UNITED STATES DEPARTMENT OF AGRICULTURE

PUBLIC HEARING

PROPOSED MARKETING ORDER AND AGREEMENT
FOR PECANS GROWN IN
ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA,
GEORGIA, KANSAS, LOUISIANA, MISSOURI,
MISSISSIPPI, NORTH CAROLINA, NEW MEXICO,
OKLAHOMA, SOUTH CAROLINA, AND TEXAS

TUESDAY, JULY 21, 2015

The hearing came to order at 8:00 a.m. in the Rio Hondo Room and Auditorium at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico, Clay G. Guthridge, Administrative Law Judge, presiding.

BEFORE:

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Chief Administrative Law Judge
Federal Maritime Commission
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KATY LOOFT, USDA
MELISSA SCHMAEDICK, USDA
JENNIE M. VARELA, USDA
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7:59 a.m.

JUDGE GUTHRIDGE: This hearing will come to order. This is a continuation of the hearing on the Proposed Marketing and Agreement for Pecans pursuant to the Agricultural and Marketing Agreement Act of 1937.

I see that Counsel is present from yesterday. There will be no need to reintroduce yourself. We know who you are.

I want to remind everyone to turn off your cell phones or at least silence them. Cell phones and other such noise making devices.

One thing I forgot to mention yesterday or I should have mentioned yesterday and didn't -- I didn't forget about it. I hadn't thought about it -- is the representatives of the Department of Agriculture and myself also are prohibited from talking about the substance of this agreement with any interested party. If you approach one of the Department of Agriculture persons and they sort of give a you're-in-the-
headlight—sort of look about things, they're afraid that they're going to talk to them about what's going on here. They can talk about procedural matters such as what witnesses will testify or what order or things like that.

But just a warning that you're not to talk about the substance of the proposal itself. I don't even talk with them about it and they don't talk with me about it.

All right. Mr. Davis and Mr. Quiros, are you ready with your first witness? I see who is already up here.

(PROPONENT WITNESS DAVID SALOPEK SWORN)

JUDGE GUTHRIE: All right. Proceed.

MR. QUIROS: Thank you.

DIRECT TESTIMONY

MR. QUIROS: Mr. Salopek, have you received a copy of what has been marked as Exhibit 1 in this proceeding?

MR. SALOPEK: I have.

MR. QUIROS: Thank you. And you had
a chance to read that and review it.

MR. SALOPEK: I have.

MR. QUIROS: And have you received what's been marked Exhibit 23, Economic Analysis of the Implementation of a Federal Marketing Order For Pecans, the Executive Summary?

MR. SALOPEK: I have.

MR. QUIROS: And you had a chance to read that.

MR. SALOPEK: Yes, I have.

MR. QUIROS: And I understand that you have prepared some testimony for us today. Would you please go ahead and begin?


David Salopek Farms is a pecan farm in Las Cruces, New Mexico. We have over 1700 acres of pecan currently in production. We also have
160 acres of new pecan trees that will be in production in another four to seven years.

On our farm, we grow improved variety pecans. The pecan business has been a family affair for us. My father planted pecan trees in the 1950s through the 1970s when this was something relatively new in the Mesila Valley. After his untimely passing, my mother, Paulina, and I took over the pecan farm in 1979. My mother recently passed away, but she was a true pecan pioneer and an important grower for New Mexico pecans for over three decades.

MR. QUIROS: Mr. Salopek, can I interrupt you.

MR. SALOPEK: Sure.

MR. QUIROS: Just as you're giving this family history, I was in a restaurant last night called De La Vega Pecan Grill. Are you familiar with that?

MR. SALOPEK: Yes, I am.

MR. QUIROS: I saw two pictures that were pointed out by one of our former witnesses,
Louis Salopek, on that. Can you kind of help tie that in for us? What were those? Who were in those pictures and when were those taken?

MR. SALOPEK: Sure. The two pictures that are there, one is my grandparents and they were immigrants to this country in the '20s. And the other is my dad and uncles who were on the tractors on the train there.

And that was in 1967. I was five years old at the time. I remember sitting on the new tractor at the farm and this was a pretty proud moment.

But my grandparents, my grandfather immigrated to the United States in 1924 on November. And he came to work in the coal mines in Pennsylvania. And he worked here in this country with a wife and three children in Yugoslavia. And they stayed there for approximately four years, maybe five years. He worked in the coal mines.

I had an uncle in El Paso, Texas who got sick. And my grandfather was asked to go
help him. And he stayed there and helped him there and our uncle in El Paso helped him buy some land which is now where the state line is. It's a restaurant in El Paso.

There was no flood control damage at the time. So the crops that he grew for two years in the early '30s got flooded out one year after another. And he sold that farm and bought a farm in the Mesila Valley where our headquarters is. It's the original headquarters of the family.

But one of the things is they spoke no English. And when they came to El Paso, he sent for his wife and three children. They showed up at the train station with a cardboard sign that said "El Paso" around their necks. And that's how he collected his family. And they came to the Mesila Valley and never left.

MR. QUIROS: Mr. Salopek, thank you very much. Please continue with your testimony.

MR. SALOPEK: We are considered a large pecan grower under the Small Business
Administration guidelines. We have attended several meetings where representatives of the American Pecan Board spoke about the Federal Marketing Order.

I feel like I've been informed about the process of securing a Federal marketing order and have been given an opportunity to participate in this process. I'm very encouraged at the number of opportunities we have been given to interact with members of the American Pecan Board, especially Mike Adams.

I reviewed the economic analysis summary prepared by Dr. Marco Palma specifically the projected average pricing increase from promotion of 6.3 cents per in shell pound versus the average 2.5 cents per in shell pound cost.

Overall, I'm aware of the cost that a Federal marketing order may impose on my farm. And I do not believe those costs are unduly burdensome. Further, I believe that the benefits of a Federal marketing order to my farm will greatly outweigh any costs associated with it.
In recent years, I've seen a wide variation in prices I have received from my crop. When I sold my crop if I wasn't happy with the price no one had ever put a gun to my head and made me sell. With such a wide variation in pricing it makes it difficult to know if we are receiving a fair price every year and to plan for the future of our farm.

While prices for pecans go up and down dramatically from one year to year, my cost of production has done nothing but steadily increased. The lack of accurate market information on the anticipated size of the pecan crop, the carry in volumes and other market data that factors into pricing makes it difficult for me and all growers to negotiate realistic prices for our crop. I've had to resort in recent years to putting some or all of my crop in cold storage until I could better understand the market and before we could commit to sell our crop.

Increased price stability and more accurate market information would greatly benefit
my farm and others. I think my farm and the
industry would also benefit in the future from
uniform, updated grade, size, packaging, quality
packaging, shipping protocols if found to be
necessary and other handling requirements as we
compete with other tree nuts for shelf space and
consumer attention.

I understand that the proposed order
only growers with more than 30 acres of pecans or
more than 50,000 pounds of average production per
year over the last four years would be allowed to
vote on the proposed order. In my opinion, this
threshold is reasonable because a grower that
does not need this threshold is really not a
commercial grower.

Any grower that is smaller than the
proposed threshold could not justify the cost
inherent in such small production and is most
probably a seller of pecans from older trees that
happen to be on his or her property, a small trek
farmer, one who does not plan to put all the
commercial inputs or afford the equipment into
his farm.

In conclusion, I fully support the proposed marketing order for pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. I would be glad to answer any questions for anyone.

MR. QUIROS: Your Honor, we tender this written testimony into the record. I think it's been identified as Exhibit 30.

JUDGE GUTHRIDGE: Is there any objection from the Department of Agriculture?

MR. HILL: No objection.

JUDGE GUTHRIDGE: Any objection from anyone else?

(No verbal response)

Exhibit 30 is admitted.

(Whereupon, the above-referred to document marked for identification as Proponent Exhibit 30 was received into evidence.)

Do you have any questions, Mr. Quiros?
MR. QUIROS: I'll reserve if there are any questions.

JUDGE GUTHRIDGE: Any questions from the Department of Agriculture?

CROSS EXAMINATION

MS. VARELA: Good morning.

MR. SALOPEK: Good morning.

MS. VARELA: Thank you for being here, Mr. Salopek. I wanted to ask you a few questions following on some of the information you shared with us already regarding the data that might be necessary.

MR. SALOPEK: I'm having a little bit of hard time hearing. So my hearing is not any better than any other farmers.

(Laughter)

MS. VARELA: I'll try to speak a little louder. You mentioned that there's a lack of good information that would help you make your decisions when you are selling your crop.

MR. SALOPEK: Yes.

MS. VARELA: Can you tell us a little
bit about the information that you have now and
how the order might help you get better
information in the future as you understand it?

MR. SALOPEK: Sure. I'll share a
little bit with you. I mean just as an example
of most recent the estimates coming out of
Louisiana and Texas have a 40 million pound
difference between the two crop estimates. You
know you network in this industry. You know
people from all over the country. So you talk to
everybody. That's part of how we gather
information.

The data that we get from the cold
stored reports and the various grower
organizations all help you. But you also fill in
the gaps on talking to people. And one of my
favorite estimates that I get from a particular
grower is he said "Yes, it's a 60 mile an hour
crop."

"What's a 60 mile an hour crop?"

He said, "If I see nuts on a tree
driving 60 miles an hour, it's a pretty good
crop. If it's a 10 miles an hour crop, now we have a problem." This is the type of data that we have to make decisions with. It's just incredibly erratic.

We've had some years where the estimates in the final crop have had 100 million pound swings. When you're investing money into it as a buyer or as a grower, not that as a grower you have a product to sell, if there's that wide variation, you can see -- I've seen price of pecans vary a dollar a pound in the matter of three or four weeks. It has caused a lot of people to lose a lot of money in this industry. And many people go bankrupt because of bad information.

MS. VARELA: Thank you. That's very helpful. You mentioned the existing cold stored reports.

MR. SALOPEK: Yes.

MS. VARELA: And you also have taken a look at Exhibit 1 which is the proposed order.

Did you look at some of the language there
regarding warehousing and reporting crops stored
in your warehouse?

MR. SALOPEK: Yes.

MS. VARELA: Can you tell us a little bit about how you define warehousing?

MR. SALOPEK: We look at the report monthly and it is a voluntary number that is given. I know there are a few -- and I don't know this for a fact. It's just from people that you talk to over the years that sometimes the numbers have the potential to not be overly accurate.

And I think if we could have verified data at least initially through the marketing order of the first four or five years we can have a very good concept of what we have in there to verify what we worked off of in the past. I don't know if that answers your question or not.

MS. VARELA: That got to part of it.

Are you aware of -- To your knowledge in the industry, is most of that warehousing done by handlers or is there also some warehousing done
MR. SALOPEK: I'd say most of it done by handlers.

MS. VARELA: But there is some done by growers, right?

MR. SALOPEK: Yes.

MS. VARELA: I think that's it for me.

Thank you.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Good morning, Mr. Salopek.

MR. SALOPEK: Good morning.

MS. SCHMAEDICK: Thank you for your testimony and your appearance. So in your testimony, you did mention that you warehouse. Is that correct?

MR. SALOPEK: Correct.

MS. SCHMAEDICK: Can you explain to us what that is? What does that mean for your operation?

MR. SALOPEK: I did it for a few reasons. One primarily was for the marketing. I
harvest pecans and I immediately put them in the freezer. And they're held at zero degrees. And I will look at the market, talk to people.

And I've just extended my market window because it is a relatively perishable product. I mean it's not perishable like lettuce or tomatoes where you have a week to make a decision. But when you put it in a freezer, you extend your market window up to 10 or 11 months.

And I've just found this from opportunities to see later on. One, that's one reason. The other reason that I do it is when everybody is harvesting here at the same time, it's very difficult to get trucks. And I can hold them for 30 or 60 days and let the big volume truck traffic die down and ship at a much steadier pace.

And also when I harvest and I put them in the freezer immediately, the quality that I retain is absolutely the best because there's no degradation of the quality.

MS. SCHMAEDICK: And you mentioned
that you warehouse the pecans 11 months. Is that correct?

MR. SALOPEK: Yes.

MS. SCHMAEDICK: So what is the typical shelf life of the pecan under the best case scenario?

MR. SALOPEK: I think if you hold them at zero degrees I mean I have some in our freezer at home, a home freezer, that are two or three years old. As long as they're held at zero, they retain a very good shelf life and the taste is good. You can actually defrost the pecan and freeze it again without any real degradation of the product.

I have talked to some people who held pecans in their freezer up to eight years. They said it looked good. They taste a little bit like paper.

(Laughter)

MS. SCHMAEDICK: So the concept of warehousing carry in brings me to another component in the proposed program.
MR. SALOPEK: Yes.

MS. SCHMAEDICK: And it's in the section on assessments. Are you familiar with what's referred to as the August 31st reporting rule?

MR. SALOPEK: Yes, I'm aware of that.

MS. SCHMAEDICK: Would you be comfortable explaining your understanding of that?

MR. SALOPEK: My understanding -- and correct me if I'm wrong -- is that August 31st if you warehouse pecans you're going to pay the assessment at that time of what you have. Is that?

MS. SCHMAEDICK: Would you have made that assessment on your own?

MR. SALOPEK: I think so.

MS. SCHMAEDICK: Why is that August 31st date important?

MR. SALOPEK: It's the transition just before the new crop arrives. We start harvesting pecans in the United States around the end of
September, the first of October. So that would allow the books to be cleaned up right before the start of the new season.

MS. SCHMAEDICK: So does that August 31st reporting date tie into the overall understanding of the market and the product that's being warehoused or carried in?

MR. SALOPEK: It would certainly fall right in place if you're carrying crop for the next season.

MS. SCHMAEDICK: Thank you. In your testimony, you also made a brief comment about the representative carry on. It's on page three of your testimony. It's in the paragraph that starts with "I understand..."

MR. SALOPEK: Yes.

MS. SCHMAEDICK: So I'll read the statement here. It says "Only growers with more than 30 acres of pecans or more than 50,000 pounds of the average production per year over the last four years will be allowed to vote."

Why is that four years? What's the significance
of four years as opposed to --

MR. SALOPEK: Well, I think a 50,000 pound load is basically a load of a ton. So if you're averaging above that, you're selling one commercial load. If you have a smaller amount than that, 20,000/30,000 pounds, you're going to either have to partner up with somebody to create a load. There's more labor involved on the small load. The freight costs are higher. Everything kind of mushrooms on the whole process of the expense of the costs. I think that's a reasonable number judging from what I know about the industry.

MS. SCHMAEDICK: In other words, does it allow to capture the fluctuation of the cyclical nature of pecan production?

MR. SALOPEK: Yes.

MS. SCHMAEDICK: Thank you. Are you familiar with the concept of inner handler transfer?

MR. SALOPEK: I believe I am.

MS. SCHMAEDICK: Is that something you
feel comfortable sharing your opinion on?

    MR. SALOPEK: Yes. State the question
one more time. There are a couple of words in
here.

    MS. SCHMAEDICK: Inner handler
transfer.

    MR. SALOPEK: So from one handler
selling to the next handler is what we're
referring to.

    MS. SCHMAEDICK: Correct. Yes.

    MR. SALOPEK: Yes, I'm familiar with
that.

    MS. SCHMAEDICK: Is that a component
of the proposal that would be helpful to you to
your knowledge?

    MR. SALOPEK: To find out who's
handling tons between each other?

    MS. SCHMAEDICK: Referring to Exhibit
1.

    MR. SALOPEK: Yes.

    MS. SCHMAEDICK: The inner handler
transfer would allow the transfer of pecans from
one handler to another.

MR. SALOPEK: And the assessment is paid on the initial handler. Is that -- I'm trying to figure out where we're going.

MR. QUIROS: Ms. Schmaedick, are you talking about Section 986.62?

MS. SCHMAEDICK: Yes.

MR. SALOPEK: Do you mind if I look that up and read it?

MS. SCHMAEDICK: If you can turn your attention to the 986.25.

MR. QUIROS: We've got it up here also, Ms. Schmaedick.

JUDGE GUTHRIDGE: And you say also 986.25.

MR. HILL: Two five.

MS. SCHMAEDICK: Yes.

JUDGE GUTHRIDGE: That is the definition.

MR. QUIROS: Have you had a chance to read that yet?

MS. SCHMAEDICK: Yes.
MR. QUIROS: Here's another definition for you.

MS. SCHMAEDICK: So the question is do you believe this proposal, the inner handler transfer proposal, serve a purpose in the industry based on your knowledge.

MR. SALOPEK: Absolutely. I mean as we had referred to earlier the inner handler transfer if you have some partial loads that you need to create a full load, that would supply us right there immediately. If somebody has a contract for 10 loads of pecans and you only have six loads and you're a handler and you want to partner up with somebody to finish it out the other four loads, there's going to be lots of advantages that are beneficial to the industry.

MS. SCHMAEDICK: My last question I'm going to shift gears here and go more towards the grower side of the industry.

MR. SALOPEK: Okay.

MS. SCHMAEDICK: As a grower in Mesila Valley, what are some of the challenges that you
face in terms of managing your farm?

MR. SALOPEK: Well, recently, it's been drought. We've been under extreme drought starting about 16-17 years ago. So our costs have gone up exponentially because of that. When you're near river water, it's a higher volume of water. So your labor to irrigate is less.

When you irrigate with wells, it's a slower process. Therefore, your labor costs are higher plus electricity or diesel for the wells. That's been one of them.

In the last several years, the increasing price of fuel. I used to buy tractor tires for about $350. The same tires over $800. We've seen diesel and gasoline double and triple in costs.

And everything that is tied to agriculture is all fuel based. So our fuel costs, I used to buy nitrogen back a decade ago for about 11 cents a unit. The same unit of nitrogen today is almost 80 cents. So it's had a 700 and some percent increase.
And I don't agree that there is no inflation in this country. I'm not quite sure what part of the country they're talking about. But where I live it's pretty high.

MS. SCHMAEDICK: Thank you. I have noticed that some of the pecan orchards here are irrigated using flood irrigation. Why is that practice used here?

MR. SALOPEK: Mostly it's because of the river water and that's how everything was established. The river water here has a lot of silt in it. And to use a drip type system or a sprinkler type system, it can be done. But it takes a very extreme filtration system in order to keep that accurate on your sprinkler. It will stop up with all the silt.

And well water doesn't have much silt in it. But there's only so much infrastructure you can do it with.

MS. SCHMAEDICK: Thank you. For my last question, you touched on pecans and how you can freeze them. Why do you freeze pecans?
MR. SALOPEK: To uphold the quality.

MS. SCHMAEDICK: What about the quality are you upholding?

MR. SALOPEK: The best quality. The day it's harvested is the best quality. So if you can retain that initial harvest quality you're better off and the sheller is better off because they have a very good product to work with.

MS. SCHMAEDICK: So by quality do you mean for example the oil content? Is that prevented from becoming rancid?

MR. SALOPEK: It does. It slows the breakdown in the oil. It keeps the color up. And it just absolutely preserves quality. When you take them out of the freezer, if you were to put a pecan that was 11 months old or 12 months old next to a new pecan, you would not be able to tell the difference in the color and the quality.

MS. SCHMAEDICK: So when that pecan produce is out of your cold storage and it is put into the stream of commerce --
MR. SALOPEK: Yes.

MS. SCHMAEDICK: -- does the industry currently have the ability to ensure that quality is maintained all the way to the consumer?

MR. SALOPEK: They should be able to if they handle it right. Once I put it on the truck, I know it's pretty good.

But what happens from that is going to be the processors' responsibility to take care of it. I mean it makes their job -- When they do a good job or get good product to begin with, everything should be uniform. They don't get rejected loads or quality issues or anything like that. So it does help to start off with a good product.

MS. SCHMAEDICK: And are there potentially packing requirements or materials that could be developed that would help retain quality for the consumer?

MR. SALOPEK: The one thing that would help a lot and I think this proposed marketing order could help would be to educate the people
who sell pecans at the grocery store level on how
to maintain a top quality pecan. If they could
be in some sort of refrigerator storage at the
stores and I know that's basically expensive or
keep them refrigerated and only put a limited
supply out in the store instead of putting them
all out there to sit on the shelves for three or
four months.

I've seen pecans change color on the
shelf. And it just depends on the volume of
sales. Yes, there could definitely be some
improvements in education.

MS. SCHMAEDICK: Do you believe that
if a consumer is presented with a fresh pecan how
would that consumer react?

MS. SCHMAEDICK: Excited. A lot of
people have never tasted a fresh pecan. They
think they're supposed to be red instead of
golden. And there's a dramatic difference in
taste.

MS. SCHMAEDICK: So would that
consumer be likely to repeat purchases?
MR. SALOPEK: I think so.

MS. SCHMAEDICK: And would that benefit the overall industry.

MR. SALOPEK: It would. It would help a lot.

MS. SCHMAEDICK: Thank you. No further questions.

MR. SALOPEK: Thank you.

JUDGE GUTHRIDGE: No more questions from the Department of Agriculture. Does anyone in the audience have any questions for Mr. Salopek?

I'm sorry. Mr. Quiros. You have follow-up questions.

MR. QUIROS: Yes sir.

REDIRECT EXAMINATION

MR. QUIROS: Mr. Salopek, I'm going to show you what is Section 986.14 of Exhibit 1. If you would take a minute to read the definition of fiscal year to yourself. I know you're familiar with this, but I wanted to show it to you before I ask you questions.
There was a question with regard to carry in inventory. Why is this important to you and when is that number important to you?

MR. SALOPEK: Well, it's very important going into the new crop. And if you have a very large carry in crop storage number and there is depending on the crop estimate that's coming, you can take the historic consumption of pecans and have a pretty good feeling if we're in a bit of an oversupply type situation or an under supply situation. And if you're in an oversupply situation, there's a change that you're going to see a softer market.

MR. QUIROS: So help me with the math here. So carry in inventory plus the projected crop size --

MR. SALOPEK: Yes.

MR. QUIROS: -- factored by the experience of demand in the past few years helps determine the price. Is that what you're saying?

MR. SALOPEK: It definitely has an impact on it.
MR. QUIROS: So understanding the carry in inventory is a critical component of understanding what might be a price set.

MR. SALOPEK: Correct.

MR. QUIROS: And having looked at the definition of fiscal year, it begins on October 1st and ends on September 30th. Having that carry in inventory number as of August 31st is part of that equation that you need to know.

MR. SALOPEK: I believe so, yes.

MR. QUIROS: And right now, what's your view of the value of the information that you're getting with regard to the carry in inventory?

MR. SALOPEK: It's very important. It allows you to understand at least for me what we're looking at in the supply 12 months ahead.

MR. QUIROS: Now tell me a little bit about what you think about the quality of that information right now.

MR. SALOPEK: It's all we have. I would say there's definitely some wiggle room in
those numbers.

MR. QUIROS: Right. And you're familiar with Exhibit 1, Section 986.65. You can take a minute to refresh yourself. This is the section with regard to marketing policy where the council will be required to review certain information and make reports to the USDA and the public with regard to that. Would that be helpful for your business to have a group throughout the entire production area be under the responsibility of the Act to report accurate information with regard to the carry in inventory?

MR. SALOPEK: Very much so.

MR. QUIROS: Okay. Thank you. You mentioned cold storage and storing at zero degrees and you said you felt there was no degradation for 10 or 11 months. And then you said up to several years. I know you may not be a food scientist. But do you feel like up to maybe two years there's pretty good preservation?

MR. SALOPEK: Yes, I would agree with
MR. QUIROS: Again, under Exhibit 1, as part of the authorities under 986.68, the authority for research and promotion activities, would it be helpful do you think to your business and to the industry across all regions to have research done with regard to how long pecans can stay in cold storage before they start to degrade?

MR. SALOPEK: I wouldn't see any harm in that information.

MR. QUIROS: Would it be helpful?

MR. SALOPEK: I think so.

MR. QUIROS: You think it would be helpful to the shellers.

MR. SALOPEK: I think it would be helpful to the shellers and I think it would be helpful to the grocery stores.

MR. QUIROS: Thank you. Let's talk about the grocery stores. Again, I know that you're not a food scientist. We haven't qualified you as that type of expert. But from
your general knowledge of being in the pecan business all of your career, we haven't talked about sort of general degradation without freezing. Talk to us a little bit how long pecans can stay on a shelf without degradation. Or what are the stages of that degradation as you understand them?

MR. SALOPEK: Well, I have very limited experience with the grocery stores other than seeing what's there. But I do have a lot of experience on the farm. And we're not going to pick every pecan on the farm unfortunately. You always have a few that are left over.

You could go out to the farm today and find a pecan and it's August and it's been 100 degree weather. Some are still hanging on the trees. And it's edible. And it does not taste that bad. It may be a little dark, but it's not as flavorful as it was in December when it was first ready. The stages of that are fairly slow.

