because it understands how hard it is to rebuild these in case you ever do lose them.

But the debate was a joint work group, wasn't it, and a full RAC. And so we don't always hold them that way. I'm not the chairman. The chairman gets to design the protocol for the meetings, okay. And it may be we should have had the full subcommittee first before we went into that. But I think the final result that came out by the April 14th meeting was a very sound, sound result for the entire industry.

Q In your opinion, would waiting five years for that first continuance referendum allow the industry more time to ascertain whether or not any proposals that might be implemented have had the intended benefits? And would the five-year period allow for a better assessment than perhaps a two-year period, which would be
relatively shorter?

A Yes.

Q Thank you. I'd like to ask some questions about the proposal to add quality authority, quality regulation authority. As you've heard earlier today, we have had other witnesses speak to this issue, but I wanted to hear from you.

In your opinion, what is the difference between quality and grade? Your statement says, the term quality regulation means any and all regulation that is important to the customer, supply chain, end user, or public at large. In some ways, grade might find its way into that definition as well.

So, for you, what is the difference between grade and quality?

A Well, for me, grade is within quality.

Q Okay.

A And quality is broad enough to include grade. But, for other people, it means something different. Some people use them synonymously.
Other people use them to mean different things.

    Q     Uh-huh.

    A     And you ask a raisin grower, grade

means one thing. You ask a raisin buyer, grade

means something else. And what, again, is a

little confusing is because we have incoming

standards that are very important to the grower,

and we have outgoing standards that are very

important to the customer. So these words mean a

little bit different things to different people.

They probably have 10 different meanings to the

same person.

    But, in each case, they really mean

specific standards or rules that the USDA, either

Processed Products Branch, or the USDA has

developed. And the last outbound standards that

I believe that the industry developed were last

developed in 1979. And so part of this is, okay,

if we were to go back and review the whole

outbound standards, okay, how would we look at

those in today's environment? And let's make

sure we can have as many tools in the toolbox to
define those.

But, in each case, there are a
specific set of promulgated standards or rules
that there's been ample debate, public comments,
standardization, review, and there's an official
document that is used within the department and
the industry.

Q    So, if understand correctly, what
you're saying is the quality authority would
allow you to create standards that would exist
outside of the 1970 --

A     Nine.

Q    -- nine USDA grades and standards that
currently exist. So it would allow you to go
above and beyond that?

A     Right.

Q    Right. Okay. I want to ask your
opinion on another understanding of mine, based
on testimony. I'm wondering, would it be
accurate to say that grade is typically
associated with a visual attribute that's
constant, it doesn't change, whereas quality
might be associated with an attributed that's not necessarily visible, for example, a contaminant or a residue for an herbicide or fungicide or something like that? Is that a --

A   Well, I'm not going to agree with you on that.

Q   Okay.

A   The fundamental difference within raisins is flavor, and you can't see flavor.

Q   Is that part of the grade standard?

A   That's a standard.

Q   Okay.

A   I mean, as to the difference between -- as to you can be caramelized, right. That's a defect, right. Too much cooking in the field is a defect. That's an incoming defect.

Did you know that?

JUDGE McCARTNEY: I did.

THE WITNESS: Right. And so, I mean -- so I'm just -- and so, once you get -- just with that, right, there are -- there can be subjective differences. There can be ones that
you'd like to visualize. But we have customers, and people in the room have customers, for embedded stems.

Embedded stems. Can't see an embedded stem because it's embedded. That's the definition of it. I mean, so how do you see it, right. You try to have -- you can't see by the visual eye, so you're trying to develop laser standards that may be mechanical can see it, or an x-ray. Many people in the industry use x-ray sorters.

So that's not visual. So there's different, you know -- sorry to --

BY MS. SCHMAEDICK:

Q     No.

A     But there's -- the whole breadth of -- and you're probably -- in the old, old days, when people were referring to grade standards, they were probably referring to things they could see -- color, number of stems, number of cap stems. But, as you get smaller and smaller and you want fewer and fewer cap stems, fewer and
fewer stems, you know, it's becomes virtually impossible for the eye to actually see it.

Q    I see. Thank you. What I'm trying to understand is the intent behind quality regulation and how that authority is to be interpreted at a future date when that authority is used to create a set of standards. So that's why I'm always asking this question, what is the difference between quality and grade. What do you mean by quality?