Now when you remove the shell from a pecan for whatever reason the degradation is a
little quicker. And Mother Nature has something figured out in there and it will degrade not as quickly as it is once the shell is removed.

MR. QUIROS: Do you ever see pecans on a grocery store shelf?

MR. SALOPEK: Yes.

MR. QUIROS: And how are they packaged?

MR. SALOPEK: Normally in cellophane bags in anywhere from several ounces to maybe a couple of pound bags.

MR. QUIROS: Are they shelled or are they in shell?

MR. SALOPEK: They're typically shelled.

MR. QUIROS: And have you ever observed what quality those pecans were and the degradation of those pecans?

MR. SALOPEK: I have.

MR. QUIROS: And do you have an opinion about those or is it a wide variety?

Tell me what you think.
MR. SALOPEK: Well, it's a wide
variety. Normally, this time of year they're
probably a little darker in color.

MR. QUIROS: Have you ever observed
any that you worried were rancid?

MR. SALOPEK: I don't think I've seen
that. I've had some that I would think hard
about eating.

MR. QUIROS: Yes. Thank you. When
you said that you put your crop in cold storage
and you said part of that was for shipping
reasons. Was part of that also because you felt
like you would have better market information
later in the season about what prices have been
paid across the production area?

MR. SALOPEK: Yes, that is definitely
a component.

MR. QUIROS: And tell me about that.
What was your reasoning when you were thinking
about putting them in cold storage and thinking
about those prices?

MR. SALOPEK: It's just a wide price
range that I have been experienced to in the
previous 30 years of my career. You know I've
seen prices move from one week to the next as
much as 25 cents a point which is like 15 cents a
point. And when things get very erratic like
that, my gut reaction now that I have a place to
store them is to step off the starting line and
let the dust settle.

MR. QUIROS: That's right. So when is
your harvest typically ending?

MR. SALOPEK: Right around the first
of the year.

MR. QUIROS: Right around the first of
the year. And if you put them in cold storage
when is it likely that you're selling those? Or
in past experience, when have you been selling
those pecans?

MR. SALOPEK: It just varies. I've
actually sold pecans, the whole crop, in January
and delivered the pecans in September for the
processors. We worked out a cold storage
arrangement.
I have sold part of the crop up front and just sold pieces of it as we go throughout the year. So I don't really have a set marketing plan. I just wait as I get information and make a decision then.

MR. QUIROS: You're just trying to get comfortable with the price.

MR. SALOPEK: Correct.

MR. QUIROS: Make sure it's a fair price.

MR. SALOPEK: Yes.

MR. QUIROS: Thank you. Please answer. There's a question about the 50,000 pounds. What's the typical -- If you could express an opinion, what's the typical average pounds per acre that you have in the west region?

MR. SALOPEK: I think 2,000 pounds is a good number.

MR. QUIROS: It's a good number.

MR. SALOPEK: If you're doing everything in writing, it might be a little higher. And if you're doing the absolute bare
minimum, it's going to be dramatically lower.

MR. QUIROS: Right. When we talk about 50,000 pounds for four years as being one of the criteria to being a grower, those four years, part of that was to reflect on and off years droughts, water conditions. Do you think that's fair to have an average over several years as opposed to just using the single year as the point of reference?

MR. SALOPEK: Yes. I think that's fair.

MR. QUIROS: As a farmer, have you seen variation on crop sizes based on external factors?

MR. SALOPEK: Very much so.

MR. QUIROS: Thank you. I'd like to show you what has been the inner handler relationship real quickly. Excuse me a second.

(Off record discussion)

Your Honor, I think I've changed that. I think I'd like to go to assessments please.

I'm going to show you what are the sections in
Exhibit 1, (h) and (I). I'd like you to take a
look at it before I ask you any questions. It's
Exhibit 1, Section 986.61, Subsection (h).

Take a look at this, Mr. Salopek. It
says "Every handler warehousing in shelled
pecans" -- this is a handler section -- "shall be
identified as the first handler of those pecans
and shall be required to pay the assessed rate on
the category of pecans in their possession on
that date.

So this says to us -- and I'm going to
ask you this as a question -- doesn't this say
that a handler that is holding pecans on August
31st will be required to pay the assessment rate
if the pecans are in their possession on that
date?

MR. SALOPEK: That's the way I
interpret it, yes.

MR. QUIROS: Thank you. Now I'd like
to show you Section 986.61 of Exhibit 1,
Subsection (I) and let you take a moment to read
that.
Mr. Salopek, this is a little different. This is a section that relates to growers as opposed to handlers. And it says, "On August 31st of each year, all inventory's warehouse by growers from the current fiscal year shall cease to be eligible for inner handler transfer treatment."

So this is a section where it says "Instead such inventory will be required to first handler that handles such inventory to pay the assessment thereon in accordance with the prevailing assessment rates at the time of transfer from the grower to said handler." Isn't it true that this section does not require a grower to pay an assessment as of August 31st?

MR. SALOPEK: That's the way I read it.

MR. QUIROS: Thank you, Mr. Salopek.

What it does say is inner handler treatment will not be available after August 31st to growers that pass this on to handlers. Is that true?
MR. SALOPEK: That's my interpretation.

MR. QUIROS: Thank you, Mr. Salopek. I just wanted to clear up those sections. Now that I have you here. You're an expert on irrigation in the west.

Tell us a little bit about this area, why the Mesila Valley and the other valleys matter and explain a little bit about irrigation in the various ways that you could irrigate and sort of the benefits. You started on some of that, but I'd love to hear a little bit more of that from you.

You know this area well. You've been in this all your life. And it would be I think illuminating for all of us to understand the water constraints.

Also I'd like you to talk a little bit about the cost of water and whether you pay for water or don't pay for water. What are your costs associated with irrigation?

MR. SALOPEK: Okay. I would say in
this area 95 percent or more is all flood area.

When you start getting over into Arizona, there's a lot more drip and sprinkler type irrigation.

Flood area irrigation has been established here prior to growing alfalfa, cotton, some of the other crops with all these flood areas. And that is the type of infrastructure that we have.

This valley and the El Paso valley are river valleys. This is alluvial soil. So you can go anywhere from a very sandy soil to a very nice loam to something that you could make adobe bricks out of. And you could have a 48 block that will have four or five different types of soil in it. It makes it a real challenge farming and trying to determine how to irrigate.

Our typical irrigation season starts right around the middle of March and goes to the end of October for pecan trees. Now some of the other crops are a little bit different than that. A typical irrigation cycle is approximately every two weeks.

There will be a little wider spread in
the beginning of the season when it's still cool.

We don't have -- The trees don't have a lot of
foliage on them. When you get to the latter part
of the season your irrigation cycle could be as
short as seven to ten days. So there is a
variation in there.

And that depends on the profit
constraints as well. When the nuts are sizing,
filling up with water, trying to create the
kernel, there is a lot more requirements in
there. What I tell everybody is kind of
transition from being a kind of cotton farmer
mentality at the beginning of the season to a
vegetable farmer at the end of the season where
if you irrigate at midnight you better irrigate
at minimum. And kind of the gist of irrigation.
I can go in a little further if you'd like.

MR. QUIROS: Tell me about pumping if
you were pumping subsoils and any issues related
to soil.

MR. SALOPEK: Well, the irrigation
that we have, the river water is always the best
quality. But you don't have it all the time, especially over the last 15 years.

The groundwater has varying qualities in salts. The more salts that are out there that stops the plants from absorbing water properly. And it causes burn on the leaves and it impacts the nuts quality some. And it can be dependent on the type of a well you have. So there is a big variant cost in there. It's very expensive to pump.

But our most expensive water has been over the last few years our irrigation water. We spend about $80 an acre to maintain our district. We can get on good water years under three feet of water. Last several years, we've only been getting anywhere from four inches to seven inches of water.

So when you do the math on that, we're spending about $200 an acre foot just to get that little bit of water from the canal system. But we're happy to get it.

When you're irrigating with the wells,
depending on the depth that your well will sit at
besides the horsepower and the motor that you
have it ranges anywhere from $25 to $40 an acre
foot on the cost of that. And it takes
approximately five to six acre feet of water to
grow a good pecan crop.

MR. QUIROS: Tell us how you get the
water from the river to your fields. Is there a
pump involved?

MR. SALOPEK: Say that again.

MR. QUIROS: Tell us how you get the
water from the river to the fields.

MR. SALOPEK: Well, there is a canal
system that starts from Elephant Butte Dam which
is about from here 85 miles north and it falls
into the river and then we have these diversion
dams that are spaced throughout the river. And
they take water out through the canal systems.
And then from the main canal we have smaller
tributary canals.

That water will travel through the
canals. You place the order with the District
and if you're on a good part of the canal you'll get water within 24 to 48 hours. Where I happen to be at I've always been a drought because it could take up to 10 days to get the water even when the lake is full.

MR. QUIROS: And when you say $200 per acre, that's just for the cost of the water.

MR. SALOPEK: Yes, during the drought, I mean if we got three acre feet we're paying $80. You're looking at $25 an acre foot. That cost has been varying a lot, but it's just been one of the costs that has been added on top of where we are.

MR. QUIROS: Any other costs associated with getting that water there in terms of diesel fuel or anything else? Or is it just a flow downhill from that?

MR. SALOPEK: Most of them are gravity flow. I do have parts of my farm that have some lift pumps in them. And that was just to get better access to the water. So there is some energy cost obtaining that water.
MR. QUIROS: Now if you could put this in perspective. Of all the agricultural inputs to growing pecans, how important is water?

MR. SALOPEK: You wouldn't have pecans without it.

MR. QUIROS: Well, let me follow up on that. Can you grow pecan trees in New Mexico without irrigation or outside of a river or a alluvial model?

MR. SALOPEK: No.

MR. QUIROS: Thank you. And while I have you here talk about major cultural challenges in the west of growing pecan trees?

MR. SALOPEK: Well, we have abundance of sunlight which is a bonus. The cost of farmland is very high. And the cost of establishing culture is incredibly high.

To buy one acre of land anymore here is probably $15,000 to $20,000 an acre. And then you're looking at if you've been doing it a long time you might get full production in eight years. Chances are it's going to be 10 to 12 to
really get in full production.

You're going to have all these
capitalized costs that you'll have to deal with
that you're going to pay for for the next 15 or
20 years. When I was growing up when my father
was transitioning our farms from row crop farms
into a pecan farm, we pretty much starved from
the '60s to the '70s.

I mean you're transitioning this farm
into a pecan orchard and there's absolutely no
income. And we tried to grow cotton in between
and what we know now is when we're growing cotton
in between we were probably slowed the trees from
developing by three or four years.

You can try and grow alfalfa there.
And you're competing with another plant. I mean
you have to eat, but it's an extremely tough
barrier to enter. And if you can survive it,
you're glad you did if you have luck.

The last year right before my father
passed away we were going to have our best crop
in 1978. And it was Memorial Day. A big dark
cloud came over and took the whole crop over all
of the southwest. Not just our farm.

We had one little bitty corner of the
farm, maybe about five acres, that didn't get
taken out. And I remember my dad said, "I wish
it had been gotten too because now I don't miss."

MR. QUIROS: You said between $15,000
and $25,000 an acre. That's for irrigated,
right?

MR. SALOPEK: Yes.

MR. QUIROS: And if I -- I know you're
not qualified, haven't been qualified as a real
estate expert, but how much do you think land
would be that did not have irrigation?

MR. SALOPEK: Some of the desert lands
out here, gosh I don't know. I mean there's
ranch land up here that doesn't have irrigation
that if you put water on it probably you could
farm it. That's depending how close it is to the
cities and what have you. There are lots of
different factors. There is ranch land selling
for $150 to $200 an acre.
MR. QUIROS: So the difference is water.

MR. SALOPEK: It's all water.

MR. QUIROS: Okay. We just did simple math and we've talked about 30 acres and 50,000 pounds. So 30 times let's just use your midpoint of $20,000. To be a base farmer your land costs for irrigated land would be approximately $600,000.

MR. SALOPEK: At least.

MR. QUIROS: Thank you. Plus the seven or eight years of no crop.

MR. SALOPEK: When you establish a farm, just to buy the trees is going to be about -- I think trees are selling for $25 a tree now. You're putting 50 trees to the acre. So whatever that math comes out to, about $1400 an acre in tree costs.

And then you're going to farm it, till it, take care of it for the next several years. You're going to have at least $1,000 an acre to $1500 an acre establishing that orchard. So it's
a very expensive proposition.

MR. QUIROS: To be a commercial farmer, it takes a fair amount of time and capital.

MR. SALOPEK: It does and life.

MR. QUIROS: Thank you very much.

Judge, we have no further questions of Mr. Salopek.

JUDGE GUTHRIDGE: Does the USDA have any?

MR. HILL: Just a quick follow-up.

RECROSS EXAMINATION

MR. HILL: He asked you a question that was asked about information and calculating numbers.

MR. SALOPEK: Yes.

MR. HILL: You responded I believe that there's some room in those numbers and you also said it's all that we have. So my question is are you trying to say that the current numbers are less than reliable.

MR. SALOPEK: It would appear that way
from my past experience.

MR. HILL: So are you also saying that this current marketing order and its reporting of numbers it would improve how we're doing business, you as a large grower and other smaller growers as well?

MR. SALOPEK: Dramatically.

RECROSS EXAMINATION (Cont'd)

MR. HINMAN: Don Hinman with the USDA. Thank you for your testimony and your extensive answers to the questions. I want to follow up about your comments on price variability. I believe you just made a point that it can vary 15 cents per pound in a week or a very short period of time. Is that correct?

MR. SALOPEK: Yes.

MR. HINMAN: And you used a different measure of that. Was it 25 cents a point? I wasn't sure I understood that terminology. Could you explain what the 25 cents was referring to?

MR. SALOPEK: Sure. We were paid on the quality. So if you take a pound of pecans
and you separate the shell from the kernel and you come back and you weigh the kernels, you divide it into your original weight and you'll come up with a shell which is say 56 percent of shell out.

You would take that 56 percent number and multiply it by the 25 cents price variation. And that would be the decrease or increase of price depending on which way it went on the value.

MR. HINMAN: Thank you. I think you also mentioned that it could vary as much as a dollar per pound in a few weeks. Is that correct?

MR. SALOPEK: Yes.

MR. HINMAN: In your view, given the limitation of the Federal marketing order, give us some additional details on how you think that price variability situation could be improved through the implementation of the order.

MR. SALOPEK: I think with accurate data there would be the ability to predict. It's
a twofold prong and I'm not going to blame everything on cold storage. When we have inaccurate crop predictions, we've had crop predictions that have been 280 million pounds and then all of a sudden it's 360 million pounds.

And there's not an finite amount of capital to buy this crop. So what happens after a while when people invest in this buying crop and if the pecans keep rolling in the price is going to go down because there's less money available to buy the crop. That's one problem.

Then when the industry gets a lesser value pecans, the person that has the cheaper inventory has the advantage over the rest of the industry.

MR. HINMAN: Thank you. No further questions, Your Honor.

JUDGE GUTHRIDGE: If I could follow up on one of this questions. You say a dollar a pound change. What percentage change is that?

MR. SALOPEK: It depends on the year.

You know it could be up to 30 percent. We
experienced that as recent as 2012. From the price in September -- and I'm just going off memory -- it went down almost $1.30 a point in a relatively few week period.

JUDGE GUTHRIDGE: Any other USDA questions? Mr. Quiros?

(No verbal response)

JUDGE GUTHRIDGE: Any questions from the audience?

(No verbal response)

Mr. Salopek, you're excused.

(Witness excused)

MR. QUIROS: Your Honor, can we do a sound check on this mike and move it maybe a little bit forward? It doesn't seem to be working today.

JUDGE GUTHRIDGE: I'm not sure it was working yesterday.

(Off record comments)

Any time you want to call your next witness.

MR. DAVIS: We call Ms. Jennifer Ivey.
Ms. Ivey, can you come to the front?

JUDGE GUTHRIDGE: Ms. Gonzalez, are you ready?

MS. GONZALEZ: Yes.

(Whereupon, the above-referred to document was marked as Proponent Exhibit 31 for identification.)

JUDGE GUTHRIDGE: Please raise your right hand.

(Proponent Witness Jennifer Ivey Sworn)

Proceed with your case.

DIRECT TESTIMONY

MR. DAVIS: Good morning, Ms. Ivey.

MS. IVEY: Good morning.

MR. DAVIS: Thank you for being here.

I understand you have prepared a statement you'd like to deliver.

MS. IVEY: Yes.

MR. DAVIS: Why don't you proceed.

MS. IVEY: My name is Jennifer Ivey.
That's J-E-N-N-I-F-E-R I-V-E-Y. I live in El Paso County, Texas. My husband and I farm 400 acres of improved pecans in El Paso County. We would be classified as a large pecan grower under the Small Business Administration definition.

I have reviewed a copy of the proposed Federal Marketing Order as published in the Federal Register. I am in support of the proposed Federal Marketing Order for four primary reasons.

First, we need more research and promotion to sell our crop to the domestic U.S. market. Other tree nut groups are organized and spending money and we need to do the same.

Second, we need better marketing and price data. We rely industry guesses and we need better to make more informed selling and farm investment decisions.

Third, the handling authorities on size, grade and packaging are important if we are going to sell more pecans to domestic consumers.

And we need to work on these items in the future.
Finally, we need an organization where all industry stakeholders meet and figure out how to move our crops forward. Too much time and energy is wasted because of growers and handlers are not working together in response to the U.S. consumers.

I understand that the Federal proposed order states that only growers of more than 50,000 pounds of average production per year over the last four years will be allowed to vote on the proposed order. In my opinion, this threshold is reasonable because the grower that does meet this threshold is not a commercial grower. Any grower that is smaller than the proposed order could not justify their costs in a hearing, it is such a small production and it is most probably a seller of pecans from old trees that happen to be on the property or a healthy farmer or one that does not plant all commercial plants on the farm.

I am not aware of anyone in my area that has a commercial farm that is smaller than
30 acres or produces less than 50,000 average
pounds per year.

I have reviewed the economic analysis
summary prepared by Dr. Marco Palma specifically
the projected average price of 6.3 cents per
shelled pounds versus an average of 2.5 cents per
in shell pound cost. I have read that
promotional deliveries price. Overall I am aware
of the cost of the proposed marketing order may
impose and I do not believe these costs are
unduly burdensome.

Further, I believe that the benefits
of the Federal Marketing Order will greatly
outweigh any costs associated with it. I am
Secretary/Treasurer of the West Texas Pecan
Association, a grower association that focuses on
the needs of the growers in West Texas.

As an officer of the West Texas Pecan
Association, I do not think that the work of the
American Pecan Council will in any way duplicate
the work and roles of the West Texas Pecan
Association. Both organizations have
complimentary aspirations.

The American Pecan Board has kept our organization informed about its efforts on the proposed marketing order. Representatives of the American Pecan Board regularly attend our meetings to listen to us and to answer our questions. I also know personally several board members of the American Pecan Board.

In conclusion, I fully support the proposed Federal Marketing Order for Pecans and encourage the Secretary to implement the Order as proposed. I will be happy to answer any questions you may have.

MR. DAVIS: Thank you, Ms. Ivey. Let me clarify for the record. The Economic Analysis Summary of Dr. Palma that you referred to I believe that appears in this record as Exhibit 23.

And also I would note that your curriculum vitae is attached to your statement.

Is that correct?

MS. IVEY: That's correct.
MR. DAVIS: Your Honor, we tender as Exhibit 31 the testimony of Ms. Ivey.

JUDGE GUTHRIDGE: Is there any objection?

MR. HILL: No objection, Your Honor.

JUDGE GUTHRIDGE: Any objection from any member of the audience?

(No verbal response)

JUDGE GUTHRIDGE: With no objection, Exhibit 31 is admitted.

(Whereupon, the above-referred to document marked for identification as Proponent Exhibit 31 was received into evidence.)

MR. DAVIS: I have no questions. I'll reserve.

JUDGE GUTHRIDGE: Does the Department of Agriculture have any questions?

CROSS EXAMINATION

MS. SCHMAEDICK: Melissa Schmaedick with USDA. Good morning, Ms. Ivey.
MS. IVEY: Good morning.

MS. SCHMAEDICK: So you mentioned that you are an officer with the West Texas Pecan Association.

MS. IVEY: That's correct.

MS. SCHMAEDICK: What is your role with that group?

MS. IVEY: I assist my husband who's the president with letters and we organize the meetings for all the local growers and keep them up to date with the different pests that are around. And we just provide all the information that's necessary in our area.

MS. SCHMAEDICK: Are those activities part of what the Association does? What types of things do you provide for your members?

MS. IVEY: Well, just general information about what's happening in our area. That's mostly what we provide.

MS. SCHMAEDICK: And you mentioned pest issues. Do you have pest issues there?

MS. IVEY: Well, we have those issues
and we bring Dr. Lucero over to discuss different things about these bounds.

MS. SCHMAEDICK: Okay. Thank you.

And as an officer of this Association, have you had the opportunity to speak with the members about the proposed marketing order?

MS. IVEY: Oh yes.

MS. SCHMAEDICK: In your opinion, is there a broad based understanding of the proposal among your members?

MS. IVEY: Yes, there is.

MS. SCHMAEDICK: What would you say is the level of support for the proposal?

MS. IVEY: I think overall there's very much a support towards it.

MS. SCHMAEDICK: And are you aware of any concerns that are of particular to your group of members?

MS. IVEY: I think mostly they're concerned with the representation and how it's going to play out. Now that it's been more defined, I think more and more the ones are very
comfortable.

MS. SCHMAEDICK: Thank you. And in terms of our representation on the council, would you foresee yourself potentially fulfilling or wanting to fulfill a seat on the council at some point?

MS. IVEY: That would be fine. I never really thought about it. But sure.

MS. SCHMAEDICK: Okay. Thank you.

That concludes my questions.

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Good morning. Don Hinman USDA.

MS. IVEY: Good morning.

MR. HINMAN: You mentioned the need for more research. Could you provide some examples of the kind of research that you would like to see undertaken if the order is implemented?

MS. IVEY: I particularly would like the health benefits to be made aware especially in our society where health is just the number
one issue for most people and quality of their food. In comparison to the other nuts that are out there, pecans are so much better. And without that research we can't back it up.

MR. HINMAN: Thank you. And one additional question. You mentioned your support for handling authorities by size, weight and packaging to overcome it. Could you go over some of the details on how you think those authorities would help the market?

MS. IVEY: I don't know.

MR. HINMAN: Handling authorities on size, grade and packaging are important. If you are going to sell all kinds to domestic producers, for example, how those authorities if implemented would improve the market?

MS. IVEY: Well, of course, any data that's going to improve the price and the ability for us to know how much it's going to be worth for us to continue in the whole production. Just as it is with many other products, you want to know what your competition has and what you're up
against. So just to help you become a more productive farmer.

MR. HINMAN: Thank you. No further questions.

JUDGE GUTHRIDGE: Any more questions?

MR. HILL: No.

JUDGE GUTHRIDGE: Any follow-up, Mr. Davis?

MR. DAVIS: I'll just follow up on Mr. Hinman's last question.

REDIRECT EXAMINATION

MR. DAVIS: Do you believe that if there were standards on quality that perhaps that would help consumers make more informed decisions? They would know that a particular grade of pecan would be worth paying more for or a lesser quality worth paying less for?

MS. IVEY: I think so. I mean compared to what is in the market right now for a C as a pecan it would make a great difference.

MR. DAVIS: And do you believe that if there were uniform standards on the safety
concerns in handling that consumers might be more
confident in buying a product that they know met
certain standards and therefore they could be a
little more confident in serving it to their
family? Or they might be more likely to serve
that product to their family.

MS. IVEY: Of course, definitely.

MR. DAVIS: I have nothing further, Your Honor. Thank you.

JUDGE GUTHRIDGE: Anything else? Any
questions from the audience for Ms. Ivey?

(No verbal response)

Hearing none, Ms. Ivey, you are
excused. If you would check with Ms. Gonzalez
over there.

(Witness excused)

MR. QUIROS: Kevin Ivey please.

JUDGE GUTHRIDGE: If you could raise
your right hand please.

(Proponent Witness Kevin Ivey Sworn)

Okay. Proceed.

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

MR. QUIROS: Thank you, Your Honor.

DIRECT TESTIMONY

MR. QUIROS: Mr. Ivey, have you had an
opportunity to read the notice which is Exhibit 1
in these hearings which contains the proposed
Federal Marketing Order for Pecans?

MR. IVEY: Yes sir, I have.

MR. DAVIS: Thank you. And, Mr. Ivey,
have you had a chance to read Exhibit 23 as part
of these hearings which is the executive summary
prepared by Dr. Marco Palma of the Economic
Analysis of the Implementation of a Federal
Marketing Order for Pecans?

MR. IVEY: Yes, I have.

MR. DAVIS: Thank you, Mr. Ivey. Mr.
Ivey, I see that you have prepared testimony for
us today. I would like you to begin please with
that testimony.

MR. IVEY: Okay. My name is Kevin
Ivey. It is spelled K-E-V-I-N I-V-E-Y. I live in El Paso County, Texas. My wife and I farm 400 acres of improved pecans in El Paso County, Texas. We would be classified as a large pecan grower under the Small Business Administration definition.

I think the pecan industry needs to be unified. I support the Federal Marketing Order because it will be a place we can all sit down and decide how to move the industry forward to grow domestic U.S. pecan sales on a unified basis.

In recent years, we have seen a wide variation in the prices we have received from our pecan crop. Such wide variation in pricing makes it extremely difficult to plan for the future operation of our farms. While prices for pecans go up and down dramatically from year to year, our cost of production has steadily increased.

The lack of accurate market information on the anticipated size of the pecan crop in any given year also makes it difficult
for us to negotiate a fair price for our crop and
to make reasonable business decisions about the
investments in our farm. Increased prices and
more accurate market information would greatly
benefit our farms.

I think our farm and the industry
would also benefit in the future from grade,
size, quantity, packaging, shipping protocols and
other handling requirements as we compete with
other tree nuts for consumer attention.

I also understand under the proposed
Order only growers with more than 30 acres of
pecans or more than 50,000 pounds of average
production per year over the last four years will
be allowed to vote on the proposed Order. In my
opinion, this threshold is reasonable because a
grower that does not meet this threshold is not a
commercial grower.

Any grower that is smaller than the
proposed threshold could not justify the cost
inherent in such small production and is most
probably a seller of pecans for older trees that
happen to be on his or her property, a hobby farmer, or one that does not plan to put in all the commercial inputs, fertilizer, water, etc. on his farm.

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

I have reviewed the economic analysis summary prepared by Dr. Marco Palma, specifically the protected average price increase from 6.3 cents per in shell pound versus the average 2.5 cents per in shell pound cost. I agree that the promotion will increase prices.

Overall, I am aware of the cost the Federal Marketing Order may impose on my farm and I do not believe those costs are unduly burdensome. Further, I believe that the benefit of the Federal Marketing Order to my farm greatly outweighs any cost associated with it.

I am President of Western Pecan Growers Association and West Texas Pecan
Association. Both of these organizations focus
on pecan grower issues. I'm also First Vice
President of the U.S. Pecan Growers Council which
focuses on marketing pecans internationally.

As an officer of those organizations,
I can tell you that those proposed American Pecan
Council will not interfere with our efforts. If
anything, the proposed American Pecan Council
will be a complimentary, unifying organization.

The American Pecan Board has kept our
organization informed about its effort to the
proposed Federal Marketing Order.
Representatives of the American Pecan Board
regularly attend our growers' meetings to listen
to us and answer our questions. I also know
personally several members of the board of the
American Pecan Board.

In conclusion, I fully support the
proposed Federal Marketing Order for Pecans and
urge the Secretary to implement the order
proposed by the American Pecan Board. I will be
happy to answer any questions.
MR. QUIROS: Your Honor, we tender this as Exhibit 32 for the record.

JUDGE GUTHRIDGE: Is there any objection from USDA?

MR. HILL: No objection.

JUDGE GUTHRIDGE: Is there any objection from the audience?

(No verbal response)

With no objection, Exhibit 32 is admitted.

(Whereupon, the above-referred to document marked for identification as Proponent Exhibit 32 was received into evidence.)

Proceed, Mr. Davis.

MR. QUIROS: I have no questions at this time.

JUDGE GUTHRIDGE: Does the Department of Agriculture have any questions?

MS. SCHMAEDICK: Yes. Melissa Schmaedick.
CROSS EXAMINATION

MS. SCHMAEDICK: Good morning, Mr. Ivey. Thank you for your testimony.

MR. IVEY: Thank you.

MS. SCHMAEDICK: And thank you for joining us today. You mentioned that you were the president of the Western Texas Pecan Growers Association. Describe what that organization is about.

MR. IVEY: Okay. West Texas Pecan Association.

MS. SCHMAEDICK: Western Texas Pecan Growers Association.

MR. IVEY: Okay.

MS. SCHMAEDICK: Is that correct?

MR. IVEY: Yes ma'am. It's West Texas Pecan Association. Maybe there was a typo here.

JUDGE GUTHRIDGE: Anyhow, Western Pecan Growers and West Texas Pecan Association.

MS. SCHMAEDICK: My apologies.

MR. IVEY: Well, West Texas Pecan Association was set up in the late '60s. And I
believe it was set up as -- most of Texas is a weevil, quarantine area, pecan weevil which is a type of insect. But the five westward counties, far West Texas, are considered quarantine free.

And so the five westward counties in Texas are what comprise the West Texas Pecan Association. We have about 50 members. And I think we account for probably 80 percent of the production in the State of Texas in our counties.

MS. SCHMAEDICK: Thank you. I'm not familiar with the pecan weevil. Can you tell me more about that please?

MR. IVEY: No problem. Pecan weevil is an insect that has impacted some of the pecan growing areas in the United States. However, it is a native insect. And there are various areas where they grow pecans where the insect is not present. But there are areas where the insect is pretty prolific.

So the work of the State Departments of Agriculture they keep an eye on this insect like they do any other insect. And as far as the
Texas Department of Agriculture is concerned they
have Texas except for five westward counties in
Texas as far as research with Texas A&M
University.

There are a lot of places where the pecan weevil doesn't exist. However, it's an insect that -- it's a late season insect that emerges from the ground. They can -- After they come out, they chew into the nut and they deposit their egg and when the nut falls and the grub has that done they go down into the ground at 18 to 20 inches where it will pupae for two to three years.

And the reason why it's difficult to insect to control is because there's no way to monitor as they do with other insects, anything to pecan worms to cotton bollworm. They have pheromone where you can collect them in a trap and count them and more or less know what your economic threshold is and when you should treat the insect.

With the pecan weevil, it's very
difficult because they're not attracted to pheromones. The only way they could get them is to capture them.

MS. SCHMAEDICK: Thank you. And in your testimony, you said that you are in favor of the research authority. Would research of a pecan weevil be an example of perhaps maybe some help?

MR. IVEY: Are you talking as far as the Federal Market Order and being interested in doing research with them?

MS. SCHMAEDICK: Yes.

MR. IVEY: No, I think our State Department, Texas Department of Agriculture and New Mexico Department of Agriculture, Georgia Department of Agriculture and the USDA under the circumstances the insect control, they're doing a pretty good job of monitoring. I wouldn't see that there would be any benefit from the Federal Marketing Order to be involved in the control of the pest issue.

However, education on the part of the
insect would be good. And we already have things
in place for people to bring nuts from
quarantiners to non-quarantiners. They have to
have a requirement of chilling hours with that
crop to make sure that the insect was present in
the nuts. That would kill them.

MS. SCHMAEDICK: So if there were the
opportunity to collaborate research with the
existing research facilities and perhaps some
funding in the Federal Marketing Order to enhance
the research that currently exists, would that be
a favorable outcome in your opinion?

MR. IVEY: I think any embracement
could be involved in education. And the
embracement would be to make sure that the
shellers, the handlers, the first handlers, the
second handlers, the third handlers which we have
that the education and the knowledge of the
insect and the vectors or the way it can be
carried across to different parts of the United
States would be the most effective way to treat
and prevent the pecan weevil spreading.
MS. SCHMAEDICK: Thank you. Can you describe the pecan industry in West Texas? You mentioned that you have -- Is it 50 members?

MR. IVEY: We have around 50 members. Some of them very small and some of them large. We also have people that I included into the membership like our local Texas AgriLife constituents. Six regions which they have an honorary membership to the organization.

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

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. Mr. Ivey, I want to change the topic a little and try to draw on some of your expertise in terms of you planting. I saw that you're involved in nurseries and some of that background.

We've heard a lot of anecdotal evidence about new plantings coming on especially with crops or new trees that were planted in 2010 or 2011 that there's not good data on those. Could you give us your view of about how much you
think was planted during that time period or the kind of trees you see coming on to the market in the next few years? Do you have a best guess of what type of increase in production we're looking at?

MR. IVEY: Well, looking at the history of pecans, I know the pecan production acreage has increased and pecan production has remained at or about the same, maybe a little bit higher. A lot of that is due to someone could have 500 acres of trees if they have 1,000 acres of farmland and they go in and they remove trees and move them over to the other 500 acres. So basically that production gets cut down until those trees catch up.

The other thing is the plant population per acre. I have found that higher plant population in controlling the trees you do see better outcome of production breakthrough.

In the terms of new plantings, almost the things that I've seen. I myself count trees and I've been a lot of places and looked at the
new plantings. The amount of acreage that
they've been planting in the last five years --
I'll just take a wild guess -- in the Southwest
it would be upwards of 15,000 acres, 20,000 acres
possibly.

So if we're producing 330 million
pounds of pecans, I think the next decade we're
going to see that number double. So the
consequence of more production coming in which is
still a grain of sand in the production of
almonds or walnuts or anything else, I think the
time is now to move on this Federal Marketing
Order especially with the new plantings and the
up and coming.

There are a great number of places of
people who don't know what a pecan is, haven't
seen one or it's a legend to them. So I think
this is very good for our domestic market as far
as educating people here in America of America's
No. 1 Native nut.

MS. VARELA: Thank you. And just to
clarify a little when you refer to the Southwest
are you generally referring to West Texas and New Mexico or the entire southwestern region?

MR. IVEY: Okay. West Texas Pecan Association where I'm located at, I'm looking at going down to El Paso Valley which is the same. Tributes the same rivers, the Rio Grande, the same water.

The West Texas Pecan Association like I said we have about 50 members. Of those probably 40 of them are farmers large and small. Of these we have people who elect -- delegates -- who go to Western Pecan Growers Association. Western Pecan Growers Association comprises of five western countries of West Texas, Arizona, New Mexico and California. So we have representatives on the Western Pecan Growers at multi-states in the southwest United States.

And they are very complimentary to each other in the type of farming we do here, high desert, high altitude and low rainfall.

MS. VARELA: Thank you. That's all I have for you.
JUDGE GUTHRIDGE: If I could follow up on one. The 15,000 to 20,000 acres you're talking about, is that nationwide or is that in the western region?

MR. IVEY: I would say it's in the western region.

JUDGE GUTHRIDGE: Thank you. Got some more USDA questions.

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Don Hinman with USDA.

You mentioned on page two that your farming industry would benefit from grade, size, quality, packaging, shipping protocols. If, for example, there were in the future a grade/size/quality standards developed through the Order, how do you think that would benefit the industry?

MR. IVEY: I'm trying to think which way I want to attack this.

MR. HINMAN: For example, if there were uniform grade/size/quality standards do you think that would increase consumer confidence in the market for pecans?
MR. IVEY: One of the things on the quality for sure is I believe pecans should be a refrigerated product. That's personal. And I agree with my constituents that testified earlier that, yes, they ought to be a cold kept food or kept to a period so they don't degrade.

If you've ever had a fresh pecan and you've had a pecan that's been sitting on the shelf for quite a while, there is a huge difference between the two. The fresh pecan would outsell, outweigh any nut in the market if they were received fresh and people actually would taste what they're really about.

As far as the packaging, I mean that pretty much goes along with it all. If they're packed right, if they're kept in the freezer section or refrigerated section to keep them fresh, I think that's very important. As I was looking here I'm kind of lost here.

So you had the quality. And what was the other question on that?

MR. HINMAN: I would just refer to
that 1st paragraph where it's mentioned grade, 
size, quality, packaging and shipping.

MR. IVEY: Okay. That's another 
thing. The grade and size quality. I think that 
the playing field has evened down. My uncle and 
my grandfather helped with the pecan grades 
system.

There was a time when a lot of farmers 
were a lot more than irrigated farmers. And they 
had the USDA believing that the dryland cotton 
was better than the irrigated cotton. So a 
couple of my uncles and my grandfather came in 
and helped with the cotton classification system. 
And that evened the playing field. And then you 
could see quality standards what cottons were the 
best.

So taken from that angle, I realized 
that we produce a smaller nut here in the west. 
And if you've commercially grown the stuff, 
there's a great quality issue that's being missed 
with the smaller nut. I think our oil content is 
far superior and the nut is really good.
So I think a grading system as far as size, quality and everything I've looked at from pecan and leading down to the oil content. So as far as the grade and the size, I think that there is the definition of the grading system so that we have everything in the same playing field.

MR. HINMAN: Thank you. I don't have anything additional. No further questions.

CROSS EXAMINATION (Cont'd)

MS. CHILUKURI: Mr. Ivey, thank you for your testimony. If the marketing order (Inaudible)

JUDGE GUTHRIDGE: Hold it farther away.

MS. CHILUKURI: You would fall under the central region. Is that correct?

MR. IVEY: Pardon.

MS. CHILUKURI: You would fall under the central region because of where you're located.

MR. IVEY: Yes.

MS. CHILUKURI: Just in terms of some
of the challenges that you face, are they similar
to other growers in the central region? Or are they
more akin to what people in the western region?

MR. IVEY: I believe the difference between -- There's a vast difference between pecans for the east and west. However I think there's a lot of tradeoffs which is kind of new to the playing fields between the two of us.

They have fungicides and everything that they have to spray. But they get their water almost free. It falls out of the sky. We have our issues with the drought, especially in El Paso with the high salt content in our wells. Every time I irrigate with my wells I put the equivalent of 4,000 pounds of salt per acre. So there's ways that I have to try to beat that in order to try to get the salt out.

There are tradeoffs between the two. So I think we're kind of on the same plane as far as cost.

MS. CHILUKURI: Can you tell me a
little bit about your role as first vice
president of the U.S. Pecan Growers Council and
what you do?

Mr. Ivey: Yes ma'am. The U.S. Pecan Growers Council is specifically focused on
international promotion of pecans. I was new to this position this past year. I came in as the second vice president. And I've just been recently moved up to first vice president.

Ms. Chilukuri: And what kinds of issues did you work on in that council?

Mr. Ivey: Just the promotion of pecans.

Ms. Chilukuri: And I see the statement from page two from the statements, overall cost that a Federal Marketing Order may increase on my farm. And I do not believe this cost will be unduly burdensome. Can you explain what you anticipate those costs to be either types of costs or quantity?

Mr. Ivey: Can you say that question again?
MS. CHILUKURI: Sure. Pages two through three of your statement, you state overall I'm aware of the costs the Federal Marketing Order may impose on my farm. And I do not believe those costs to be unduly burdensome. In referencing costs, can you tell me more about what those costs are?

MR. IVEY: As far as the cost is the assessment that we're going to pay per pound for the Federal Marketing Order. I believe it's time we move forward and that we do that. I think (1) the -- This is going to get kind of deep.

The farmer is billed the sheller and the marketer. And the shellers fail to market in the market. And we had something we call a checkoff program at one time where it was a voluntary assessment where we would give money per acre to the checkoff program and we'd give that money for marketing.

It's a program that didn't work too well because when it's voluntary it's hard to get anybody to participate. You have people that
participate 100 percent. And you have people
that don't participate at all.

And I believe by organizing and
getting this assessment made to where it's
mandatory, it's going to help the organization as
a whole. And it's going to move us into a
position we've never seen or been in before.

And so I think it's time that the
farmers that have been participating in paying in
the checkout program, paying that assessment,
they've never really gotten a reward for the
farmer who has not participated. Now we can get
everybody together in order to do that.

Another thing too is getting the cat
and dog together, the grower and the shower and
putting them in the same room and having them
work together. I think that's very important. I
think it's going to carry this program leaps and
bounds. Now we're sitting in the same room and
we're looking at each other. We're trying to
work out our problems involving new data.

MS. CHILUKURI: Thank you. No further
questions.

JUDGE GUTHRIDGE: Any more questions from the Agriculture?

(No verbal response)

Do you have any, Mr. Quiros?

MR. QUIROS: Yes sir.

REDIRECT EXAMINATION

MR. QUIROS: Thank you, Mr. Ivey, for your testimony. A couple of follow-up questions.

The Western Pecan Growers Association and the West Texas Pecan Associations, those are both grower associations. Is that correct?

MR. IVEY: Yes sir.

MR. QUIROS: Thank you. I want to show you what is a portion of Exhibit 1, Section 986.68, authority for research and promotion activities. I would like you to focus your attention with regard to the descriptions of research here. You testified that certain entomological issues you thought were better handled at the state level. Do you think it would be valuable for you as a grower and for the
industry as a whole to have studies of production
research?

MR. IVEY: I don't know. I guess I
have a level of multiple feelings on that. I
think the production research is best left to the
universities in the states. Of course, as far as
in helping in terms of production research, it's
hard to decide how much further we can go to --
You heard what we have. Of course, I'm sure
there were done in like the 1960s or the '70s or
'80s as we go out into the future.

I think I would put the production
research a little bit lower on the list.

MR. QUIROS: How about marketing
research which is the next research there?

MR. IVEY: I think that should be at
the very top of the list.

MR. QUIROS: Thank you. So you think
that would help your farm and the industry as a
whole.

MR. IVEY: Yes, I do.

MR. QUIROS: Thank you. And then I'm
showing you the continuation of this section which talks about nutritional research. Do you think that would be helpful. There could be some industry wide management or establishment of research with regard to nutritional research in order to be able to promote pecans.

MR. IVEY: I think that goes one and one with marketing.

MR. QUIROS: Thank you very much. The next question I'd like to ask is you were mentioning a little bit about your estimate of additional acres that have been planted in the last couple of years. How important do you think it is to the industry to have future supply in these new plantings?

MR. IVEY: I think very important. Once America realizes just how good the pecan nut is I think it's really going to take off as far as getting the word out there. For the last 20 years of my life, I've always had a shaking methods and have eight to ten ounces of pecans in there. And I get blood work done regularly. And
my good cholesterol and bad cholesterol are off the charts. They have to handwrite them in. They're not even on the numbers.

MR. QUIROS: High or low?

MR. IVEY: Low. The bad cholesterol and the good cholesterol is high. So I'm never really worried about it because the doctor looks at it and says, "My gosh," I can't believe it because I'm off the charts and they have to handwrite in the numbers.

MR. QUIROS: And you attribute this to intake of pecans.

MR. IVEY: Yes, I do.

MR. QUIROS: And so the nutritional research that we just talked about if that was developed and well known and based on science you think that would be beneficial to the industry and to your farm.

MR. IVEY: Absolutely. In fact I think everybody should have a handful in the morning.

MR. QUIROS: I couldn't agree with you
more. You mentioned something in a discussion with regard to sizing and grading and what we call handling authorities under Section 986.69. Are you familiar or aware that the current industry sizing and grading requirements related to pecans were last promulgated in 1969 and 1986?

MR. IVEY: Yes, I was aware of that.

MR. QUIROS: And those are voluntary.

MR. IVEY: Pardon?

MR. QUIROS: That those standards in size and grading requirements are somewhat voluntary.

MR. IVEY: I think that there's an industry standard or a basis for which when you sell your pecans. We're working on some things. It's already been established and been approved for many years. We have had things which could more profound.

And of course in the upcoming Chinese market they like bigger pecans. So it's really pushed the direction and size wasn't important and now it's more important.
MR. QUIROS: Are you aware that there are any industry wide descriptions of sizing and grading -- let's just stick with those as an example -- that are not covered in the 1969 and 1986 announcements?

MR. IVEY: Not to my knowledge.

MR. QUIROS: Yesterday we heard testimony from one of the witnesses and he was talking about 1s and 2s. He was calling pecan sizing 1s and 2s. Is that a familiar term to you?

MR. IVEY: Yes sir, it is.

MR. QUIROS: Are you aware that that term is used in any of the promulgations with regard to sizing and grading in 1969 and 1986? Did they use the terms 1s and 2s in those pronouncements? Are you aware of that?

MR. IVEY: Yes sir.

MR. QUIROS: I just wanted to know if you thought there might be other terms that are being used for sizing and grading that are locally or colloquial that farmers know what they
mean but they may not in fact be reflected in the current sizing and grading requirements?

MR. IVEY: I don't know of any.

MR. QUIROS: Thank you. You mentioned the U.S. Pecan Growers Council. Tell us a little bit about that. We have some testimony later in our time. But tell us a little bit about what you're trying to do, what your goals are.

MR. IVEY: Well, that's to promote pecans outside of the U.S. And I know that we're trying to fill the large market of course. We're trying to get in more markets, India. And we recently went to Washington, D.C. to try to get some of the tariffs removed so that we can export more pecans to India.

MR. QUIROS: So the focus of the U.S. Pecan Growers Council is international. Is that correct?

MR. IVEY: That is correct.

MR. QUIROS: And you are aware that this is a domestic Federal Marketing Order. It's focused on the domestic market.
MR. IVEY: Yes sir.

MR. QUIROS: Thank you. Do you see any conflict between those two organizations?

MR. IVEY: No sir.

MR. QUIROS: Thank you. You mentioned before when you were asked questions about the assessment that the growers paid the assessment. I'm going to show you a copy from Exhibit 1 of Section 968.61. And I wanted to ask you. Are you aware that under the Act that no grower pays an assessment? Only handlers pay an assessment? Are you aware of that?

MR. IVEY: Yes sir.

MR. QUIROS: Thank you. And when you mentioned that it's time for the growers begin paying assessments and moving on what you are really referring is that that might affect your price? The payment of assessments by handlers might affect your price and there may be some costs to you as part of the Federal Marketing Order for Pecans. Is that what you were trying to indicate?
MR. IVEY: Could you restate that?

MR. QUIROS: Yes sir. You mentioned as part of your testimony a few minutes ago that it was time for the industry to move ahead. I'm loosely quoting you and start paying assessments and to move the industry ahead. I just wanted to make sure that when you were saying that you weren't indicating that growers were going to pay assessments, but that the whole cost of the Federal Marketing Order, a portion of that, could be borne by growers because they may receive a lower price from handlers because they know handlers will be paying the assessment price. Is that you were trying to indicate?

MR. IVEY: No, it wasn't. I guess I used that term loosely. However, the originators could not have any of the assessment made or putting payments into that unless it was pecans. And it's kind of the story of the chicken and the egg. All new wealth, our new wealth, that you can take something or take nothing and make something into, that's borrowing.
The gold miner, the person that collects gold from the earth, that mines gold from the earth, they're just taking value out of what it already exists. It's been there forever. The farmer is actually creating new value. And so I completely understand with the crop that as we go on I'm sure that there will be payment assessments. If it wasn't for pecan existing, then an assessment wouldn't be paid.

MR. QUIROS: Yes. But you're absolutely clear that under the Act that no grower really pays the assessment. They're not charged unless they become a handler.

MR. IVEY: Yes, I know that.

MR. QUIROS: Thank you very much. I just wanted to clarify that. No further questions, Your Honor.

JUDGE GUTHRIDGE: Anything else from Agriculture?

(No verbal response)

Anyone in the audience have a question for Mr. Ivey?
(No verbal response)

Then, Mr. Ivey, you're excused. If
you would check with Ms. Gonzalez over there and
see if she has any clarifications.

(Witness excused)

MR. DAVIS: Your Honor, as I think
I've told everyone yesterday afternoon, we have
one more witness that kind of had a time
constraint. So if we could put on one more
witness before we take a morning break. I don't
think it will be a long witness.

JUDGE GUTHRIDGE: I thought those were
the three you had time constraints for.

MR. DAVIS: There were four. There's
one more gentleman, Mr. Straley. Is that alright
or?

JUDGE GUTHRIDGE: Let me ask is Sammie
Singh here.

MR. SINGH: I've been here just for
one reason. I am available.

JUDGE GUTHRIDGE: Oh, I'm not asking
you to testify. I just wanted to know if you
were here right now.

MR. SINGH: Yes, I'm here.

JUDGE GUTHRIDGE: And I think I asked Ms. Ray back there to tell you you will be our fourth witness today. Do you mind being the fifth witness?

MR. SINGH: What I've heard, everything is in order and I'd rather --

JUDGE GUTHRIDGE: My question is can I pass you by to have somebody else.

MR. SINGH: Yes.

JUDGE GUTHRIDGE: Good. I had asked her to tell him to not go and I just wanted to not ignore him since he was here yesterday.

MR. DAVIS: Thank you. And we appreciate that. Thank you, Mr. Singh. We appreciate that courtesy.

Is Mr. Straley present?

(Whereupon, the above-referred to document was marked as Proponent Exhibit 33 for identification.)
JUDGE GUTHRIDGE: Mr. Straley, could please raise your right hand?

(Proponent Witness G.L. Straley sworn)

JUDGE GUTHRIDGE: Mr. Davis.

MR. QUIROS: Yes Your Honor.

DIRECT TESTIMONY

MR. DAVIS: Good morning, Mr. Straley.