A    Well, and just it's a poor comparison, but the framers of the Constitution had certain meanings when it was formed. 200 years later, it was interpreted to mean something else. The same thing with the word grade. If the creators of the marketing order were still here from 1949 and had lived through all of these things, I'm confident that their definition of grade would have kept up with what our customers are.

But we don't have anything necessarily in the record that shows that, that shows that. So I think us in the industry, we use them
synonymously, oftentimes grade and quality. But that's what the purpose of this amendment is, to make sure that we have the breadth of scope to define them any way that makes sense from a marketing and processing side for our customers anywhere in the world.

MS. SCHMAEDICK: Okay. Thank you.

Those are all of the questions that I have.

Thank you.

JUDGE McCARTNEY: Any further questions for this witness?

MS. CHILUKURI: Yes.

JUDGE McCARTNEY: Go ahead.

MR. McFETRIDGE: Rupa, you can go.

That's fine.

JUDGE McCARTNEY: But we always save you for last. This is confusing. Thank you for trying to be a gentleman, but we have a process.

MR. McFETRIDGE: Marc McFetridge, USDA. Just a couple of quick questions.

BY MR. McFETRIDGE:

Q In your testimony, you stated that a
majority of the growers that supplied Sun-Maid would be considered small growers; is that correct?

A I think I was very careful to not use the term majority.

Q Okay.

A Okay. I said a number of our --

Q A number.

A -- growers would be classified as small businesses.

Q Okay.

A And I avoided that question particularly because it kind of follows the 80/20 rule, not exactly, but, say, 70/30. We get 70 percent of our tonnage from the largest growers and 30 percent of our tonnage from the smallest growers. So we have a lot of small growers, but they don't deliver the vast majority of tonnage.

Q Thank you for that clarification.

Based on being president of Sun-Maid, would you said, based on the Small Business Administration definition of having annual receipts from selling
raisins of greater than $7.5 million, would you say that Sun-Maid would be a large or a small handler?

A     A large handler.

MR. McFETRIDGE: All right. Thank you. I think that's all I have for now.

MS. CHILUKURI: Rupa Chilukuri, USDA.

BY MS. CHILUKURI:

Q     Mr. Kriebel, I'd like to ask you a question about Proposal Number 4, the establishment of different regulations for different markets. And I'd like you to take a look at Exhibit 1, the notice of hearing.

JUDGE McCARTNEY: Do you have it in front of you? Let's make sure the witness has a copy of that document.

BY MS. CHILUKURI:

Q     And, if you could, turn to page 23653.

A     Okay.

Q     And that's Proposal Number 4.

A     Right.

Q     Okay. So, if you could, read into the
record 989.59. If you could read into the record
(a) Regulation, and then (1) and (2). And I'd
like to ask you a question about that after
you've done that.

A     It begins, (a) Regulation. Unless
otherwise provided in this part, no handler shall
(1) ship or otherwise make final disposition of
natural condition raisins unless they at least
meet the effective and applicable minimum grade
quality and condition standards for natural
condition raisins; or (2) ship or otherwise make
final disposition of packed raisins unless they
at least meet such minimum grade quality and
condition standards established by the committee
with the approval of the secretary in applicable
rules and regulations, or as later changed or
prescribed pursuant to the provisions of
paragraph (b) of this section.

Provided that nothing contained in
this paragraph shall prohibit the shipment or
final disposition of any raisins of a particular
varietal type for which minimum standards are not
applicable or then in effect pursuant to this part. And provided further that a handler may grind raisins which do not meet the minimum grade quality and condition standards for packed raisins because of mechanical damage or sugar in the raisin paste, the committee may establish, with the approval of the secretary, different grade quality and condition regulations for different markets.

Q Okay. And, based on your reading of that provision, is it your understanding that different regulations for different market destinations can be below applicable minimum grade quality or condition standards? And take your time to review, if you'd like.

A Well, I hate to say below because they may just be different, right. They may be different. They may be -- somebody may consider them below, but --

JUDGE McCARTNEY: Well, would the different be such that they would not have been approved under Grade B as currently defined in
the regs? Let's use different in that way.

BY MS. CHILUKURI:

Q Would different mean below the applicable minimum standards as set out per (a) -- 989.59(a)(1) and (a)(2)?

A Well, in each case, I could see the situation where you had different standards for different attributes. So, for example, cap stems, we've talked about cap stems a lot, right? Actually, in the old days, people ate cap stems.