MR. STRALEY: Good morning.

MR. DAVIS: Thank you for being here with us this morning. It is my understanding that you may have a statement that you'd like to give first and perhaps take some questions.

MR. STRALEY: That is correct.

MR. DAVIS: Thank you. Just lean forward into the microphone there.

MR. STRALEY: Okay. My name is G.L. Straley. It's spelled G.-L. S-T-R-A-L-E-Y. I live in Roswell, New Mexico. I am the CFO of Chase Farms and have been for the past three years.

Before Chase Farms, I spent 32 years with Farm Credit of New Mexico in various
capacities with a focus on agriculture lending.

My résumé is attached.

Chase Farms is a vertically integrated pecan business headquartered in Artesia, New Mexico. We currently have over 7,000 acres of orchards planted with over 4,000 acres currently in production in Arizona, New Mexico and El Paso County, Texas. Last year we produced over ten million pounds of pecans and we expect to double that production in the next six years.

On our farm, we grow the improved variety of pecans. Chase Farms also own a larger sheller, San Saba Pecans. Chase Farms is considered a large grower and a large sheller under the Small Business Administration definitions.

I feel like we have been informed about the process of securing a Federal Marketing Order and we have been given an opportunity to participate in the process.

I have reviewed the economic analysis summary prepared by Dr. Marco Palma,
specifically, the projected average price increase from promotion of 6.3 cents per in shell pound versus the average 2.5 cents per in shell pound cost.

MR. DAVIS: May I interrupt just for a second? Is that Exhibit 23 that I shared with you?

MR. STRALEY: That is correct.

MR. DAVIS: Thank you.

MR. STRALEY: Overall I am aware that the costs of the Federal Marketing Order may impose on our farm and handler interest and I do not believe those costs aren't overly burdensome. Further, I believe the benefits of the Federal Marketing Order to our farm and handler interest will greatly outweigh any costs associated with it.

I especially have two concerns that the proposed Federal Marketing Order addresses. First, we need to market to increase demand and help stabilize prices. Next, we need to continue researching the benefits of pecans. The American
Pecan Council is our best hope of doing both of these.

Also, I am aware that the proposed order may impose some direct costs on our shelling operation such as the one to three cents per pound assessment. I am aware there may be some indirect costs, such as the obligation to keep records of the amount of product we handle and the calculation and remittance of assessment to the American Pecan Council. I believe these direct and indirect costs are reasonable and are not unduly burdensome to our sheller operation.

The lack of accurate market information on the anticipated size of the pecan crop in any given year makes it difficult for us to negotiate fair prices for our crop and to make reasonable business decisions about future investments. Increased price stability and more accurate market information would greatly benefit our farm.

I think the pecan industry would also benefit in the future from grade, size, quality,
packaging, shipping protocols and other handling requirements as we compete with other tree nuts for shelf space and consumer attention.

I understand that under the proposed order any grower with more than 30 acres or more than 50,090 pounds of average production per year over the last four years will be allowed to vote on the proposed order. In my opinion, this threshold is reasonable because a grower that does not meet this threshold is not considered a commercial grower.

Any grower that is smaller than the proposed threshold could not justify the cost that are inherent in such a small production and is most probably merely a seller of pecans from older trees that happen to be on his or her property, a hobby farmer or one that does not plan to put all the commercial input such as fertilizer, water, etc. on this farm.

I also understand that only shellers that handle more than one million pounds of in shell pecans per year will be eligible to
nominate and to be elected to the sheller seats on the Council. I believe this is also a fair threshold.

First, I am not aware of any sheller in my area which handles less than one million pounds in shell per year that is not in the commercial shelling business. Further, if there are such shellers in my area I do not believe it would be --

MR. DAVIS: I'm sorry. Did you say this is not a commercial sheller business? I believe you said that.

MR. STRALEY: Yes. That is.

MR. DAVIS: That is a commercial.

MR. STRALEY: Sorry. I misspoke.

Further, if there is such a sheller in my area, I do not believe it would be commercially viable because such a small operation cannot invest in the required equipment or turn a profit on such small production.

The American Pecan Board has kept our team well informed about its efforts through its
website and personal meetings. In fact, Mr. Mike Adams met with Richard Chase, one of our owners, and Richard gave Mike some counsel on how to specifically handle substandard pecans which eventually was made part of the proposed Federal Marketing Order. I can say that the American Pecan Board has really reached out to all segments of the pecan industry over the last two years.

In conclusion, we fully support the proposed Federal Marketing Order for Pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. I would be happy to answer any questions anyone may have.

MR. DAVIS: Your Honor, Proponent would tender Exhibit 33, the testimony and statement of Mr. G.L. Straley and his curriculum vitae.

JUDGE GUTHRIDGE: Any objection from Agriculture?

MR. HILL: No objection, Your Honor.

JUDGE GUTHRIDGE: Any objection from
anyone in the audience?

(No verbal response)

Hearing no objection, Exhibit 33 is admitted into the record.

(Whereupon, the above-referred to document marked for identification as Proponent Exhibit 33 was received into evidence.)

MR. DAVIS: I'll reserve questions.

JUDGE GUTHRIDGE: Does the Department have any questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS EXAMINATION

MS. SCHMAEDICK: Good morning, Mr. Straley.

MR. STRALEY: Good morning.

MS. SCHMAEDICK: I believe it's still morning. Is that correct?

MR. STRALEY: Yes ma'am.

MS. SCHMAEDICK: Thank you for your
testimony. Just a couple. One quick clarifying question. On the first page of your testimony you said that you have over 7,000 acres planted and over 4,000 acres currently in production. So is that 4,000 out of the 7,000 or is it 7,000 in addition to 4,000?

MR. STRALEY: That would be 4,000 out of the 7,000 that we are currently harvesting pecans from. That would leave 3,000 acres we have planted that we are not currently harvesting.

MS. SCHMAEDICK: Thank you. And I wanted to ask you about a couple of your statements on the second page of your testimony. I'll just read them quickly so that we can have a reference point. You said you represent both a farming component and a handling component in your vertically integrated business. Is that correct?

MR. STRALEY: Correct.

MS. SCHMAEDICK: And then you go on to say you do not believe that the costs of the
proposed program are unduly burdensome. And then
later on also you said that same comment in
reference to your shelling operation.

MR. STRALEY: Correct.

MS. SCHMAEDICK: What exactly do you
mean by it not being unduly burdensome?

MR. STRALEY: That the costs as a
vertically integrated producer obviously we would
handle and sell those pecans ourselves. So we
would be paying that assessment ourselves for the
farm. We believe that those costs that would be
involved with that would be more than offset by
the benefit effect to us through increased prices
for our product.

MS. SCHMAEDICK: Thank you. You also
mentioned that you are the CFO of Chase Farms.
Could you tell me what CFO stands for?

MR. STRALEY: Chief financial officer.

MS. SCHMAEDICK: Thank you. So would
you say that you have a fair amount of experience
as a business person managing a business?

MR. STRALEY: Correct. In addition to
my years with Chase Farms, I was also 32 years as
an agricultural layman.

MS. SCHMAEDICK: Thank you. Do you
have a copy of the Exhibit 1 in front of you?

MR. STRALEY: Not right in front of
me. No, I do not.

MS. SCHMAEDICK: Just a moment. We'll
get that copy to you to review.

MR. DAVIS: I'm sorry. What exhibit?

MS. SCHMAEDICK: Exhibit 1 please.

MR. DAVIS: Exhibit 1, okay. I just
happen to have that handy.

(Off record comments)

MS. SCHMAEDICK: So you've indicated
that you're familiar with this proposal, Exhibit
1. Is that correct?

MR. STRALEY: Correct.

MS. SCHMAEDICK: Could you look at
Sections 986.52 through 986.55? And for the
record, I'll ask that Council expenses, powers,
duty and procedure sections.

MR. STRALEY: And again I'm having
trouble hearing exactly what you're saying.

MS. SCHMAEDICK: Sections 52, Council expenses.

MR. STRALEY: Sixty-two.

MR. DAVIS: Fifty-two.

MS. SCHMAEDICK: Fifty-two.

MR. STRALEY: Okay.

MS. SCHMAEDICK: Through 55 which is procedure.

MR. STRALEY: Would you happen to have the page?

JUDGE GUTHRIDGE: 38028.

MS. SCHMAEDICK: Yes.

MR. STRALEY: Yes, okay.

MS. SCHMAEDICK: Thank you. So I'll give you a moment to look over these sections. I have some questions pertaining to these sections.

MR. STRALEY: Okay.

MR. DAVIS: Are you going to go in numerical order with them?

MS. SCHMAEDICK: Yes.

JUDGE GUTHRIDGE: Actually, I
misinformed you. 986.52 is on 38027. It starts at the bottom of the page and then she 52, 53, 54, and 55. Okay.

MS. SCHMAEDICK: And I believe Mr. Davis has also listed on the overhead.

MR. STRALEY: Okay.

MS. SCHMAEDICK: So given the experience as a chief financial officer, does this section seem pertinent given the proposed organization of the program and the administrative oversight in the organization of the program?

MR. STRALEY: Yes, I think this is extremely important to be part of it because we can clearly show the two of those that we are using the funds to promote the product and not being used for administrative overhead expenses. So those costs would be borne by members of the Council themselves. They are not compensated for serving on it.

MS. SCHMAEDICK: Thank you. And we'll move on to Section 53. Section 53 includes the
authority to create bylaws, make recommendations
and receive important information to USDA. Are
these fairly typical activities of an
administrative type of committee or board?

MR. STRALEY: Yes, I would say so.
Yes, that would be exactly what it's set up to do
which is to make recommendations.

MS. SCHMAEDICK: What is the
importance of bylaws?

MR. STRALEY: To help set up a
standard throughout the industry so that everyone
is aware of them and can follow them.

MS. SCHMAEDICK: Thank you. And if we
can go to 54 please. In 54, if you look at
paragraphs a through e, in your opinion do these
paragraphs describe standard business practices?

MR. STRALEY: Yes, I would agree. And
again I think it's very important because it
provides very good transparency for what the
Council does and what they're involved with so
that there is no chance for misappropriation of
funds. It's clearly above board. Everyone can
see how we process it and what they're doing to it.

MS. SCHMAEDICK: And how important is accountability in bookkeeping?

MR. STRALEY: Extremely important. You have to have the trust and integrity for everyone to believe in the program.

MS. SCHMAEDICK: And is it important for an administrative body to be able to hire employees?

MR. STRALEY: Correct. Yes, I think the individuals that would serve on this board are obviously not the experts in the particular areas such as marketing, research. But they would certainly know the areas that they need to go to hire those individuals.

MS. SCHMAEDICK: Thank you. So shifting gears I would like to ask you about your involvement with San Saba Pecans.

MR. STRALEY: Yes ma'am.

MS. SCHMAEDICK: It's a shelling operation. Is that correct?
MR. STRALEY: Yes, ma'am.

MS. SCHMAEDICK: So in the development of the proposed program, were you involved in discussions related to sheller representation on the Council?

MR. STRALEY: I was not, especially no, not particularly. But there were individuals in our company in San Saba that were involved and provided input, yes.

MS. SCHMAEDICK: So you're aware of discussions then.

MR. STRALEY: Yes.

MS. SCHMAEDICK: And what were some of the concerns that shellers had regarding representation?

MR. STRALEY: I think some of the concerns they had were that they were not represented equally with the growers. However, I think that was overcome when they realized that the importance of having the product there and it takes the product in order to assess it. And they are just processing that product.
Although the growers will not pay directly the assessment, primarily the shellers will collect and pay that by reducing the costs that would be paid to the grower. So I think with that understanding they were willing to accept, yes, less representation. But, yes, there was initially some concern that the growers were larger represented on the Council than the shellers.

MS. SCHMAEDICK: Thank you. And you just made an interesting comment and I'll try to characterize it. I believe you said the shellers would collect the assessments and pay them. But that collection may result in a slightly reduced price to growers. Is that correct?

MR. STRALEY: It could, yes.

MS. SCHMAEDICK: So I believe you stated that you're aware of Dr. Palma's testimony that forecasts would arrange for a price increase.

MR. STRALEY: Correct.

MS. SCHMAEDICK: To the grower.
MR. STRALEY: Correct.

MS. SCHMAEDICK: So is it fair to extrapolate from those two pieces of information that even though your payment to the grower might be slightly less that overall even after that deduction the price paid to the grower would be higher than it is today? Is that the goal?

MR. STRALEY: Yes.

MS. SCHMAEDICK: Thank you. You also gave us an example about how your business was able to provide some concerns or feedback in the drafting of the proposal with regard to substandard pecans.

MR. STRALEY: That is correct.

MS. SCHMAEDICK: Are you able to expand on that example?

MR. STRALEY: One of our original concerns was reading through the proposed Order where there was a category for improved and native nuts. But as a grower of improved variety at any given year we will produce from a low of two percent to a high of 18 percent that are
considered substandard nuts. They would be of lesser quality, cracks, stick types (phonetic) that normally would not go through the shelling process of commercial shelling. And as such we would receive a lesser value.

But it could entail a substantial volume in any given year. And we recognize that. In our case, as you see, we produce 10 million pounds. If it happened to be a year of 18 percent, that's a substantial volume of nuts that were not going to be included in the assessment.

And so we visited with Mr. Adams to see if we could get that category included and it subsequently was.

MS. SCHMAEDICK: So it's my understanding that your suggestion to create a category for substandard pecans is that to essentially close the loop?

MR. STRALEY: Correct. Yes, we did not think those were addressed with the two varieties of improve and native. We felt there needed to be an additional category of substandard.
MS. SCHMAEDICK: And just to clarify, substandard pecans, could that include both native and improved pecans?

MR. STRALEY: Yes, it could. But typically you're going to have a larger percentage of those on the improved depending upon the year.

MS. SCHMAEDICK: Thank you. And my last question for you is given there were some concerns about sheller representation on the Council, at this point would the proposal -- Are you confident that the decision making process will result in sound decisions being made by the Council?

MR. STRALEY: Yes, I am.

MS. SCHMAEDICK: Thank you.

JUDGE GUTHRIDGE: Mr. Hinman.

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Don Hinman, USDA. Good morning. In your shelling out version, do you also acquire from other farms in shell and sell them into the market?
MR. STRALEY: Yes, we do. Currently, we provide on any given year about 15 percent of the total that we would shell and we would purchase 85 percent from other growers.

MR. HINMAN: Thank you. On page two of your testimony in the second paragraph on the third line of that, you talk about "We need to continue researching the benefits of pecans." Would an example of that be the health and nutritional benefits of pecans?

MR. STRALEY: Yes, I think those would be specifically what we were referring to. The health and nutritional benefits of pecans, attending different marketing shows or food marketing throughout the world and the nation. It is amazing to me how well the almond, walnut, pistachio industry had done in promoting their product.

But people may not be aware that pecans are as healthy or healthier in certain areas than those. And I do believe that is directly because of the research they had done.
through their marketing.

MR. HINMAN: Do you have other ideas about research on other production and marketing aspects that could be funded through any Federal marketing order?

MR. STRALEY: You know, I don’t know right off. Anything or all that we can do I think to further promote the pecan industry would be a benefit.

MR. HINMAN: Thank you. No further questions.

JUDGE GUTHRIDGE: Any other questions from Agriculture?

(No verbal response)

Mr. Davis.

MR. DAVIS: Yes, Your Honor. I have one in particular follow-up that will weight in to here.

REDIRECT EXAMINATION

MR. DAVIS: Unfortunately, I cannot put up the entire Section 986.55 procedures simply because it’s too long. But I want you to
know that's the section I'm referring to. You may want to follow along.

I'm not going to put up Section 986.55(c)(1). It has the relatively innocuous pile of quorum. And you can read along with me here. It says "A quorum of the Council may be meaning 12 of the members. The voting of a majority of members present at the meeting which there is a quorum shall constitute the act of the Council provided that" -- and this is the important part -- "one action to Council with respect to the following issues shall require a two-thirds vote."

And then there's a long laundry list of items in subparagraph (i)(1) and these require the super majority, the two-thirds vote, not the 60 percent. And I won't read all of them. Let's look at establish bylaws, appointment of administrative issues, budgets, assessments, compliance and audit. And the list goes on down to ten. But in looking at those, first would you agree and as your experience as a CFO that those
are the most significant and important issues
that a board would have to consider?

MR. STRALEY: Yes.

JUDGE GUTHRIDGE: By those you mean
the items listed in 986.55(c)(1)(i)-(x).

MR. DAVIS: (i)-(x) yes. Those are
the really meaty issues.

MR. STRALEY: Correct.

MR. QUIROS: And it requires the super
majority. And you are aware that the board will
consist of 17 members, nine of which are growers,
six of which will be handlers and then of course
the two independent. And because of this
requirement of the super majority, that would be
12 votes.

The shellers are almost always have to
be a consensus of some sort between the growers
and the shellers in order for anything to pass.
Is that correct?

MR. STRALEY: That would be correct.

MR. DAVIS: And earlier Ms. Schmaedick
had asked you about concerns that the handlers
may have had. Does the fact that this super
majority was put into the quorum give the
shellers some comfort that even though they did
not have numerical quality of voting that at
least their voice would always have to be shared
in making these important decisions that are set
forth here?

MR. STRALEY: Yes.

(Off record discussion)

MR. DAVIS: My co-counsel here says
there's one other section which I'll point out to
you in that regard and that is in terms of
986.65, the marketing policy. And of course the
marketing policy is going to be the board's
effort to estimate the crop size and make
announcements and give information to the
community on that estimated crop size.

And do you see here in 986.65 that
once again before a decision can be made on the
estimated market size of the crop that has to be
passed by two-thirds of the Council members,
correct?
MR. STRALEY: Correct.

MR. DAVIS: And once again there would have to be some kind of consensus between growers and the handlers before any such announcements could be made. Is that correct?

MR. STRALEY: Correct.

MR. DAVIS: Do you think that that would be an important issue to handlers that their voice would be heard on that issue?

MR. STRALEY: Yes, I do.

(Off record discussion)

MR. DAVIS: Your Honor, I have no further questions. Thank you.

JUDGE GUTHRIDGE: Follow up from Agriculture.

RECROSS EXAMINATION

MS. VARELA: Jennifer Varela, USDA. I just have one quick follow-up for you because you are in the interesting position of having farms that include more than one region.

MR. STRALEY: Yes.

MS. VARELA: So I wanted to draw your
attention to some of the language we have on voting for nominees. Are you familiar with that aspect there?

MR. STRALEY: Yes.

MS. VARELA: And are you aware of -- Were you involved in any of the discussions on how that representation might be made?

MR. STRALEY: Not personally, no. But members of our team were.

MS. VARELA: They were involved in it. And just to summarize under voting for nominees there, the language says "If a grower is engaged in producing pecans in more than one region, that grower" --

PARTICIPANT: What section?

MS. VARELA: I believe it's Section 986.46, council nominations and voting.

MR. STRALEY: Yes, I'm familiar with that section.

MS. VARELA: But the concept there that I want to ask you about is that language that is in here in more than one region you would
nominate in the region with the largest volume of production. Does that seem fair and equitable to you? Are you comfortable with that determination?

MR. STRALEY: Yes.

MS. VARELA: Okay. Thank you.

MR. STRALEY: And we recognize that even though we would be a grower in the western and central regions the majority is in the western region and we would be a grower in the western region.

MS. VARELA: Thank you.

JUDGE GUTHRIDGE: Anything else from USDA?

(No verbal response)

MR. DAVIS: I have no further questions, Your Honor.

JUDGE GUTHRIDGE: Does anyone in the audience have any questions for Mr. Straley?

(No verbal response)

Hearing none, Mr. Straley, you're excused. If you would check with Ms. Gonzalez
over there and see if she has anything to clarify. Thank you.

(Witness excused)

It's not 10:17 a.m. and I think it's time for a bit of a break. And we'll come back at 10:28. And, Mr. Singh, you will be our first witness.

MR. SINGH: I'd like to decline. Everything I hear --

JUDGE GUTHRIDGE: You changed your mind. You don't want to testify. You signed up yesterday.

MR. SINGH: It's going to be a repeat of this. Why waste the time. And actually Mr. Ivey said a lot of what I would have said.

JUDGE GUTHRIDGE: Okay.

MR. SINGH: Thank you.

JUDGE GUTHRIDGE: So, Mr. Davis, you'll have your next witness at that time.

MR. DAVIS: Thank you, Your Honor. It was a ten minute.

JUDGE GUTHRIDGE: 10:28 a.m. and right
now it's 10:18 a.m. Off the record.

(Whereupon, the above-entitled matter briefly went off the record.)

JUDGE GUTHRIDGE: This hearing will come to order again. Mr. Davis, Mr. Quiros, call your next witness please.

MR. QUIROS: Yes, Your Honor. We're calling John Heuler.

(Whereupon, the above-referred to document was marked as Proponent Exhibit 34 for identification.)

JUDGE GUTHRIDGE: Please raise your right hand.

(Proponent Witness John Heuler Sworn)

Mr. Quiros.

DIRECT EXAMINATION

MR. QUIROS: Yes. Thank you, Mr. Heuler, for joining us today. I wanted to ask you a couple of foundational questions. The first is received a copy of the notice that was published in the Federal Register that includes
the proposed Federal Marketing Order for Pecans which has been listed as Exhibit 1 in this hearing.

MR. HEULER: Yes.

MR. QUIROS: Is your microphone on?

MR. HEULER: Check.

MR. QUIROS: Thank you. Secondly, I want to ask you if you have received and had an opportunity to review the executive summary of economic analysis of the implementation of a Federal Marketing Order for Pecans prepared by Dr. Marco Palma that has been listed as Exhibit 23 in this hearing.

MR. HEULER: Yes.

MR. QUIROS: Thank you. I understand you have prepared testimony for us today, Mr. Heuler. I'll let you deliver that testimony.

MR. HEULER: My name is John Heuler. It is spelled J-O-H-N H-E-U-L-E-R. I live in Yorba Linda, California. I am one of the owners of A&P Ranch as well as personally owning a 55 acre pecan ranch.
A&P Ranch and its affiliates have been involved as growers in almonds, pistachios and pecans. I have been active as a tree nut grower for 30 years and as a pecan grower for four years. A copy of my résumé is attached to this testimony.

My father started in the almond industry in 1968 and started growing pistachios in 1974. He started growing pecans in California in the mid 1980s. He realized that the pecan market was quite immature and prices were low. There was no organization for marketing and expert so he sold all of the pecan holdings and concentrated only on almonds and pistachios. Needless to say, I have been involved with the tree nut industry my whole life.

I and a number of my partners decided to re-enter the pecan market about five years ago. A&P Ranch purchased an existing orchard and I personally purchased another existing orchard. I see the potential of real growth in this market as it has the smallest amount of production for
the major U.S. tree nuts in the United States.

We have 220 acres of improved
varieties currently in production and another
approximately 2,000 acres planted. Our goal is
to have 4,500 acres of pecans combined with all
of our affiliated companies. All of the pecans
will be grown in Arizona.

With only 220 acres of pecans in
production, A&P Ranch has less than $750,000 in
annual gross revenue from pecans. Therefore,
under the Small Business Administration
guidelines, we are classified as a small pecan
grower business.

I've had numerous conversations with
Mike Adams and other representatives of the
American Pecan Board. I feel like I have been
informed about the process of securing a Federal
marketing order and have been given an
opportunity to participate in this process.

I have also reviewed the economic
analysis summary prepared by Dr. Marco Palma,
specifically, the projected average price
increase from promotion of 6.3 cents per pound versus the 2.5 cents per pound in shell cost. I believe this number to be very conservative and is more likely to be closer to $1.00 per pound in the future. I base this on my knowledge of the FMO for pistachios.

Overall, I am aware of the costs that the proposed Federal marketing order may impose on our farm and I do not believe that those costs are unduly burdensome. Further, I believe that the benefits of the Federal marketing order to our farm will greatly outweigh any costs associated with it. With both the almonds and pistachio industries, the FMO has been a real boom for the farmers with the highest prices being realized with near record production.

As a board member on the Administrative Committee for Pistachios, I completely understand the benefits of a Federal marketing order. A&P Ranch believes in marketing and promotion as a way to increase crop prices. All of our tree nut investments now and in the
past, almonds and pistachios, either had the
advantage of generic marketing promotion through
a Federal marketing order or through a state
check-off program.

Knowing what I know, it makes no sense
for anyone in the pecan industry to oppose the
Federal marketing order. The current lack of
generic promotion has stagnated the industry and
has hurt all involved. We strongly support the
Federal marketing order for pecans and we are
confident the benefits outweigh the burdens to us
as a small grower with aspirations to be a large
pecan grower.

Also, currently the lack of accurate
market information on the anticipated size of the
pecan crop in any given year makes it difficult
for us to negotiate fair prices for our crop and
to make reasonable business decisions about
investments in our farm. Increased price
stability and more accurate market information
would greatly benefit our farming operation.

We think our farm and the industry
would also benefit in the future from grade, size
quality, packaging, shipping protocols, and other
handling requirements as we compete with other
tree nuts for shelf space and consumer attention.

I also understand that under the
proposed order, only growers with more than 30
acres of pecans or more than 50,000 pounds of
average production per year over the last four
years would be allowed to vote on the proposed
order. In my opinion, this threshold is
reasonable because a grower that does not meet
this threshold is not a commercial grower. Any
grower that is smaller than 30 acres or 50,000
pounds could not justify the cost inherent in
making a small orchard a success and is most
probably a hobby farmer or one that does not plan
to use appropriate levels of commercial inputs,
fertilizer, water, etc., on his farm. I don't
know a single farmer in my area that has a
commercial farm that is smaller than 30 acres or
produces less than 50,000 pounds.

As an owner of A&P Ranch, I am
testifying on behalf of the ranch in support of a Federal marketing order for pecans. I am also testifying in my individual capacity as a pecan grower in support of the Federal marketing order for pecans.

In conclusion, I fully support the proposed federal marketing order for pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. I would be glad to answer any questions anyone may have.

MR. QUIROS: Your Honor, we tender this exhibit.

JUDGE GUTHRIDGE: Any objections from Agriculture?

MR. HILL: No objection.

JUDGE GUTHRIDGE: Any objection from anyone in the audience?

(No verbal response)

Hearing no objection, Exhibit 34 is admitted into the record.

(Whereupon, the above-referred to document marked
for identification as
Proponent Exhibit 34 was
received into evidence.)

Mr. Quiros.

MR. QUIROS: I'd like to reserve my
questions, Your Honor.

JUDGE GUTHRIDGE: Does Department of
Agriculture have any questions?

MR. HILL: Yes, just a quick point of
clarification.

CROSS EXAMINATION

MR. HILL: Could you please go to the
last paragraph? The sentence as far as the
first sentence, "I also have reviewed the
economic analysis..." I thought I heard you say
2.8 cents per cost.

MR. STRALEY: I misspoke if I said
2.8.

MR. HILL: Okay. It would be 2.5.

MR. STRALEY: Correct.

MR. HILL: All right.

JUDGE GUTHRIDGE: Any more questions
CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Thank you, Mr. Heuler, for your testimony and thank you for traveling so far. So you mentioned that you have experience as a grower for pistachios and almonds as well as pecans. Is that correct?

MR. HEULER: Most of my experience is with pistachios and almonds.

MS. SCHMAEDICK: And you also mentioned that you have experience or knowledge of the Federal marketing order that regulate pistachios and almonds. Is that correct?

MR. HEULER: Not as much with almonds, but pistachios I serve as one of the administrative members.

MS. SCHMAEDICK: Great. Good. I was going to ask you that. So thank you for answering that question in advance. Under this American Pistachio order is there authority for promotion?
MR. HEULER: Did you say American Pistachios?

MS. SCHMAEDICK: Yes, American Pistachios.

MR. HEULER: Yes.

MS. SCHMAEDICK: Okay. In your capacity as a committee member, were you active in the nomination process for the receiving of new members?

MR. HEULER: No. Mine actually was appointed by one of the folks. I was on the technical committee.

MS. SCHMAEDICK: Okay.

MR. HEULER: Ours was -- It dealt with food safety standards. It was more a work group on how the industry would deal with the issues ahead of time and that. As far as the marketing promotion, the answer is no. I'm familiar with how it worked. But that was not my capacity.

MS. SCHMAEDICK: Were you a member of the committee, or on a subcommittee?

MR. HEULER: No, I was actually on the
administrative committee for pistachios, which if
you google my name I come up, that's the history.

MS. SCHMAEDICK: Okay. Thank you. I
want to turn your attention to -- Do you have a
copy of the proposed.

MR. HEULER: I do.

MS. SCHMAEDICK: Thank you.

(Off record discussion)

MS. SCHMAEDICK: I wanted to turn your
attention to Section 986.3 affiliation. It's
actually a definition.

MR. HEULER: 986.3.

MS. SCHMAEDICK: Yes, correct.

MR. HEULER: Yes.

MS. SCHMAEDICK: Based on your
knowledge of pistachio marketing order, does this
language look familiar to what is found in the
pistachio marketing order?

MR. HEULER: I haven't read the
pistachio marketing order in years, probably a
decade. 986.3 is the production area.

MS. SCHMAEDICK: 986.3 is affiliation.
MR. HEULER: 986.3.

MR. QUIROS: Mr. Heuler, I have it on

the overhead screen.

MR. HEULER: I'm sorry.

MR. QUIROS: Mr. Heuler, if it would

help I have it on the overhead screen.

MR. HEULER: Okay. I'm sorry. What was the question again?

MS. SCHMAEDICK: I'm wondering if you

are aware of a common element in the pistachio

program.

MR. HEULER: It's been so long since

I've actually read that. I don't want to comment on it.

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

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. Mr. Heuler, I just want to ask you a clarifying question about part of your statement here on page two regarding your reading of the executive summary.
MR. HEULER: Okay.

MS. VARELA: After you describe the differences in costs and benefits that you understood. You said you believed this number to be very conservative. Which of the two numbers were you referring to?

MR. HEULER: The amount of dollars, cents in this case, recognized above and beyond which you would get without promotions.

MS. VARELA: Okay. Thank you.

MS. LOOFT: (Aside) Is that price related?

MS. VARELA: Yes.

MS. LOOFT: Which number is it? I can't hear him. Okay.

MS. VARELA: That's all I have. Thank you.

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Don Hinman with USDA.

Good morning. On that same point regarding dollar per pound, you have a much more -- a stronger view of the impact of promotion than in
this study. Is that correct?

MR. HEULER: Would you go ahead and repeat the question?

MR. HINMAN: You said that the 63 cents per pound, the difference between the benefit from the portion of the cost you believe that the difference is much higher, potentially much higher, and a great deal of more impact from promotion than in the study. Is that correct?

MR. HEULER: Yes.

MR. HINMAN: And what's your basis for having that strong review about the impact of promotion?

MR. HEULER: Okay. If you notice a lot of pecan people in the world have a little bit of an inferiority complex. They don't like to look at the almond-pistachio guys. I sold my crop last year, pecan crop, for about $2.45 a pound. And I think it did pretty well.

I sold my pistachio crop for $3.65 a pound and this year we're looking at almond prices at $4 a pound. And that's nut meats.
That's not shell.

It's a fabulous, fabulous gig. It really is. The pecan industry really does not have any detrimental problems with producing a high quality American product.

I mean face it. All the other nuts are not indigenous to the United States. Pecans are. It leaves a wonderful message. How would you like to have the best product, best growing regions, the best everything and just not tell anybody about it.

I don't really know what the pecan marketing budget is. It's less than $1 million. Currently, just the APG, just one trade group, their marketing budget is $14 million this year.

JUDGE GUTHRIDGE: What is the APG?

MR. HEULER: American Pistachio Growers. And that's excluding any brand specific that other growers will put in. It's millions and millions of dollars.

In the almond industry, you know we've all seen the old ads. Advertising a quality
product is a great idea. Not advertising a quality product is a bad business decision. Pure and simple.

So getting back to my point about a dollar. I just sat and looked at my returns on a per pound basis. And that's what I based it on. Nothing more than that.

MR. HINMAN: Thank you. One further question on page three. In the second to last paragraph, you mention a benefit would be more accurate market information.

MR. HEULER: Yes.

MR. HINMAN: Could you give a comment on how your view of a benefit of more accurate information would play out in the pecan marketing order.

MR. HEULER: And this is an assumption. The assumption is that the pecan marketing order and the board itself will function very similar to how the rest of the other two industries on here function.

In the pistachio industry, pretty much
everybody is involved in that and gives specific
data on through-put. So you can go back 15 years
and get very, very accurate data of exactly of
how much insect damage there was a given year
across the entire usury. That had been very
helpful, especially looking at trends in the
market.

But accurate data and the ability to
bring growers and shellers or handlers together
is a wonderful idea. It works very well in the
other industries.

MR. HINMAN: Thank you. I have no
further questions.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick,
USDA. Mr. Heuler, you just mentioned a few
things I'd like to explore further with you.
Under the pistachio and almond programs, do you
provide reports? Do you report data?

MR. HEULER: Very specific data.

MS. SCHMAEDICK: Does that present a
burden to you? Is it cumbersome?
MR. HEULER: It's data we accumulate anyway. It's literally an email.

MS. SCHMAEDICK: Are you comfortable sharing that data?

MR. HEULER: In the pistachio industry, everybody knows everybody from the process and the marketing end of it.

(Off record discussion)

It's a really common thing. The only thing is we do hesitate a little bit about is as we're doing experimentation in processing, in other words, different processes, that typically is in-house. But within a year, everybody knows what it is anyway.

But as far as the data goes, no. It's very easily gotten for anybody.

MS. SCHMAEDICK: And are you satisfied with the treatment of the confidential information? Is that important to you?

MR. HEULER: The reporting data is not very confidential. I don't see a need for it.

If you're talking about going to the local coffee
shop and compare numbers whether it's over coffee
that's one point. But as far as sharing
important data, I mean that's really what
cooperation means. And withholding that is --

MS. SCHMAEDICK: So would it be
correct to say that the sharing or reporting of
data even though that does take some time it's
something you're currently doing and the benefit
of everybody providing that data is a generation
of a better understanding of your industry as a
whole. Is that correct?

MR. HEULER: That's very correct.

MS. SCHMAEDICK: And you also made a
comment that your understanding is that the
proposed pecan program would operate similarly to
the pistachio and almond programs. Is that
correct?

MR. HEULER: I would hope it would.

MS. SCHMAEDICK: Can you explain what
your comfort level is in the way the pistachio
and almond programs work? Why do you think they
are working well?
MR. HEULER: That's an hour. Let me see if I can summarize it quickly.

MS. SCHMAEDICK: Okay.

MR. HEULER: Both the almond and pistachio industries are relatively new. Pistachio are not indigenous to the United States. They came from Asia. Most almonds are grown in California. Most pistachios are grown in California.

They have a very, very cohesive group that had to start in the industry from scratch. Most of these people are first generation, maybe second generation.

In the pecan industry, it's an industry that's been here for hundreds of years. It's native. There are improvements, to raise the question. But you have to get together with a group of people and say, "We have to make this work." They do not work together.

You get your report. You understand what the problems are. And you support the industry. And in the end you see the example of
how successful that is.

As far as agriculture goes, I really don't know another crop that has a higher yield per acre. And there's a lot of automation involved in this at this point.

But as far as yield creator dollars it's amazing. I just do not understand the conflict the pecan industry has.

The walnut industry is varied depending on how they do things. I'm not that familiar with the walnut industry than I am with the other two. I know for a fact that it's an amazing profit.

MS. SCHMAEDICK: How do you think the market for almonds and pistachios would look if you didn't have marketing orders?

MR. HEULER: When I was a lot younger and had less gray hair, we were getting between 90 cents a dollar a pound. Last year I got $3.65.

And without that marketing order, you just wouldn't have the promotion. There's
basically one company in the pistachio industry
that can do their own promotions. The rest of us
have to get together to do them. And it's been
very successful.

Blue Diamond in the almond industry is
co-op. I remember that co-op when I was a kid.
And I remember going through the Blue Diamond
plants in both Sacramento and in Bakersfield.
And they were the only co-op that could
advertise. They were the only ones that had
money to do it.

But in the long run, the marketing
order has really, really helped us tremendously.
But I think it's also the adversity that the
pecan industry has been going through. Once they
get together and are working together as a
homogeneous group, those days are past. You've
got to get past them.

MS. SCHMAEDICK: So would it be
accurate to describe or to sum up pages described
as sort of cohesive, collective action that
you're seeing in pistachios and almonds and that
you would hope that that would also happen in the pecan industry as a result of the marketing order? Would that be a correct summary?

MR. HEULER: I really have a hard time seeing it not happen. When you get a group of people together with a common goal as long as in their mission statement that was their common goal was to advance the pecan industry in a number of different ways. Just following their mission statement.

MS. SCHMAEDICK: And in your testimony you on the first page of your statement said "There was organization for marketing and export. So he sold" -- he meaning your father -- "all of the pecan holdings and concentrated only on almonds and pistachios."

Now fast forward to you, you've since entered into the pecan industry four years ago. Is that correct?

MR. HEULER: We started talking about a finders, yes, four years ago.

MS. SCHMAEDICK: So my question is
would the existence of a Federal marketing order increase your confidence in the future stability of the pecan industry.

MR. HEULER: Absolutely. Without any question.

MS. SCHMAEDICK: I think that's it for my questions.

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. You stated in your testimony that all the acreage from pecans would be in Arizona?

MR. HEULER: Yes.

MS. VARELA: Are there any particular challenges or differences to growing in Arizona that might be different from what we've heard so far in New Mexico? How would you describe some of the practices and horticulture in that area?

MR. HEULER: I'd be the last person to tell you that I was an expert in pecan production in the United States. I know enough about pecan production in Arizona to be dangerous.

What I do know about it is you've got
to have the proper water supply and high quality
water. And you have to have proper chilling
hours. At the elevation that we're at, that's
absolutely the case. It's a relatively narrow
band.

MS. VARELA: Thank you very much.

CROSS EXAMINATION (Cont'd)

MR. HILL: Brian Hill. Could you
please look at Section 986.63?

MR. HEULER: 986.63, contributions.

MR. HILL: Right.

MR. HEULER: Yes.

MR. HILL: Okay. Read this. Is this
in any of the other orders, the pistachio order?

MR. HEULER: Again, that was so long
ago that I read that. I would be remiss to tell
you yes or not.

MR. HILL: Okay. Read this. You
talked about service and industrial marketing and
so forth. Can you tell what you feel about this
particular part here? You support this or not
and why.
MR. HEULER: A&P Ranch and I have both
ccontributed -- I'm sorry. A&P and I personally
have both contributed time and money towards
this. I think as the industry standard I think
it's something that absolutely you should
support.

I know there's a question about in the
last person up here or the person before that we
were talking about servicing without getting
paid. I did that for two years and great
restraints. But the answer is contributions to
industry makes sense.

MR. HILL: Thank you. That's all I
have to ask.

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Don Hinman, USDA. Good
morning. You were commenting about the pistachio
and almond industries and you're involved in
that. On the bottom of page 3 of your testimony,
you mentioned benefits from future grades, size,
quality, packaging, shipping protocols and other
handling requirements.
I wonder if you could comment from your perspective from pistachio and almond industries how you think those benefits with those uniform standards along those lines from the almond and pistachio industries that would improve the market for pecans?

MR. HEULER: From what I understand about pecan grading, those are relatively old standards. They were developed quite a while ago. We have to recognize that in the modern world we have electronic sorting. And we use electronic sorting, laser, chlorophyll, x-ray. You name it. We sort with it.

In the pecan industry I can't speak about any of this. I can't do that. I would assume that we would use the exact same type of sorting that we use currently in pistachios and almonds. Where we think that's a huge benefit is it eliminates a lot of people who do really terrible job. There's a lot of dust involved in that. There's a lot of handling involved and it's not our job.
But the flip side of it is every time you make a sort positive or negative, every time, you have more and more and more products, size, stain, insect. Instead of having good or bad product, you'll start having more and more products.

When you get into size grading standards, those are going to have to be upgraded to meet the electronic sorting era. And that's just a matter of a standard. I mean to be able to not have a grade that's universally recognized for everything that you can sort, not just good and bad, it makes a lot of sense.

MR. HINMAN: Thank you. I have no further questions.

CROSS EXAMINATION (Cont'd)

MS. CHILUKURI: Mr. Heuler, thank you for your testimony. On page three, you state "Knowing what we know, it makes no sense for anyone in the pecan industry to oppose the federal marketing order." Through this whole process, are you aware of anyone who is opposed
to the marketing order?

MR. HEULER: I have very limited contact with anyone beyond the State of Arizona and California. I do not know of anyone that would opposed it. But I haven't talked to everyone in Texas, Louisiana and all the way across.

MS. CHILUKURI: Thank you.

MR. HEULER: Can I follow up? There is always going to be fear of the unknown. It's a natural thing of humans especially when it comes to money. The federal marketing order of almonds and pistachios were a huge burden for us. We would never ever every tell anybody anything different just because I know they know. It's not how we work in the pecan industry.

MS. CHILUKURI: Have you found that within the almond and pistachio marketing orders perhaps people were previously opposed to the implementation of those order?

MR. HEULER: Oh I know for a fact in the pistachio there was a whole series of people
that were very afraid. Oh my gosh, this is going
to cost us money. Absolutely. It's the fear of
the unknown.

Did it turn out better than they had
ever expected? Oh yes. Very much so.

MS. CHILUKURI: Thank you.

JUDGE GUTHRIDGE: Any more questions?

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick,

USDA. I wanted to go back again to your
experience serving on the pistachio committee.
And I wanted to ask you about your opinion on the
importance of diversity on the committee. Is it
in your opinion important to have fair
representation of all the different grower and
handler communities with members on that
committee?

MR. HEULER: Could you repeat the last
part of that again?

MS. SCHMAEDICK: Sure. In your
opinion does having a fair representation of
grower and handler entities on your committee
important in terms of representing your industry?

MR. HEULER: Definitely. I believe that the committee I served on there were four people from District 1. Their names I can't remember. There were two from District 2 and two from District 3 and two from District 4. District 4 was Arizona and New Mexico.

There are four handler positions, processors/handlers. And then there are two at large positions that were members of the general public. I believe that was how it was set up.

Having the pistachio processors on that committee was very helpful in the sense that they provided a real world look at what they were having to do. I don't know if everybody is understanding something here.

Pecans that are on the tree, they're not very time sensitive. Pistachios can be harvested. It has to be hulled and dried within 24 hours or you have seen major costs, potentially millions of dollars. Once they're dried, they're relatively stable.
The problem is we see plants in pecans as something -- it's a process you go through. It's not time sensitive. In the pistachio industry, there's 400,000 acres of pistachios that all have to be hulled in five weeks. When they come off that tree, you're hulling.

So it's the world's worst investment. But you have to have it to have a hull. When you have the input of both the growers which are very time sensitive when you're bringing these off and the hullers/processors there. You all come together and work up their schedules. They know what's going on.

If you don't have them all in the same room, you can't things done. And that's the reason having the committee was very helpful.

MS. SCHMAEDICK: What about the representation of smaller businesses and larger businesses in that meeting? Was that helpful?

MR. HEULER: It was pretty helpful. There are people who really raise pistachios. They are very isolated and independent from
everybody else. There are only two hulling
facilities in all the State of Arizona. A&P and
there's a smaller one across the valley from us.

    But each of local communities, each of
the local pistachio farms, have a very important
voice. And on top of that you have
representation at the community level. And
that's just a group of local growers.

MS. SCHMAEDICK: Thank you. And I
believe you mentioned. Was your term two years?

MR. HEULER: Two years.

MS. SCHMAEDICK: So what are your
thoughts on the relevance of bringing new folks
into serve on that committee? Is that important
to have them?

MR. HEULER: We have term limits.

MS. SCHMAEDICK: Right. But is that
-- Would it be beneficial to have the same people
sit on that committee for 20 years? Or is it
better to have some rotation?

MR. HEULER: I'm going to give you an
opinion.
MS. SCHMAEDICK: Please.

MR. HEULER: We have an 86 year old sitting on the committee every day. He has forgotten a whole lot of things I wish I knew. My poor son unfortunately got through college and made the mistake and went to work for a company. So he stopped now, too. So he went through all of the education programs we can be approved through. But slowly but surely we'll figure it all out.

That's for pistachio industry. I assume it's the same for pecans. It's a mixture. The kids, the younger ones, like my son, they bring to us -- My son has a degree from Pepperdine in computer science. I made him take a bunch of business courses, too.

The technology he brings to our business is phenomenal, but he doesn't know anything about history. He doesn't know anything about what's been tried. He doesn't know anything of the monumental failures these industries have. That's just time.
So to answer your questions I'd say it's a combination of both. You have to have some people who are smart enough to know what's happening the past. You have to have new people that comes in and brings new technology.

MS. SCHMAEDICK: Thank you. I'm formulating my next question.

MR. HEULER: What's that?

MS. SCHMAEDICK: I said I'm formulating my next question.

MR. HEULER: Go for it.

MS. SCHMAEDICK: Thank you. Could you turn your attention to Section 986.50 from the proposed program. The section heading is Term of Office.

(Off record discussion)

MR. HEULER: Can I have a minute to read this?

MS. SCHMAEDICK: Yes, please. In fact, I just want to bring your attention to paragraph (b), the first sentence.

MR. HEULER: That's the pistachio.
You can do two terms.

MS. SCHMAEDICK: So for the record, the first sentence in paragraph (b) of Section 986.50 says "Council members and alternates may serve up to two conservative four year terms of office." My question is based on your experience with pistachios in your opinion essentially a person can sit for eight years. Is that a reasonable time for a person to share their expertise and learn about the industry?

MR. HEULER: Once again, one of the things I can't speak for the pecan industry. I think we probably have people on the APG personally. They're phenomenally educated, phenomenally experienced people. They are the gods that we have really on that board.

If they would give us eight years of their time for free, I'd take that. It was a lot of work the two years I was there. And I decided not to do the next two years. But as far as looking at industries where you're giving of your time and your expertise, I think that's a really
good thing.

MS. SCHMAEDICK: Thank you. My last question for you is I think you made a brief comment about public members on the committees.

MR. HEULER: Yes. There are two.

MS. SCHMAEDICK: So where is the importance in your opinion of having public members?

MR. HEULER: I'll give you my theory and I'll give you how it actually worked out.

MS. SCHMAEDICK: Okay.

MR. HEULER: The theory is you want people from outside the industry to be able to give you kind of feedback or input that they're coming in from left field and they may view how that works differently. In other words, you're trying something. The industry is trying to look at something. Maybe bring in a view that's completely different. A different perspective on everything.

How it actually worked out the time I was there I don't think I heard a single word
from either one.

MS. SCHMAEDICK: If the public member were to bring outside expertise to the council that opposed council's decision would that be seen as an asset? Do you think that would be important?

MR. HEULER: Oh yeah. Recognize that I can't speak for the pecan industry. But for the pistachio industry, we're a bunch of geeks. There's no two ways about it. We are very focused on what we do. I am an excellent example of that.

Having somebody from the outside who can bring in outside expertise and to recognize within that community or that group of people, it's kind of going off in left wing. They might say, "You might think about this."

"Yes, that would be very frugal and accepted." They recognize that they are not all the people in the vote. Does that answer your question?

MS. SCHMAEDICK: Yes, thank you.
Thank you so much. That concludes my questions.

JUDGE GUTHRIDGE: Anything else from Agriculture?

(No verbal response)

Mr. Quiros.

MR. QUIROS: No questions, Your Honor.

JUDGE GUTHRIDGE: Does anyone in the audience have any questions for Mr. Heuler?

(No verbal response)

I guess not. So, Mr. Heuler, you're excused. Check with Ms. Gonzalez to see if she has any spellings or anything.

(Witness excused)

MR. DAVIS: Our next witness is Mr. Albert Keck.

(Whereupon, the above-referred to document was marked as Proponent Exhibit 35 for identification.)

JUDGE GUTHRIDGE: And while he's handing out papers let's go ahead and swear you in.
(Proponent Witness Albert Keck Sworn)

Mr. Davis.

DIRECT TESTIMONY

MR. DAVIS: I just checked my watch
and I'll say good morning, Mr. Keck. Thank you
so much for being here.

This has come up in the past, although
I'll just get these near you. I'm going to hand
what's been marked as Exhibit 1. And that is the
proposed Federal Marketing Order. You may have
some questions.

And then I believe at some point in
your testimony you said you had reviewed the
summary economic analysis. That is in this
record as Exhibit 23.

Mr. Keck, I understand that you
prepared a written statement that you would like
to deliver.

MR. KECK: Yes, I have.

MR. DAVIS: Please proceed.

MR. KECK: My name is Albert Keck.

It's spelled A-L-B-E-R-T K-E-C-K. I live in

My family owns Alamo Ranch Company. Alamo Ranch Company is a pecan farm in Cochise County, Arizona. I have over 150 acres of pecans currently in production. Last year we produced 166,483 pounds of pecans. Those are improved varieties.

We have also planted 50 acres of new pecan trees that will not be in production for two more years. On our farm we grow improved varieties of pecans. A copy of my résumé is attached.

Alamo Ranch Company has less than $750,000 in annual gross revenue from pecans. And therefore, under the Small Business Administration guidelines, we are classified as a small pecan farm.