JUDGE McCARTNEY: Good fiber, as one of the witnesses pointed out.

THE WITNESS: And they really are.

We've done nutrient analysis on cap stems. And there's more nutrients in cap stems per gram than in the raisins themselves.

JUDGE McCARTNEY: But they must not taste as good because you reminded us that flavor is the governing characteristic that people are interested in; is that correct?

THE WITNESS: Well, a few cap stems don't really interfere with the flavor, you know.
JUDGE McCARTNEY: Uh-huh.

THE WITNESS: A lot of cap stems really do, you know. So, in that case, we have customers in the industry who want virtually no cap stems. And we've argued with them that you're actually destroying some of the nutrient value of the raisins in the first place.

JUDGE McCARTNEY: Pardon me. Counsel, is it your -- are you -- is this in response to your question, or is this unresponsive to your question? I'm confused now. What was the question?

MS. CHILUKURI: I was saying, based on his reading of that provision, does he think that different market regulations -- different regulations for different markets can be below the minimum standards that are in the order.

THE WITNESS: Well, we would change the regulations in the order. It's not to avoid the order. It's that, if we -- we used to have Grade C, right? We used to have Grade C, so that was in the order. Maybe we want to bring Grade C
back.

MS. CHILUKURI: Okay. Thank you for that clarification.

JUDGE McCARTNEY: But it would be in the order.

THE WITNESS: It would be in the order.

JUDGE McCARTNEY: Published pursuant to rulemaking, notice, and comment.

THE WITNESS: Correct.

MS. CHILUKURI: Thank you for that clarification. That is my only question.

JUDGE McCARTNEY: All right. Are there any further questions for this witness?

MR. SAHATJIAN: I just want to make a comment because --

JUDGE McCARTNEY: Well, first -- all right. Before we take comments, are there any objections to the admissibility of Exhibits 33, 34, and 35?

(No audible response.)

JUDGE McCARTNEY: No objections, they are hereby admitted.
(Whereupon, the above-referred to
documents were received into evidence as Exhibit
Nos. 33, 34, and 35.)

JUDGE McCARTNEY: If you do not have
a question for the witness and you merely wish to
opine, then we need to adjourn this witness. Do
you have a question for him?

MR. SAHATJIAN: I do have a question.

JUDGE McCARTNEY: All right. You may
proceed.

BY MR. SAHATJIAN:

Q Mr. Kriebel, you were at the January
27, 2016, RAC meeting --

A Yes.

Q -- I'm assuming. And do you recall
the vote on the amendment, the continuation
referendum?

A Some of the votes, because there were
multiple votes.

Q Okay. Well, I have on record just
one, and it's regarding the continuation
referendum. And I don't know if you recall, but
there was a vote. Do you remember what the
results of that vote were for inserting the
language into the proposal of no less than two
years and no later than three year of the
effective date that we'd have a referendum?
A     I've got the minutes and --
Q     It's on page 7.

JUDGE McCARTNEY: Are you referring to
an exhibit that's been admitted into the record?
And what's the exhibit number? 15, page 7?

(Off mic comment)

JUDGE McCARTNEY: All right.

THE WITNESS: That was a vote, and
then there's another vote on page 8.

BY MR. SAHATJIAN:

Q     Okay. I'm not sure what the
difference was, but they both say the same
language. Two years, no later than three years.
I don't know.

But, regardless, that was not a
unanimous vote. I voted against that. And, if
you recall, that was a motion to include in the
proposals here, that there would be a
continuation referendum. And that was a split
vote, so I just want -- I just want you to
confirm that you recall that this was not a
unanimous decision.

A     My recollection, and I believe the
minutes state that there was a split vote on
January the 27th, and there was a unanimous vote
on April the 14th at a meeting that you attended.

MR. SAHATJIAN: I guess I'll just wait
for the comments section. All right. I don't
have any questions.

JUDGE McCARTNEY: Anything further for
this witness?

(No audible response.)

JUDGE McCARTNEY: All right. You're
excused, sir. Thank you for your testimony and
for attending.

All right. So we're at 4:30. Let's
go off the record.

(Whereupon, the above-entitled matter
went off the record at 4:26 p.m.)

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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Amendments to the Marketing Order Regulating Raisins

Before: United States Department of Agriculture

Date: 05-03-16

Place: Clovis, California

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]

Court Reporter