I feel like I have been informed about the process of securing a federal marketing order
and have been given an opportunity to participate
in this process. I have talked with board
members of the American Pecan Board numerous
times to share my thoughts.

I have reviewed the economic analysis
summary prepared by Dr. Marco Palma, specifically
the projected average price increase from
promotion of 6.3 cents per in shell pound versus
the average 2.5 cents per in shell pound cost.

MR. DAVIS: If I can interrupt you.

That's Exhibit 23 you have in front of you.

MR. KECK: Yes.

MR. DAVIS: Yes. Thank you.

MR. KECK: Overall, I am aware of the
costs that the proposed federal marketing order
may impose on my farm. And I do not believe
those are unduly burdensome. Further, I believe
that the benefits of the federal marketing order
to my farm will greatly outweigh any costs
associated with it.

My family and our business interests
also include domestic dates. Domestic dates are
included in a separate federal marketing order
established in 1955. I have been heavily involved in the California Date Administrative Committee overseeing domestic dates and currently serve as chairperson.

I have had a lot of experience with the federal marketing order for domestic dates. I have personally seen the benefits that an agricultural commodity can achieve through a federal marketing order.

In conclusion, I fully support the proposed federal marketing order for pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. I would be glad to answer any questions anyone may have.

MR. DAVIS: Your Honor, the proponents tender as Exhibit 35 the testimony of Mr. Albert Keck and his curriculum vitae.

JUDGE GUTHRIDGE: Is there any objection from the Department of Agriculture?

MS. CHILUKURI: No objection.

JUDGE GUTHRIDGE: Any objection from any member of the audience?
(No verbal response)

Hearing none, Exhibit 35 is admitted into the record.

(Whereupon, the above-referred to document marked for identification as Proponent Exhibit 35 was received into evidence.)

MR. DAVIS: And, Your Honor, I'll reserve questions.

JUDGE GUTHRIDGE: Are there any questions from the Department of Agriculture?

CROSS EXAMINATION

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Good morning, Mr. Keck.

MR. KECK: Good morning.

MS. SCHMAEDICK: Nice to see you. Thank you for your statement and your insight into the proposal for pecans. You mentioned that you are involved with the date industry. Are you a grower or a handler?

MR. KECK: I'm seated on the board as
a handler member, but we are a large grower, too.

MS. SCHMAEDICK: If you don't mind I

want to draw on your experience in the date

program and try to relate that to the proposal

for pecans. Would that be okay?

MR. KECK: Sure.

MS. SCHMAEDICK: Thank you. In your

experience as a chairperson, how are the

activities of the California date program funded?

Where do you get your money from?

MS. SCHMAEDICK: The date history

through the marketing order is regulated by grade

and size standards. And every lot of dates that

actually gets released from the market needs to

pass federal inspection. And it has to be done

under USDA. It used to the Process Products

Inspection Service and then they merged. But

it's the USDA Inspection Service.

The inspectors will come into the

plant when a load is presented for inspection.

They will draw samples, basically review those

samples to see if that lot passes under the grade
standards for the marketing order. If it does, they certify it. And then that information gets shared with the date committee management.

Now the handlers report voluntarily their volume. And the USDA is not a policing entity in terms of the assessments. But it's a corroborating entity that the management at the committee level then cross references to make sure that those handlers are reporting everything they're shipping.

Then the committee will send the handler invoice based on the volume shipped with the assessment level that the committee at the board level has approved for the budget. And that's how the funds are raised to support the budget and the activities.

MS. SCHMAEDICK: Thank you. So would it be fair to say that the assessments collected from the handlers then provide funding for the committee operations?

MR. KECK: Yes, it's incumbent on the handlers to pay assessment.
MS. SCHMAEDICK: Correct. Thank you.

In your industry, how do the handlers feel about paying assessments?

JUDGE GUTHRIDGE: In your industry, do you mean the data industry?

MS. SCHMAEDICK: Thank you. In the data industry, what is the sentiment on that assessment?

MR. KECK: Our industry is a very small geographic growing district with very limited members within that district, in the data district. So most of the operations have a local representative on the board.

So annually we'll come together and we will approve a budget and an assessment rate to support that budget. And so generally speaking there's a lot of support to pay the assessments that someone who is on the board had a part in determining this.

MS. SCHMAEDICK: In your opinion, is there a sense of ownership in terms of the portion to be treated in the form of an
assessment to the budget? I'm not sure that makes sense.

MR. KECK: I believe there isn't a lot at this point in the history of our industry. There's not a lot of contention in the industry. So our contributions I feel are forwarded to the committee I think very favorably to support what the committee is doing.

MS. SCHMAEDICK: Thank you. If you had a moment can you refer to Exhibit 1 which is the proposed federal marketing order for pecans.

MR. KECK: Yes.

MS. SCHMAEDICK: If you turn to page 38023 of the Federal Register Notice. It is the page that has the index of the sections.

MR. KECK: I'm trying to find it.

MR. DAVIS: It's the index.

MR. HILL: The page number is at the top right.

MR. KECK: Is it 38023? Is that the page number?

MS. SCHMAEDICK: Yes. Thank you.
Before I go any further with questioning, I'm assuming you had time to read the date marketing order.

MR. KECK: Yes. Occasionally over the years.

MS. SCHMAEDICK: But are you reasonably familiar with it?

MR. KECK: Generally.

MS. SCHMAEDICK: So what I would like to do is spend some time talking about the proposed sections following the administrative body. And I would like to look at Sections 52, 53, 54 and 55.

MR. KECK: Okay.

MS. SCHMAEDICK: Let's start with Section 52, counsel expenses.

MR. DAVIS: Mr. Keck, I've also go these up over here.

MR. KECK: Yes. We are allowed to submit for reimbursement of expenses associated with our duties as members of the committee.

Generally speaking, I co-sign the checks for the
vice chairman. I have yet to see any members submit expense reports. So we basically do this voluntarily. We cover our checks.

MS. SCHMAEDICK: Does that work well for the California date program?

MR. KECK: It does.

MS. SCHMAEDICK: In your opinion, is this recommended language in Section 52? Is that reasonable?

MR. KECK: Yes, it is.

MS. SCHMAEDICK: Thank you. In Section 53, powers, can you take a moment to look at that? Now in your experience, does it help for a program to have similar language?

MR. KECK: Yes.

MS. SCHMAEDICK: And what is the relevance of this language? Is it necessary for the operation of the program?

MR. KECK: It's essential for it. It really describes what the committee does or the council in this case.
MS. SCHMAEDICK: And if you could look at Section 54, duties.

MR. KECK: Yes.

MS. SCHMAEDICK: In your experience with the California date program, are these also included in that program?

MR. KECK: There is. It almost describes to a T how our program is administered.

MS. SCHMAEDICK: And how important is it to have the authorities?

MR. KECK: Well, when it comes to a program like this, I believe a confidence within the industry is essential. Confidence outside the industry with related partners be it the government or other interested sectors, maybe the buying sector, it's essential that the people have confidence that a volume such as this council and the date community specifically is administered with integrity, not arbitrarily and not in a fashion that may manipulate one group over another.

And basically it allows the committee
or the council to function with legitimacy and confidence.

MS. SCHMAEDICK: Thank you. So in your opinion, our Sections 53 and 54 are important or perhaps essential.

MR. KECK: Yes, very essential.

MS. SCHMAEDICK: Thank you. If you could turn your attention to 55 which is procedure.

MR. KECK: Yes.

MS. SCHMAEDICK: Based on your experience with the California date program, when you are in committee meetings, are you required to follow procedures that establish a quorum for example?

MR. KECK: Yes.

MS. SCHMAEDICK: What's the purpose of having a quorum?

MR. KECK: To ensure that the industry is adequately represented for the actions that the committed does.

MS. SCHMAEDICK: And are you allowed
to take any actions or make decisions without a quorum?

MR. KECK: I think we have a discussion, but I'm not of the decision being binding if we didn't have a quorum. I don't recall at our meetings when we have those issues. But at our meetings, we have a USDA representative there who also helps guide some of the legalities of administering the program. But we do not -- I don't recall a time when we didn't have a quorum.

It can get a little difficult when you need two-thirds to pass a budget or a major issue. But again it's kind of incumbent on the management of the committee and some of the board members to ensure that members of the committee go to the meeting and especially if there's going to be important voting, it needs a two-thirds vote.

And we do. We'll start to call around and say, "You have to have somebody there or an alternate. It's an important meeting." It's not
so easy to get together a group of industry members in a specific place and time. So it's important that you have a representation there. You don't want to come back for another meeting.

MS. SCHMAEDICK: Right. I understand.

So you brought up two really important points. One is you mentioned an alternate. Can you explain what you mean by an alternate and the function of an alternate?

MR. KECK: Yeah. There's a member on the committee. In our case, we have on the date committee, six handler members and three growers currently. And every member has an alternate.

Those alternates serve in the full capacity of a member the full rights and responsibilities in the absence of the member. That's usually the meeting where a member is not present and there's a vacancy that I will appoint an alternate to come and serve in the member's capacity.

MS. SCHMAEDICK: In your opinion, is it important to have alternates?
MR. KECK: It's very important if you want to establish quorums, especially the two-thirds threshold. Those are the important ones.

MS. SCHMAEDICK: Thank you. You also mentioned that sometimes it's difficult to meet all in one place. So I wanted to turn your attention to paragraph (c)(2) and there's a proviso there in the middle of the paragraph. I'll read it out to you.

MR. KECK: Okay.

MS. SCHMAEDICK: It says, in the event of an emergency that warrants immediate attention sooner and basically a meeting seems possible, a vote of the finance committee will be taken. In such an event, the council's first preference is a video conference. A second preference is a phone conference followed by a written confirmation of the members attending the meeting." Do you have something similar to that?

MR. KECK: We've currently -- You know our order is 70 years old. So it was written before a lot of technology. Recently, we had
amendments to our language that includes some of this new technology.

I'm not sure if we have video conferencing, just the technical language that you include in here. But we do have the provision to meet in other formats.

MS. SCHMAEDICK: How important is that?

MR. KECK: That could be essential if you're missing one member from the quorum.

MS. SCHMAEDICK: So of the items that we've covered in these sections as relate to California dates, in your opinion, are they equally as important for the proposed pecan program?

MR. KECK: Well, I think the procedures you established here are just as critical and even more so when you're talking about the geographic area that pecans industry has. And to meet with a board at a specific point in time is a big deal. I can see having situations where you might have one short of a
quorum with alternates and members and you can
achieve a functional meeting with that language
there.

MS. SCHMAEDICK: Previously when we
spoke about assessments, I think you briefly
touched on it and that is compliance. Does the
California date program have a compliance
component?

MR. KECK: Yes, we are required to
submit compliance plans to the Secretary and
within that plan spell out the procedures to
encourage compliance and effect compliance. And
that goes down to even conducting physical audits
of handlers and that kind of thing.

MS. SCHMAEDICK: And in your opinion
is that type of compliance authority and
preparation important to the functioning of your
program?

MR. KECK: It's important in the sense
that it's a formal program that has assessment
authority. And if you don't maintain compliance,
then you lose -- you basically start to lose
legitimacy and authority within the industry.
And you're basically not administering -- If you
don't effect compliance, then that means you
administer arbitrarily.

So it's very important that the buyer
stays away from a situation where it could be
considered to be administered arbitrarily or to
the benefit of one group over another. It won't
work if you don't have compliance. If you can't
get one person to participate as being regulated
then why would anyone else.

MS. SCHMAEDICK: Thank you. So in
your opinion would compliance be important for
the proposed pecan order?

MR. KECK: Yes, it's essential that
the committee have the ability to effect
compliance.

MS. SCHMAEDICK: Thank you. And my
last question for you is on continuous
referendums. Let me point for the section
proposed for review. If you turn to Section
96.94, entitled termination.
MR. KECK: Okay.

MS. SCHMAEDICK: Can you look at paragraph (d) please?

MR. KECK: Okay.

MS. SCHMAEDICK: For the record, I'll read it. It says, "The Secretary shall conduct a referendum within every five year period from the implementation of this part to ascertain whether a continuance of the provisions of this part..."

Then it goes on to say they are by two votes. In your opinion, is this a helpful practice? Would it be a helpful practice?

MR. KECK: I think that it's helpful. Every five years is a little short, personally, just with the effort that it takes to get to this point with marketing. If it were not to pass referendum and then to get it started again, it's just a steep hill to climb.

One thing that always concerns us with referendums are accurate rosters. And those may take some time to develop, as well, because people drop out of industries and fall in and
out. So it's a big effort. But it does again
reinforce the legitimacy of the program.

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

JUDGE GUTHRIDGE: Any other questions
from Agriculture?

(No verbal response)

Mr. Davis.

MR. DAVIS: Proponents have no
questions. Thank you so much.

MR. KECK: Thank you.

JUDGE GUTHRIDGE: Does anyone in the
audience have any questions for Mr. Keck?

(No verbal response)

Hearing none, you are excused. If you
would check with Ms. Gonzalez over there and see
if she has any problems with anything.

(Witness excused)

JUDGE GUTHRIDGE: Ms. Wray, has anyone
signed up to testify?

MS. WRAY: No.

MR. DAVIS: Your Honor, could we take
lunch?

JUDGE GUTHRIDGE: Do you want to call your next witness?

MR. DAVIS: Yes, Your Honor, unless you want to take lunch.

JUDGE GUTHRIDGE: It's 11:43 a.m. right now. Should we go on one more? I expect there will be comparable time to have one more witness.

MR. QUIROS: That will be fine, Your Honor. I call Mr. Jay Glover. Please have a seat. The Judge will swear you in, Jay.

MR. GLOVER: Okay.

JUDGE GUTHRIDGE: Would you raise your right hand please?

(Proponent Witness Jay Glover Sworn)

Mr. Quiros.

MR. QUIROS: One moment, Your Honor.

(Whereupon, the above-referred to document was marked as Proponent Exhibit 36 for identification.)
DIRECT TESTIMONY

MR. QUIROS: Mr. Glover, thank you for coming here today. First of all, had you had an opportunity to read Exhibit 1 to this hearing which is the notice that contains the proposed federal marketing order for pecans?

MR. GLOVER: I have.

MR. QUIROS: Secondly, to build a foundation, I'm asking you if you've had an opportunity to receive and review Exhibit 23 entitled executive summary which is an economic analysis of the implementation of the federal marketing order for pecans which was prepared by Dr. Marco Palma?

MR. GLOVER: I have.

MR. QUIROS: Thank you. I understand you have prepared testimony. If you would like to read that, that would be appropriate.

Glover Farms is a family pecan farm in New Mexico. I have over 280 acres of pecans currently in production. Last year we produced 700,000 pounds of pecans. I have 200 additional acres on which I intend to plant pecan trees and once planted the new pecan trees will be in production after seven years. On our farm, we grow improved varieties. A copy of my résumé is attached.

Glover Farms has more than $750,000 in annual gross revenue from pecans. And therefore, under the Small Business Administration guidelines, we would be considered a large grower business.

I have had multiple opportunities to be informed about the federal marketing order. So I feel as though I have been informed about the process of securing a federal marketing order and have been given an opportunity to participate in this process.

I have reviewed the economic analysis summary prepared by Dr. Marco Palma,
specifically, the projected average price increase from promotion of 6.3 cents per in shall pound versus the average 2.5 cents per in shall pound cost. Overall, I am aware of the costs that a federal marketing order may impose on my farm. And I do not believe these costs are unduly burdensome. Further, I believe the benefits of the federal marketing order to my farm will greatly outweigh any costs associated with it.

In recent years, I have seen a wide variation in the prices I have received from my pecan crop. Such wide variation in pricing makes it extremely difficult to plan for the future operation of my farm. While prices for pecans go up and down dramatically from year to year, my cost of production have steadily increased. Cost of fertilize and equipment have all increase in recent years regardless of the price I receive for my crop.

Additionally, the lack of accurate market information on the anticipated size of the
pecan crop in any given year also makes it
difficult for me to negotiate a fair price for my
crop and to make reasonable business decisions
about future investments. Increased price
stability and more accurate market information
would greatly benefit my farm.

I think my farm and the industry would
also benefit in the future from grade, size,
quality, packaging, shipping protocols and other
handling requirements as we compete with other
tree nuts for consumer's attention.

I also understand that under the
proposed order, only growers with more than 30
acres of pecans or more than 50,000 pounds of
average production per year over the last four
years will be allowed to vote on the proposed
order. In my opinion, this threshold is
reasonable because a grower that does not meet
this threshold is not a commercial grower. Any
grower that is smaller than the proposed
threshold could not justify the cost inherent in
such a small operation.
Until July 12 of this year, I served as President of the U.S. Pecan Growers Council. Our focus has been on expanding sales of pecans internationally through MAP funding and state funding. I am aware that the federal marketing order for pecans is a domestic program.

And I think that the goals and future work of the American Pecan Board and the National Pecan Growers Council have several goals that work that are complimentary. One is focused on international and one is focused on domestic. I have been authorized by the board of U.S. Pecan Growers Council to testify on its behalf in support of a federal marketing order for pecans and have written a letter on behalf of my organization to the Secretary of Agriculture supporting the proposed federal marketing order. And you also have a copy of that.

I am also testifying in my individual capacity in support of the federal marketing order for pecans.

In conclusion, I fully support the
proposed federal marketing order for pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. If you have any questions, I'll take them.

MR. QUIROS: Your Honor, I'm tendering this as Exhibit 36.

JUDGE GUTHRIDGE: Let me clarify one thing, Mr. Glover. I think on page three you testified at one point you said United States Pecan Growers.


JUDGE GUTHRIDGE: It's written here as National Pecan Growers Council.

MR. GLOVER: The organization voted in our meeting in Texas last week to change the name of the organization.

(Laughter)

JUDGE GUTHRIDGE: Thank you. So that's the new name.

MR. GLOVER: Yes, sir. It's changing from the National Pecan Growers Council to the
U.S. Pecan Growers Council.

JUDGE GUTHRIDGE: So on July 12th you were president of the National Pecan Growers Council.

MR. GLOVER: Actually, we voted to change the name before I relinquished the seat.

JUDGE GUTHRIDGE: Okay. So references in here should now be United States Pecan Growers Council.

MR. GLOVER: Yes, sir.

JUDGE GUTHRIDGE: Okay. U.S. Department of Agriculture, do you have any objections?

MR. HILL: No objections. My office exchanged testimony, as precedent, before with this organization.

JUDGE GUTHRIDGE: Does anyone in the audience have any objections?

(No verbal response)

Hearing no objection, Exhibit 36 is admitted into the record.

(Whereupon, the above-
referred to document marked
for identification as
Proponent Exhibit 36 was
received into evidence.)

Mr. Quiros.

MR. QUIROS: Reserve questions, Your
Honor.

JUDGE GUTHRIDGE: Does the Department
of Agriculture have any questions?

CROSS EXAMINATION

MS. SCHMAEDICK: Hello, Mr. Glover.

This is Melissa Schmaedick, USDA. Thank you for
your testimony. You mentioned that you have over
280 acres of pecans. Is that correct?

MR. GLOVER: Yes.

MS. SCHMAEDICK: How long have you
been farming?

MR. GLOVER: My family's had that
operation since 1969.

MS. SCHMAEDICK: So it's a couple of
generations then involved.

MR. GLOVER: Yes.
MS. SCHMAEDICK: I would like to talk to you about your experience with the U.S. Pecan Growers Council formerly known as the National Pecan Growers Council.

MR. GLOVER: Yes, ma'am.

MS. SCHMAEDICK: Thank you.

(Off record discussion)

So who are your constituents?

MR. GLOVER: The constituents of the U.S. Pecan Growers Council are regional organizations such as Eastern Pecan Growers, Western Pecan Growers, New Mexico, Louisiana. All of the states except I believe North Carolina but they may have come in without my knowledge.

MS. SCHMAEDICK: And these associations represent growers within their state. Is that correct?

MR. GLOVER: Yes.

MS. SCHMAEDICK: And I think you mentioned that the U.S. Pecan Growers Council focuses its activities on international
marketing. Is that correct?

MR. GLOVER: Yes, ma'am. Working with
the USDA through the MAP, the Market Access
Program.

MS. SCHMAEDICK: What types of
activities have you conducted?

MR. GLOVER: Well, we have several
target markets, our biggest being China, India,
Turkey, UAE, UK.

MS. SCHMAEDICK: So do you do
tradeshows in these countries? Or what do you?

MR. GLOVER: We do tradeshows
primarily. We also do in-store promotions,
educational programs. When we first got into
China, they didn't know what a pecan was, did
have a room for it. Now they do. And there
initially it was very much focused on education.
And now it's more promotion and helping the
roaster community there to make profit and
working hand and hand with them on distribution
and education.

MS. SCHMAEDICK: How long has the U.S.
Pecan Growers Council been operating with MAP funds?

MR. GLOVER: I do not know the specifics. I believe it's been four years, but I do not know everything.

MS. SCHMAEDICK: Four years. I'm guessing you made quite a bit of progress in those four years overseas.

MR. GLOVER: Absolutely we have. I believe the statistics indicate that over half of last year's pecan crop out of Georgia went overseas.

MS. SCHMAEDICK: And has that benefitted the industry?

MR. GLOVER: I'm sorry, Ms. Schmaedick. I didn't understand you.

MS. SCHMAEDICK: Has that benefitted the growth of the industry? Has that benefitted growers?

MR. GLOVER: Absolutely. I believe that even growers that do not directly ship overseas see an increase by price for their crop
because as those other pecans leave the country
there's less pecans available to be consumed
domestically.

MS. SCHMAEDICK: Correct. So in your opinion, the proposed program, is its focus on the domestic market?

MR. GLOVER: Are you referring to the marketing order?

MS. SCHMAEDICK: Yes.

MR. GLOVER: Yes. As I said in my testimony, ma'am, the proposed federal marketing order and the American Pecan Board in my mind I see a focus on domestic marketing, packaging and the U.S. Pecan Growers Council continuing to be with the main focus on the international market.

MS. SCHMAEDICK: I believe in your testimony you said that you felt that could be a cooperative relationship and there wouldn't be duplicity and overlapping functions. Is that correct?

(Off record discussion)

MR. GLOVER: I believe that they are
handling global organizations. There is plenty
of work for all of us to do. You know we're
using the Market Access Program to obtain funding
for the international marketing. There are other
government programs that can help us with the
marketing that we're not even tapping. So there
are possibilities for the domestic marketing plus
continued growth on the international side, too.

MS. SCHMAEDICK: So would you say in
general that the U.S. Pecan Growers Council is
supportive of the proposed federal marketing
order?

MR. GLOVER: Absolutely. And as I
believe a copy of our letter of support is
attached to my testimony.

MS. SCHMAEDICK: Were there any
concerns on the idea when it was first
approached, concerns from the U.S. Pecan Growers
Council about the proposed anywhere?

MR. GLOVER: Not to my knowledge.

MS. SCHMAEDICK: Given the success of
the MAP program in four years, what are your
hopes or expectations for the federal marketing order and its impact on the domestic market? Do you hope to see a similar result?

MR. GLOVER: I hope to see increased demand resulting in higher prices. The only real numbers I've seen as the projections of that increase were in the study.

MS. SCHMAEDICK: And who makes up the Pecan Growers Council? You mentioned the whole list of states that are participants in that program. In your opinion, was the cooperation of the states together? Were you able to achieve more together than you would have individually as states?

MR. GLOVER: Absolutely. The Market Access Program requires whatever commodity that is being promoted internationally to be promoted as a generic product. So for the Georgia Pecan Growers Association, for example, to go try and get MAP funding, the USDA is not going to do that because they're going to be trying to promote Georgia pecans and the same could be said for the
west. So without the combined operation through
the U.S. Pecan Growers Council, then we would not
have the mechanisms to use MAP funding for the
international market.

MS. SCHMAEDICK: In your opinion,
would that same type of benefits through
collaboration under the federal marketing order
allow folks that couldn't, let's say, funnel
their product or conduct research due to lack of
resources? Would the federal marketing order
facilitate those type of activities?

MR. GLOVER: Absolutely. The amount
of funding that's required to do some of the
things you just mentioned requires us an industry
nationwide to come up with those funds. So I
think it's the only way in this case.

MS. SCHMAEDICK: Thank you. That
concludes my questions.

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. I
want to draw a little on your expertise since
you've worked with the Council on a national MAP.
And I have a little more understanding of some of the regional groups.

I want to draw your attention to Sections 986.30 and 986.32. That's the production area.

MR. GLOVER: You said .30 and what?

MS. VARELA: .30 and .32.

MR. QUIROS: Jay, I'm also going to put them up here so you can see them.

MR. GLOVER: Okay. I was wondering.

MR. QUIROS: Yes.

MR. GLOVER: Yes, ma'am.

MS. VARELA: Now given that you've had substantial experience dealing with pecan growers across the country, first looking at the production area, does that definition in your opinion cover all of the areas in the country that receive pecans commercially?

MR. GLOVER: To my knowledge, yes.

MS. VARELA: Do you have knowledge of any production outside of that area?

MR. GLOVER: I do not.
MS. VARELA: And then looking down to
the second definition there, regions, you can see
we have three regions defined there. Do those
seems reasonable to you in terms of how pecans
are grown and the distribution of production in
the country?

MR. GLOVER: That seems reasonable on
three fronts to me, geographically, in terms of
tonnage it's divided pretty evenly, and in terms
of the number of growers it's divided pretty
evenly.

MS. VARELA: Thank you very much.

CROSS EXAMINATION (Cont’d)

MR. HINMAN: Don Hinman, USDA. Good
afternoon.

MR. GLOVER: Thank you.

MR. HINMAN: On page one, you
mentioned that you are intending to plant 200
additional acres of pecans, correct?

MR. GLOVER: Yes, sir.

MR. HINMAN: Can you tell me what some
of the factors you are considering in that
decisions to plant additional acres?

MR. GLOVER: Absolutely. I'm waiting on the results of the vote on this proposal.

MR. HINMAN: So the fact that the benefits of this order are influencing your decision to plant future acreage.

MR. GLOVER: Yes, sir. And on some level it's influencing my decision on whether to put my farm up for sale or not.

MR. HINMAN: On the bottom of page two, I'm asking two questions about your comments on the benefits of the proposed order. And at the bottom of page two you mention one of the benefits of the proposed order would be more accurate marketing information. If you could comment please on your views on how that more accurate market information would benefit your farming operation.

MR. GLOVER: Well, you know the two main factors that dictate what a crop is worth is what the projected production is for that year. And I'm talking in North America all across the
United States and Mexico and what the carryover is from the previous year. What I'm talking about here is getting really good cold storage information, more carry in information.

We have several people in our growing community that go around and predict what they think the crop is going to be. And then we don't have that good information on what the carry in is. So I think with better carry in numbers I'm in a better position to negotiate with the buyer on what price my crop should be.

MR. HINMAN: Thank you. On the top of page three of your testimony, you mention the benefits that would come from grade, size, quality, packaging, shipping protocols and other handling requirements. So if the order brought about more uniform grade, size, quality standards for example, how would those benefit your farming operation?

MR. GLOVER: I also have a retail operation. And through that retail operation, I know what the benefit of good-looking,
standardized packaging brings to me. They sell better. They sell better if it's standard enough to different size packaging for example. Another thing that comes to my mind out of this portion is trying to address rancidity. Pecans sometimes before they reached the shelves are not handled correctly. And they need to be refrigerated and they're not. And so a lot of people don't know what a good fresh pecan tastes like because they can't get their hands on them. So I would like this to be addressed under the proposed federal marketing order.

MR. HINMAN: Thank you. Those are all my questions.

JUDGE GUTHRIDGE: Okay. Follow up on just one thing to clarify. You used the term carrying number. Is that what you mean?

MR. GLOVER: Carry in.

JUDGE GUTHRIDGE: Carry in number.

MR. GLOVER: Yes.

JUDGE GUTHRIDGE: And how would you
define that?

MR. GLOVER: It is the number of pecans from the previous production year that haven't been consumed and are available to enter the product stream.

JUDGE GUTHRIDGE: Thank you.

Any more questions from the Department of Agriculture?

MR. HILL: No.

JUDGE GUTHRIDGE: Mr. Quiros.

REDIRECT EXAMINATION

MR. QUIROS: Yes. Thank you, Mr. Glover. I'm going to ask you to turn to Exhibit 1, Section 986.65 as a follow-up to the Judge's question. It's 985.65 and I'm looking at Subsection (d), estimate of the handler inventory on August 31st of in shell and shelled pecans. Is that part of what you believe to be the carry in inventory, Mr. Glover?

MR. GLOVER: That's the bulk of the carry in. There might be some product that growers have in their private cold storage. But
that is the majority of it.

MR. QUIROS: That's correct. You mentioned a lot about it would be very helpful for you to have an estimate of that number. Is that because it factors into the price that you would be paid for the next year's crop?

MR. GLOVER: As I said, the estimated size of the current year crop plus what's leftover from the previous year's crop handler inventory as it's referred to here --

MR. QUIROS: Right.

MR. GLOVER: -- are the two main factors that will settle the price of my product.

MR. QUIROS: Right. So it is helpful then to know what the projected crop is for the next year.

MR. GLOVER: It's essential.

MR. QUIROS: And right now in the pecan business how is that determined?

MR. GLOVER: We typically work off of the USDA's number.

MR. QUIROS: Okay. Are the numbers
that you work off or that you see every year
reliable in your estimation?

MR. GLOVER: Not in my opinion.
MR. QUIROS: I understand that

historically in the pecan industry there have
been two or three individuals that made their
respective prognostications with regard to the
future crop in a particular year. Are you
familiar with those?

MR. GLOVER: I am.
MR. QUIROS: And what sort of
confidence do you have in those numbers?

MR. GLOVER: They're as accurate as
they can be without a standardized process.
MR. QUIROS: Do you think they're
scientifically based?

MR. GLOVER: I do not.
MR. QUIROS: Okay. They're just the
experience of those three individuals with regard
to crops.

MR. GLOVER: Yes.
MR. QUIROS: Have you ever seen that
they've been wrong?

MR. GLOVER: Yes.

MR. QUIROS: Has that caused fluctuation in the price of pecans?

MR. GLOVER: Yes.

MR. QUIROS: Thank you, Mr. Glover.

Are you familiar with the release of several weeks ago by the California Almonds of the projected crop for the next year?

MR. GLOVER: I have not seen that.

MR. QUIROS: Thank you. As the last matter, could you turn please to the letter that you wrote while you were president of the National Pecan Growers Council, now the U.S. Pecan Growers Council and would you be able to read that into the record please?

MR. GLOVER: As you can see, that's not my strong suit. But I'll have to borrow your copy.

MR. QUIROS: Yes, sir. It's attached as a copy to your testimony.

(Aside) You can put it on the
overhead.

The testimony that you have.

MR. GLOVER: That copy that you gave me.

This letter is dated 6/15/15 and is addressed to The Honorable Tom Vilsack, Secretary of Agriculture.

"Dear Secretary Vilsack, The National Pecan Growers Council is writing you in support of the federal marketing order for pecans currently being promulgated by the American Pecan Board. Our industry has and continues to face issues of price and supply instability in the market. This situation inhibits our effort to provide a constant quality supply of pecans for domestic consumers at a price that supports a profit to be returned to producers and processors.

We believe that a federal marketing order will contribute to a more stable market environment that is favorable to growers, buyers, shellers and consumers. The National Pecan
Growers Council would like to go on record in favor of the order and greatly appreciate your support.

Respectfully submitted, Jay B. Glover, President, National Pecan Growers Council."

MR. QUIROS: Thank you, Mr. Glover.

No further questions, Your Honor.

JUDGE GUTHRIDGE: Any follow-up from the Department of Agriculture?

(No verbal response)

Does anyone in the audience have any questions for Mr. Glover?

(No verbal response)

Hearing none, then, Mr. Glover, you're excused. If you would talk with Ms. Gonzalez to see if she needs anything clarified.

(Witness excused.)

It's now 12:12 p.m. Shall we recess and return at 1:15 p.m.?

MR. QUIROS: 1:30 p.m. perhaps.

JUDGE GUTHRIDGE: 1:30 p.m.

MR. QUIROS: We have some witnesses to
JUDGE GUTHRIDGE: Okay. 1:30 p.m.

We're in recess.

(Whereupon, the above-entitled matter went off the record at 12:12 p.m. and resumed at 1:31 p.m.)

JUDGE GUTHRIDGE: On the record. Mr. Davis, call your next witness.

MR. DAVIS: Your Honor, the Proponents call as our next witness Mr. Ben King.

(Whereupon, the above-referred to document was marked as Proponent Exhibit 37 for identification.)

JUDGE GUTHRIDGE: Mr. King, please raise your right hand.

(Proponent Witness Ben King Sworn)

Proceed.

DIRECT TESTIMONY

MR. DAVIS: Good afternoon, Mr. King.

Thank you so much for being here.

MR. KING: Yes.
MR. DAVIS: You have in front of you what's in this record as Exhibit 1 for the proposed FMO and Exhibit 23.

MR. KING: Yes.

MR. DAVIS: The summary of the economic testimony of Dr. Palma. Have you had an opportunity to review those two documents?

MR. KING: Yes, I have.

MR. DAVIS: All right. Do you understand that you have a prepared statement that you would like to read?

MR. KING: Yes, I do.

MR. DAVIS: Why don't we go through that?

MR. KING: Thank you very much. My name is Ben King. It's spelled B-E-N K-I-N-G. Although, I currently reside in Chicago, I have extensive personal heritage and involvement in orchard management and California agriculture generally and the California pecan industry in particular.

Six years ago, I converted an orange
orchard that has been in my family for over 100 years to pecans. And since then I have planted and purchased approximately 850 acres of pecans in California.

Currently, I am the largest producer of pecans in California. That's approximately 1.6 million pounds of an estimated six million pounds state crop and owner of the largest acreage of pecans in California. In addition to the pecan acreage, I also own approximately 380 acres of almonds which has been established on land that has been in my family since the 1860s.

I have also been active in establishing several new companies that are intended to provide expertise, technology and capital to the California pecan industry in the future. I have established an asset management company called Arbor Nutrio LLC based in Chicago and co-founded a pecan marketing company called Pacific Gold Nut Company based in El Paso, Texas and co-founded a tree nut orchard management company called Pacific Gold Agriculture with
offices in Visalia which is the San Joaquin Valley and Colusa which is my home town located in northern Sacramento Valley.

One of my co-founders, Erin Steidlmayer, of Pacific Gold Agriculture is also present here at these hearings. She looks forward to introducing herself and our collective vision for pecans as a sustainable tree nut orchard management in California from her own perspective.

Under the Small Business Administration guidelines, we would be considered a large grower business.

I feel like I have been informed about the process of securing a federal marketing order. I have been given an opportunity to participate in this process.

I have reviewed the economic analysis summary prepared by Dr. Marco Palma, specifically, the projected average price increase from promotion of 6.3 cents per in shell pound versus the average 2.5 cents per in shell
pound cost. Overall, I am aware of the costs
that a federal marketing order may impose on my
farm and I do not believe those costs are unduly
burdensome, but rather a wise investment for our
companies and industry as a whole.

In recent years, I have seen wide
variation in the prices paid for pecans and I
believe that this volatility in prices is
unhealthy for producers and potential future
providers of capital to the industry. This
volatility is extreme compared to my experiences
as an almond grower and the price volatility that
is observed for walnuts and pistachios in
California. While the extreme price volatility
of pecans is unhealthy because operating costs
have been rising regardless of pecan price
decreases, it is also a deterrent to make
necessary capital investments in orchard
efficiency or sustainability infrastructure.

Further, the lack of accurate market
information on the anticipated size of the pecan
crop makes it difficult for us to feel confident
about prices offered for our pecans. Increased price stability through more accurate market information would greatly benefit our farm.

I think our farm and the industry would also benefit in the future from grade, size, quality, packaging, shipping protocols, and other handling requirements as we compete with other tree nuts.

I also understand that under the proposed order, only growers with more than 30 acres of pecans or more than 50,000 pounds of average production per year over the last four years will be allowed to vote on this proposed order. In my opinion, this threshold is reasonable because a grower that does not meet this threshold is not a commercial grower, but nevertheless will benefit from the increased marketing information and price stability that is likely to come with the federal marketing order.

The American Pecan Board has kept our organization informed about its effort to propose a federal marketing order. I have financially
contributed to the work of the American Pecan Board because I believe in their goals.

In conclusion, we fully support the proposed federal marketing order for pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. I thank you for this opportunity. I would be glad to answer any questions anyone may have.

MR. DAVIS: Thank you, Mr. King.

Your Honor, the Proponents tender Exhibit 37, the testimony of Ben King along with his CV.

JUDGE GUTHRIDGE: Is there any objection from the Department of Agriculture?

MR. HILL: No objection.

JUDGE GUTHRIDGE: Any objection from anyone in the audience?

(No verbal response)

Hearing no objection, Exhibit 37 is admitted.

(Whereupon, the above-referred to document marked
for identification as
Proponent Exhibit 37 was
received into evidence.)

MR. DAVIS: And, Your Honor, we will
reserve any questions at this time.

JUDGE GUTHRIDGE: Any questions from
the Department of Agriculture?

CROSS EXAMINATION

MS. SCHMAEDICK: Michelle Schmaedick,
USDA. Thank you, Mr. King, for your testimony.

MR. KING: Thank you.

MS. SCHMAEDICK: Thank you for joining
us today. You mentioned that you are involved in
the almonds and pistachio.

MR. KING: Not almonds. Just
personally involved in from the grower's
perspective almonds and pecans.

MS. SCHMAEDICK: Almonds and pecans,
okay.

MR. KING: -- from orchard management
we also work for this, for grove almonds.

MS. SCHMAEDICK: I'm sorry. Did you
also say for walnuts?

MR. KING: As kind of a loosely affiliated group, yes.

MS. SCHMAEDICK: Okay. So with these other commodities, have you served in any capacity on any committees?

MR. KING: No, I have not. I grew up in Colusa, California which is under 5,000 on an orchard right next to the river. I worked in walnut orchards. I worked in fruit orchards, peach orchards. But whenever I graduated from the University of California Davis I got an agriculture economics degree. Farming wasn't very good.

I wanted to do the farm management, but I went on to actually become an attorney in New York City and worked in the financial community. And during that time since my father died I continued to do farm management and improving the land that my great grandfather had.

I've been planting pecan trees for over a decade.

So it's really a return for me the
last year to a return to agriculture. So I really appreciate the opportunity to be part of what's going on in the pecan industry. I've spent quite a bit of time and money looking at the other growers' perspectives and very much appreciate the leadership of the American Pecan Board and Mike Adams.

MS. SCHMAEDICK: Thank you. So given your background then in the financial and legal industries, have you had a chance to look at the proposal, the Exhibit 1 proposed federal marketing order?

MR. KING: Yes, I have.

MS. SCHMAEDICK: Have you had a chance to focus on the administrative committee components? I'm referring to Sections 986.52–986.55. It begins with council expenses and then covers powers, duties and procedure. Are you familiar with those sections?

MR. KING: I've looked at them. Yes, I have. I can't say to remember the detail, but I understand the accounts.
MS. SCHMAEDICK: So in your opinion is the way that the program is proposed in terms of its administrative capacity include all of the elements that you would hope to find in sound business plan?

MR. KING: Yes, I think you need both first of all for having a collective nature in cost sharing for the business and have some type of balance between people who are focused versus the product community. But also I think what it's going to provide is the collective which is very important for a national specialty crop but also a way to cost share and most of all transparency and empowerment of grower level in way to collaborate with the Department of Agriculture.

MS. SCHMAEDICK: Thank you. And in terms of the business practice oversight, bookkeeping, reporting, do you have any thoughts on that?

MR. KING: Right. I think transparency is kind of the cornerstone of trust
within finance, within anything in the business end. But more importantly I believe when you're dealing with people from a wide geographic areas and have different viewpoints, knowing that there's transparency and fairness in the process, that it's viable, it really depends on the enduring confidence of the complete pecan usury community to make sure this is successful.

I think every decision needs to be rationale and I'm sure that the conservatism is kept with that. The industry has been talking about this for so long. It's important we have procedures and transparency and reserve rates because we're just starting to process. And we don't know what the market is going to be and how the challenges are. But we need to make sure that we have processes in place to protect all this hard work done today.

MS. SCHMAEDICK: Thank you. You also mentioned that your business has made contributions to the American Pecan Board.

MR. KING: Yes.
MS. SCHMAEDICK: So I'd like to take that thought a step further. In the proposed language in Section 986.63, do you have that?

MR. DAVIS: I'll put that up for you.

MR. KING: One second. Which section again?

MS. SCHMAEDICK: 986.63, contributions.

MR. KING: Contributions, yes.

MS. SCHMAEDICK: I'll give you a moment to look over that language.

MR. KING: Yes, I've seen that.

MS. SCHMAEDICK: So in your opinion, can contributions be helpful to an organization?

MR. KING: Absolutely. I believe I was on the record saying this, but I don't know the basis. There are definitely good people involved. I think it's the rates of that facility, but also I think it's incumbent upon the Board to not have preferential treatment just because somebody gives a contribution. So I would contend to sort of remove myself from that
process. And somebody who cares about the
industry I think will give contributions, but
then it more should be incumbent upon making sure
that from fiduciary that they are not influenced
by those contributions.

MS. SCHMAEDICK: Thank you. So just
to clarify. There's a statement in the middle of
that paragraph that says, "Such contributions may
only be accepted if they are free from any
encumbrances or restrictions on their use." Is
that the --

MR. KING: Yes, I think that's great
to have that specifically in the language. But
also I think the understanding if anybody makes a
ctribution to make sure there's no intended or
unintended.

MS. SCHMAEDICK: Thank you. My last
question for you is you mentioned the importance
of developing packaging and shipping protocols.
What do you have in mind when you say packing and
shipping protocols?

MR. KING: Well, it's when -- I'm
really not an expert on that, but it's speaking of the general language. I do think uniformity.
I do think there is no issue in the quality and the perception of quality of pecans. I do think that you can -- As somebody that's grown, who has been around farming my whole life, my favorite memory is picking fresh fruit or climbing on the cherry trees, and those are my memories of life.

There's something about quality or having great quality which today is more something that people are focused on the quality of the product. So to the extent that we can as the usury can have protocol that can ensure a certain quality to the consumer it will really enhance that amount of money that's in the market. Sometimes uniformity and quality levels should the practice of the market in the U.S.

MS. SCHMAEDICK: Thank you. No further questions.

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Good afternoon. Don Hinman, USDA. I just have one question. You
mentioned the value of accurate market
information in your testimony.

MR. KING: Yes.

MR. HINMAN: And you specifically
mentioned in relation to the anticipated size of
the pecan crop.

MR. KING: Yes.

MR. HINMAN: Others here have
testified that another very useful aspect of data
collection would be inventories. Would you
agree that that is another useful part of the
market information that would be collected?

MR. KING: Yes, I think the issue of
the cold storage numbers and the reliability in
reference to that, as I engage this industry is a
common thing, about whether or not those are
reliable and real numbers. They tend to be at
times a decent size, but of course looking at the
overall supply, when they're not verifiable, it
will have harder confidence.

And then the other point is lesser so
but since pecans are also a variable crop the
outcome of supply, the carry in and the potential
for a large year is something that's impacted.
And the interaction of the others too which can —
— Three years ago we had a lean crop. So all
these things, the supply of the pecans is
probably more our ability in tree nuts based off
of a smaller denominator because it's a large
geographic zone, because your deliverable in food
and in variety.
Information here in analyzing the bare bone
information probably is more important than any
other thing.

MR. HINMAN: Thank you. I have no
other questions.

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA.

Thank you so much for your time, Mr. King. I
just want to follow up a little further on one of
the statements you made. You mentioned that the
volatility you experienced in pecans is extreme
compared to the experiences as an almond grower
than price volatility you see in walnuts and
pistachios.

MR. KING: Yes.

MS. VARELA: Could you expound on that a little.

MR. KING: Yes, I think as you've seen in 2001, the year up to 2012, with the natives we saw a four percent, three percent change in prices. That is just kills capital formation and kills who want to buy trees. And so that says to me as one of the -- I haven't looked at actual or done the work of a standard deviation of that variance. But I would imagine that the volatility of pecans in the last seven years or ten years versus almonds or walnuts I would imagine it's about two or three times the volatility. That's a guesstimate.

The other thing about volatility is that there's both good volatility and bad volatility. Good volatility is when the price goes up and that's what's happening. And it's happening this year in almonds and the exception last year an increase in prices for walnuts;
whereas pecans were basically static or they
improved by a very small margin from prices three
years ago, four years ago were higher than they
are today, $1.3 in shell or less than that.
That's part of it, too.

But overall I think it's my perception
that historically because of the lack of
information, because of geographic dispersion of
the pecan growers that a lot of lessons learned
by the growers, we can get lesser prices and
assume that's fine because that's just how it is
especially around here.

MS. VARELA: Thank you. And also
drawing on your experience in California in
particular you mentioned that you have the
largest acreage.

MR. KING: Yes, it's certainly not the
smallest in the country, by and large. There's
only 6 million to 8 in pecans and two million in
almonds. So about that, I guess.

MS. VARELA: Would you say that most
of the pecan farms in California are on the
smaller side compared to some of the others.

MR. KING: Well, I think pecans in California are sort of unique. And I think that's a lot of reasons why the acreage hasn't grown. We guesstimate there's probably 25 to 30 growers with 5,000 acres and half of that is -- So there are some small pecan trees that were planted a while back that people will have custom on custom farming.

But they really haven't scaled it because of some of that increase came in the recent price economics. If you of almonds and re-extractions of 5,000 pounds per acre on these new varieties versus at $2.00 a pound versus pecans where in California the high would be the same, that's still there. So the orchards have not scaled in California. And I think that's one function opportunity cost and also function of changing cultural practices in the pecan industry while these other nut crops are just see a significant amount of globalization.

MS. VARELA: Thank you. You mentioned
kind of new term for me there. Could you define
custom farming for me please?

MR. KING: I'm sorry. Custom farming.

MS. VARELA: Custom farming.

MR. KING: So custom farming is where
you hire somebody to do one part of your cultural
practices, so a typical culture of custom farming
operations harvest. So if I had 40 acres of
pecans, I probably could -- I'd likely have some
walnuts and maybe some almonds or at least
walnuts. You could do all the irrigation. And
you can do the spraying.

But when it comes to harvest you may
want to have especially -- Because they have more
leaves than the other nut trees, you have some
come into the harvest. Or hedging, you are
hedging to the amount of hedging for pecan
there's one person actually goes up and down
doing the hedging and it actually comes out less,
too. So you find a specialized provider at a
reasonable cost of your cultural boundaries.

MS. VARELA: And would you say that
that type of industry is more common where you
are than in some of the other production or parts
of the production area?

    MR. KING: Yes, I'd say maybe
depending on the area, you know, a place like
Rosita Valley there's a lot. They probably do
custom harvest for pecans. But when it comes to
California because you have so many different
crops and people you see have different trees,
you will find people that are just nutting into
orchard management or farm management.

    One of the companies actually that
we're establishing is an orchard management
company where we will come in and invest to the
management side for a price break or looking at
unit center based structure. Pecans do have
certain specialized requirements. Therefore, the
machinery or even the knowledge is something
specialized. You can do that yourself.

    MS. VARELA: Thank you very much.

That's all I have.

    JUDGE GUTHRIDGE: Any more questions
from the Department of Agriculture?

(No verbal response)

Mr. Davis.

MR. DAVIS: One second. I want to
make sure. I have no questions. Thanks so much.

JUDGE GUTHRIDGE: Thank you so much
for your time. Does anyone in the audience have
any questions for Mr. King?

(No verbal response)

All right. You can be excused. Check
with Ms. Gonzalez to see if there are
clarifications.

(Witness excused)

MR. KING: So I'll just leave the
exhibits right here.

MR. DAVIS: Leave those exhibits right
there. Yes, thank you so much.

This may just take a second longer
since I'm solo here. But before I call my next
witness, let me get the documents in a row.

JUDGE GUTHRIDGE: Is the next witness
going to be Ms. Steidlmayer?
MR. DAVIS: Steidlmayer.

JUDGE GUTHRIDGE: You wanted to run outside for a minute.

MR. DAVIS: No, I'm getting documents ready.

(Whereupon, the above-referred to document was marked as Proponent Exhibit 38 for identification.)

JUDGE GUTHRIDGE: Please raise your right hand.

(Proponent Witness Ms. Erin Steidlmayer sworn)

Mr. Davis.

DIRECT TESTIMONY

MR. DAVIS: Good afternoon, Ms. Steidlmayer. How are you?

MS. STEIDLMAYER: Good.

MR. DAVIS: Good. Thank you for coming in. You have before you Exhibit 1.

MS. STEIDLMAYER: Yes, I do.

MR. DAVIS: And that is the proposed
federal marketing order, correct?

    MS. STEIDLMAYER: Yes, it is.

    MR. DAVIS: Have you had an

opportunity to review that in preparation?

    MS. STEIDLMAYER: Yes, I have.

    MR. DAVIS: Yes. And how about do you

also have Exhibit 23?

    MS. STEIDLMAYER: Yes, I have it here.

    MR. DAVIS: And that is the executive

summary of the economic testimony of Dr. Marco

    Palma, correct?

    MS. STEIDLMAYER: Yes, it is.

    MR. DAVIS: Have you had an

opportunity to review that?

    MS. STEIDLMAYER: Yes, I have.

    MR. DAVIS: Ms. Steidlmayer, I

understand you have a prepared statement. Would

you be prepared to go forward with that?

    MS. STEIDLMAYER: Yes. Thank you.

    MR. DAVIS: Thank you.

    MS. STEIDLMAYER: Good afternoon. My

name is Erin Steidlmayer. It's spelled E-R-I-N

Pacific Gold Agriculture manages over 1,200 acres of almonds and pecans and approximately 3,000 acres with our affiliated group companies. My responsibilities include general farm management duties, and more specifically, business development and human resources. Since we are affiliated with Ben King and Arbor Nutrio, we are the largest pecan orchard manager in California.

Due to my previous experience in the software technology industry and my understanding of the importance of said technology, Pacific Gold Agriculture is working with a software company to integrate technology an agriculture. We are able to track orchard by orchard, block by block, of productivity and we have the ability to monitor and compare solar panel power production,
soil water retention and much more.

With this technology, we can make the business of agriculture as transparent and understandable to the consumer as other industries which would definitely bring the pecan farming industry into the 21st century and beyond. Attached is my résumé.

Although I am an attorney by profession, my family heritage in farming goes back to the 1920s when my great grandparents emigrated from the Philippines to the sugar cane fields of Hawaii.

Pacific Gold Agriculture has more than $750,000 in annual gross income from pecans. And therefore under the Small Business Administration definitions we are classified as a large pecan business.

I have reviewed the economic analysis summary prepared by Dr. Marco Palma, specifically, the projected average price increase from promotion of 6.3 cents per in shell pound versus the average 2.5 cents per in shell
pound cost. I believe that the benefits of the federal marketing order to our farming business will greatly outweigh any costs associated with it.

The American Pecan Board has kept our organization informed about its efforts to propose a federal marketing order. I believe that I have been informed about the process and I have been given the opportunity to participate in this process.

In conclusion, I fully support the proposed federal marketing order for pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. I would be glad to answer any questions anyone may have.

MR. DAVIS: Thank you so much, Ms. Steidlmayer.

Your Honor, the Proponent group tenders Exhibit 38, the testimony of Erin Steidlmayer and her curriculum vitae.

JUDGE GUTHRIDGE: Any objection from Department of Agriculture?
MR. HILL: No objections.

JUDGE GUTHRIDGE: Any objections from anyone in the audience?

(No verbal response)

Hearing no objection, Exhibit 38 is admitted into the record.

(Whereupon, the above-referred to document marked for identification as Proponent Exhibit 38 was received into evidence.)

MR. DAVIS: Your Honor, we will reserve questions.

JUDGE GUTHRIDGE: Does the Department of Agriculture have any questions?

CROSS EXAMINATION

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Good afternoon, Ms. Steidlmayer. Thank you for your testimony.

MS. STEIDLMAYER: Sure.

MS. SCHMAEDICK: So I'm curious. I'm not quite sure based on your testimony. Are you
identified as a grower?

MS. STEIDLMAYER: So we're a farm management company. So we're neither specifically a grower or a handler. But we're affiliated with a grower. I work with Ben King and he is the grower and roughly it's up to the referrals.

MS. SCHMAEDICK: Well, given that relationship I was hoping that maybe you could speak to a term that is in the proposed program.

MS. STEIDLMAYER: Okay.

MS. SCHMAEDICK: If you could look at 986.3 which is entitled affiliation. And I'll give you a moment to look it over.

MS. STEIDLMAYER: Sure.

MR. DAVIS: Ms. Steidlmayer, I'm going to try to get that up on the overhead for you, too.

MS. STEIDLMAYER: Okay.

MS. SCHMAEDICK: So I guess let's start off with what is your basic understanding of this term here? What is it trying to capture?
MS. STEIDLMAYER: I think it's trying
to capture either -- So a grower or a sheller --
I'm sorry. I want to make sure I answer this
correctly.

MS. SCHMAEDICK: Sure. Take your
time.

MS. STEIDLMAYER: Sure. So there's a
common thread between the sheller and the grower.
And the first part of the sentence, a grower or a
handler that is under the control of another
grower and handler, there is a proprietary
relationship between those entities. So there's
a common thread between the grower and the
sheller.

MS. SCHMAEDICK: Thank you. I
apologize for putting you on the spot there. You
said you were an attorney. The reason I ask you
this is in the context of membership on the
proposed council for example I'm wondering about
your relationship with the previous witness, Ben
King, as a grower.

MS. STEIDLMAYER: Okay.
MS. SCHMAEDICK: Would you be considered an affiliate according to this definition?

MS. STEIDLMAYER: We are neither a grower or a handler. For the first part, we're not under the control of a grower/handler or directly. Or indirectly connecting in proprietary capacities. I think that we're still not because we're not a grower or a handler. So no.

MS. SCHMAEDICK: Okay. So then based on your understanding of the common thread --

MS. STEIDLMAYER: Right.

MS. SCHMAEDICK: -- if there were a common thread --

MS. STEIDLMAYER: Right.

MS. SCHMAEDICK: So it's a hypothetical. If there were a common thread, would that allow you to have a seat on the council?

MS. STEIDLMAYER: For our farm management company?
MS. SCHMAEDICK: Yes.

MS. STEIDLMAYER: Well, it's just answering a question if there were a common thread.

MS. SCHMAEDICK: If there were.

MS. STEIDLMAYER: Then yes.

MS. SCHMAEDICK: Okay. Thank you.

That's my only question.

MS. STEIDLMAYER: Okay.

MS. SCHMAEDICK: Thank you.

JUDGE GUTHRIDGE: Any other questions from the Department of Agriculture?

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Don Hinman, USDA. Ms. Steidlmayer, you mentioned 1,200 acres of almonds and pecans. Can you break it out? What is the number of acres of pecans at Pacific Gold Agriculture?

MS. STEIDLMAYER: Yeah, so it's about 400 acres of almonds and about 800 acres -- it's actually 850 acres of pecans.

MR. HINMAN: That was my only
question. Thank you.

MS. STEIDLMAYER: Okay.

JUDGE GUTHRIDGE: Any other questions from the Agriculture?

(No verbal response)

Mr. Davis.

MR. DAVIS: Thank you so much. We have no questions.

MS. STEIDLMAYER: All right.

MR. DAVIS: Appreciate it. Thanks for coming.

JUDGE GUTHRIDGE: Is there anyone in the audience have a question for Ms. Steidlmayer?

MS. STEIDLMAYER: Steidlmayer.

JUDGE GUTHRIDGE: Steidlmayer.

(No verbal response)

No. So you're excused. Please check with Ms. Gonzalez.

MS. STEIDLMAYER: Sure.

(Witness excused)

MR. QUIROS: Your Honor, we'd like to call our next witness, Mr. Medina. Your Honor, I
need just a moment to talk with my co-counsel while he gets settled.

JUDGE GUTHRIDGE: Certainly.

(Off record discussion)

MR. DAVIS: And this is going to be 39.

(Whereupon, the above-referred to document was marked as Proponent Exhibit 39 for identification.)

In the meantime, let me go ahead and swear you in so we're ready to go.

(Proponent witness Eduardo Medina sworn)

MR. QUIROS: Thank you, Your Honor.

DIRECT TESTIMONY

MR. QUIROS: Mr. Medina, just to lay a foundation for your testimony, I wanted to ask you if you had been able to receive and review a copy of what is Exhibit 1 in this hearing which is the notice which contains the proposed federal marketing order for pecans.
MR. MEDINA: Yes, sir.

MR. QUIROS: Next I'd like to ask you if you have received what's been identified as Exhibit 23 in this hearing which is an executive summary of the economic report that was given by Dr. Marco Palma yesterday. Have you received that?

MR. MEDINA: Yes, sir.

MR. QUIROS: Thank you. And had a chance to review it.

MR. MEDINA: Yes, sir.

MR. QUIROS: Thank you. I understand you have prepared testimony. Would you like to read that now?

MR. MEDINA: Yes, sir.

MR. QUIROS: Thank you.

MR. MEDINA: My name is Eduardo Medina. It's spelled E-D-U-A-R-D-O M-E-D-I-N-A. I live in Dallas, Texas. I am the Chief Executive Officer of Pecan Grove Farms and Nursery. Pecan Grove Farms and Nursery is located in Cedar Creek, Texas. We have two pecan
farms located in Central and West Texas. One our
farm, we grow improved varieties of pecans. I
have attached a copy of my résumé.

Under the Small Business
Administration guidelines, we are considered a
large pecan grower farm.

There are four benefits I would like
to see as a result of the proposed federal
marketing order for pecans.

1. Increase detail and reliability of
industry data. The lack of accurate market
information on the anticipated size of pecan crop
in any given year also makes it difficult for us
to negotiate a fair price for our crop and to
make reasonable business decisions about
investments in our farms. More accurate market
information would greatly benefit our farm
operation.

2. Increase consumer focused pecan
research. Our universities provide great
agricultural and technical research today, but we
need more research focused on health benefits of
pecans and research related to marketing to our
customers.

MR. QUIROS: Mr. Medina, can I
interrupt you there? Is there any other types of
research do think would be helpful to have as
part of the federal marketing order for pecans?

MR. MEDINA: Yes. I would like also
research regarding technology nursery, falling
trees, all related to having a better tree and
better yield, less disease. And there's a lot of
intent to do that. There is not a lot of
resources available.

MR. QUIROS: Thank you, Mr. Medina.

MR. MEDINA: Number three would be
industry (non-branded) pecan promotion and
marketing. We need good marketing to address and
win in the domestic U.S. market, the largest
consumer market in the world.

4. The final benefit I would like to see is
what I call "risk management." A unified voice
for the entire industry to help us face
challenges together, such as a potential product
recall. This unified industry representation, coupled with possible future handling improvements related to quality, packaging, size, grade, etc., will be very important in the future growth of the industry.

I have reviewed the economic analysis summary prepared by Dr. Marco Palma, specifically, it is very encouraging to review that using promotion investment of 2.5 cents per in shall pound that the increase of the value of the crop had an average of 6.3 cents positive impact per in shell pound.

Overall, I am aware of the costs that a federal marketing order may impose on our farms. I do not believe those costs are unduly burdensome. I believe that the benefits of the federal marketing order to our farms will greatly outweigh any costs associated with it.

MR. QUIROS: Mr. Medina, I'd like to interrupt you again if I can. Acknowledging that growers do not pay assessments, if you prices were affected essentially by the cost of the
assessments and you were paid lower in prices, what percentage of your costs for production would 2.5 cents be?

MR. MEDINA: It would be between one and three percent of the cost. And in my business experience, a marketing expense would be about ten percent. If you go to any public company, it will have about a ten percent market expense. So I think that is not burdensome.

MR. QUIROS: And you're familiar with Dr. Palma's testimony again which sets it at I think between 1.3 cents and 1.7 cents of the cost of production.

MR. MEDINA: Right.

MR. QUIROS: Thank you.

MR. MEDINA: I was about to get into that in my testimony.

MR. QUIROS: Yes. Thank you very much.

MR. MEDINA: I understand that under the proposed order, only growers with more than 30 acres of pecans or more than 50,000 pounds of
average production per year over the last four years will be allowed to vote on the proposed order. In my opinion, this threshold is reasonable because a grower that does not meet this threshold is not a commercial grower. Any grower that is smaller than the proposed threshold could not justify the cost inherent in such a small production and is most probably merely a seller of pecans from older trees that happen to be on his or her property, a hobby farmer or one that does not plan to put all commercial inputs such as fertilizer, water, etc. on his farm.

I have been a member of the Texas Pecan Board for the past two years. The American Pecan Board has kept our organization informed about its efforts to propose a federal marketing order. Pecan Grove Farms and Nursery hosted the first meeting of the American Pecan Board and we have met with the board four times. I feel like I have been informed about the process and I have been given an opportunity to participate in this
process.

It is my expectation that the funds will be used efficiently and by that I mean with a high percentage of the money making it to industry uses rather than salaries and also effectively which also means using experts and not only growers and shellers involved in the deployment of the funds.

In conclusion, I fully support the proposed federal marketing order for pecans and encourage the Secretary to implement the order as proposed by the American Pecan Board. I will be glad to answer any questions you may have.

MR. QUIROS: Your Honor, we tender Mr. Medina's testimony and his résumé as Exhibit 39 in these hearings.

JUDGE GUTHRIDGE: Is there any objection from Department of Agriculture?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Any objection from anyone in the audience?

(No verbal response)
With no objection heard, Exhibit 39 will be admitted into the record.

(Whereupon, the above-referred to document marked for identification as Proponent Exhibit 39 was received into evidence.)

Mr. Quiros.

MR. QUIROS: Yes, reserve questions.

JUDGE GUTHRIDGE: Does the Department of Agriculture have any questions?

CROSS EXAMINATION

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Thank you, Mr. Medina, for your testimony. Thank you for joining us today. There are two things from your testimony that I wanted to explore a bit further.

One is that you mentioned that you own a nursery. Is that correct?

(Off record discussion)

MR. MEDINA: Yes, I do.

MS. SCHMAEDICK: Is that a separate
business or part of your pecan growing business?

MR. MEDINA: It's part of my pecan growing business. I see it as we can sell to consumers. We can see it commercially. So far we only sell it commercially. But we have made decisions to plant.

JUDGE GUTHRIDGE: Is that limited to a pecan nursery?

MR. MEDINA: Yes, we do a pecan nursery. So we don't have any other fruit or nuts.

MS. SCHMAEDICK: So I wanted to turn your attention to Exhibit 1. And I wanted you to look at specifically 986.28 which a definition for pecans.

MR. QUIROS: Mr. Medina, I also have it up on the screen.

MR. MEDINA: Thank you.

MS. SCHMAEDICK: Have you had a chance to look at this definition?

MR. MEDINA: Yes, I have.

MS. SCHMAEDICK: So given your
background in the nursery part with the pecan
industry, can you tell me just in layman's terms
a very quick explanation of the difference
between a seedling and improved?

MR. MEDINA: I'm probably not the best
person to ask that question. But I'll try to do
my best. I think the difference between a
seedling and an improved variety is that the
seedling is what you obtain from the tree. You
just plant it and it grows.

An improved variety would be you have
a root system that you like. You actually either
bud a new variety to that tree or you graft the
tree into this new tree. So you are getting for
example the best out of the root system as well
as the best on the top side of the tree. I hope
that helps.

So one you don't do anything. You
know you get the tree and you put it in the
ground and you have a seedling. But you don't
know if it's really a combination of pollination.

MS. SCHMAEDICK: So just to clarify,
for a seedling you could take a pecan from that
tree and stick it in the ground and you would get
a tree.

MR. MEDINA: Yes, but that tree may be
pollen. But when the flowers combine with pollen
it will give a different variety independent of
the percentage of the combination. So the
chromosome will end up as something else. That's
why it's not the same definition.

MS. SCHMAEDICK: I see. And in your
nursery, what type do you carry? Improved pecan?

MR. MEDINA: Just improved varieties.

MS. SCHMAEDICK: Only improved, okay.

So I want you to look at paragraph 82 of 986.28.
And that paragraph starts with "Improved pecans."

986.28, paragraph (a)(2) improved pecans.

MR. MEDINA: Yes.

MS. SCHMAEDICK: So there's a
statement there that says that varieties are
selected for superior trades. And then further
on it says, "including but not limited to..." and
it gives a listing of names of varieties. Do you
see that part?

MR. MEDINA: Yes, I do.

MS. SCHMAEDICK: To your knowledge, is this a fairly extensive list of the type of trees that are grown in nurseries?

MR. MEDINA: Yes, I think it's a fair list of the commercial varieties of improved varieties. There may be more that is less commercial. And there's continuously new development of new varieties. But today it is a fairly good list.

MS. SCHMAEDICK: Thank you. And you mentioned new varieties. Are there new varieties?

MR. MEDINA: Yes, the USDA rating center, there's three I believe in the U.S. and they try to do the work on traditional genetics which is the combination of two trees. Then they get a new pecan and they plant it and they grow it. Then they see how that performs for the first time.

And once they get certain track
records of production and the tree holds on and
it's a good quality and it brings benefit to
certain aspects of industry, then they will
release it to the public as far as the USDA
program.

There also has been recently growers
that have actually been developing their own
seedlings and finding out through development if
that variety would be better than others. And
eyes they have been recently patented, two or three
different improved varieties. But they are less
commercial. It's rare that it becomes successful
commercially.

MS. SCHMAEDICK: Thank you. And how
are you as an industry owner made aware of these
new varieties? Are they introduced to you and
then you decide whether or not to carry them? Or
how does that work?

MR. MEDINA: I try to be part of the
process. I tried to be close to the reading
centers as well as see other people's research.
And then I also try to stay in touch with my
clients which is the buyers and see what the
benefits are or not. So I actually travel
throughout the U.S. from Georgia to Arizona a
couple of times per year. I take home -- and
just getting a sense of what the issues are and
then just do something that you like to do and
try and find out about it.

MS. SCHMAEDICK: And what types of
attributes are you aware of that folks are trying
to develop through those varieties?

MR. MEDINA: For example, in western
states, they're more interested in avoiding
something called scab. They're also looking for
size of the pecan and early varieties. Those are
the three main things that they're looking for.

So scab is a type of fungus that
actually effects the production of the tree. And
so you can have a variety that actually is less
susceptible to scab and then a lot of times
you'll have a higher yield.

When you go over to the western
states, you're looking more for drought resistant
variety as well as salt resistant due to the weather conditions there and also clearly keep a high yield on your production.

MS. SCHMAEDICK: I believe you said that in the western states scab was a concern.

MR. MEDINA: In the western states they have scab. In the western states, they have salt and drought problems.

MS. SCHMAEDICK: Thank you for that clarification. In your opinion if research were allowed for under the proposed marketing order, would the development of disease resistant varieties be helpful?

MR. MEDINA: Yes, I think it would be very helpful. But I also think it's going to be helpful to make sure that nothing only stays in the U.S. Today according to the USDA program, you have just an open system with other countries.

They were actually the basis of the development of other countries on the expansion of the Mexican industry or the South African
industry and even the Chinese industry has been USDA. The USDA has been sending through the years material to develop orchards and teaching them how to grow them.

And they're thinking as an industry has been consistently -- There's not enough communication between one side and the other. And also the USA has not been able to have contracts with patent development or IT technology related to these varieties. Again there is any development from the industry as American example, it should be included and it's linked to IT propriety and stays in the U.S as far as the competitive advantage of other markets.

MS. SCHMAEDICK: Thank you. You also mentioned that you are affiliated with the Texas Pecan Board. Can you tell us about your role in that group?

MR. MEDINA: Yes, so I'm one of the eight members. And I'm Vice President at the present of the organization and what we work on
is innovation and trying to develop research on medical or health benefits in pecans. And there is an intent to do more. But the resources are very limited.

We also contribute capital to the MAP funding of the U.S. Council or the American Council.

MS. SCHMAEDICK: And the Texas Pecan Board, how do they generate revenue?

MR. MEDINA: They do a conference and they sell. I think 90 percent of their contributions come from that.

MS. SCHMAEDICK: Are there any assessments applied at the state level for Texas?

MR. MEDINA: There is the Texas board with this assessment checker program. Mike Adams is president. And everybody should contribute voluntary to spend some time with production. Unfortunately, that program hasn't worked very well. I think the contribution is less 23 percent of the state production. That's if the performance so good.
MS. SCHMAEDICK: In your opinion, why is that so?

MR. MEDINA: From practically people are not aware of it, lack of communication. There is also this feeling that how do I know if I contribute someone else will do. So people take a short road. They don't see the benefit of actually participating as a group.

Hopefully, things are changing. And there's progress. We hope that this effort of the marketing order will help to be an example of why we should be investing. And specifically the Texas growers should be focused promoting Texas pecans. So this initiative of the marketing order should be definitely -- we should be having a Texas order, continuing investing in marketing within the State of Texas.

MS. SCHMAEDICK: As a member of the Texas Pecan Board, are you saying that you're not concerned about competition with the federal marketing order?

MR. MEDINA: No, I think if I can try
to summarize it one of the things I see maybe be
captured in The Wall Street Journal or things
that are a national distribution. And then
there's the Dallas Morning News and make an
effort in those local papers that will have an
impact on the local consumption. It should be
completely different. They are mutually
exclusive or not. It should be.

MS. SCHMAEDICK: So you're saying that
they are mutually exclusive. But could they also
be --

MR. MEDINA: Complimentary.

MS. SCHMAEDICK: Yes.

MR. MEDINA: Yes, they could have
funds. One of the things we could also do is
contribute funds for the Texas board
specifically to develop marketing within the
state. Also in the MAP funding we are ongoing.

From the Texas Pecan Growers
Association, we are funding a portion to the MAP
fund. I'm not sure about the Texas Board. I
usually go to one meeting out of three. So
that's why that's -- and I'm not always on the
same day as they are.

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

CROSS EXAMINATION (Cont'd)

MR. HINMAN: Don Hinman, USDA.

MR. MEDINA: Hi.

MR. HINMAN: I'm going to ask you a
few more questions.

MR. MEDINA: Sure. Please.

MR. HINMAN: And the questions relate
to you listed in your testimony four benefits and
I just want to ask you about two of those.

MR. MEDINA: Okay.

MR. HINMAN: On the first page, you
mention an example market information about the
size of the pecan crop. Then you put your
categories as increased detail and response and
reliability of industry data. Could you provide
us a bit more detail about what you mean by
detail and reliability of the data and how that
would benefit the industry? This is on number
one on page one. Just comment more on increased detail and reliability of market information.

MR. MEDINA: Sure. In my mind is I'll try to keep it really simple. If we know that there is a lot of cold storage falling in production and we also know that there's going to be high volume in the industry generally, I might put it into cold storage my production and hold it until the market balances out. And therefore I can get a better price and at the same time as everyone else. There is that position that I can make.

However, if I know that in time I might be able to rent or lease a space of cold storage. So finding out at the last minute it's not a good practice. It also may need to have a national concern like if there's a whole lot of credits or how do I hold on based on my current inventory. How do I hold it long enough to make a better business decision. I hope that helps.

MR. HINMAN: Thank you. And number four on page two, there you mention possible
future handling improvements in quality, packaging, size, grade, etc. Could you comment along that how those would benefit the pecan industry?

MR. MEDINA: Sure. Today actually someone shared with me a website from the UC–Davis about cold storage. And it says that you can store all different tree nuts at 40 degree Fahrenheit in cold storage. That will allow you to keep the same quality for about 12 months. But if you keep it at zero like they tell people which was mentioned this morning the same quality are put into the study was that it would stay for two years.

So you can have an advantage of just holding longer. So David Salopek mentioned it this morning which proves it's actually already made by someone else in the recent times. So by having better packaging or practices you can have a longer shelf life. And therefore you would be able to go to market at the right time and avoid too much product in the market. And therefore
the price volatility should be reasonable in a significant way. I hope that helped.

MR. HINMAN: Yes. Thank you. I don’t have any more questions.

CROSS EXAMINATION (Cont’d)

MS. VARELA: Jennie Varela, USDA. I have a few more questions for you. I wanted to ask you a few questions about the make-up of the proposed council. Have you had a chance to look at Section 986.45 in Exhibit 1?

MR. MEDINA: I'm sorry. I cannot answer you.

MS. VARELA: All right. From Exhibit 1, it's Section 986.45.

MR. MEDINA: Okay. Yes, I've read it before.

MS. VARELA: Okay. Great. First of all, when you look at that, does it seem representative of the industry to you the way that those seats have been allocated?

MR. MEDINA: Yes, to an extent.

MS. VARELA: And would you say there
that there are several seats specific for small
growers and small shellers?

MR. MEDINA: Yes.

MS. VARELA: Along with that, do you
see that it's important -- Or in your opinion is
it important that the council will be diverse?

MR. MEDINA: Yes, I think it's
important for the council to have diversity in
the way we look at the system. Each of them will
have an idea of what their needs are and that has
value. I think what I see that is missing is
maybe one representative of outsiders, people
thinking that if you get the best of the
industries to help you make a decision.

At the end of the day it will be
growers and shellers. But you notice there
aren't any people in marketing or research or
other different avenues. So that could be
something that you might get. If you bring in
someone from the outside you should always
consider it. It says that, if you're not going
to get paid, and you can get a volunteer from
outside of the industry there is no economic
benefit on any decision or that needs to be
compensated to justify his time.

It might be something you guys should
consider about how to do, how to compensate a
third party which the attendant be compensated
properly to do the job.

MS. VARELA: And is that outside
person just something that might be accomplished
with the position of the public member?

MR. MEDINA: If that's the intent.
The theory behind it is the other person early in
the morning mentioned that in his practice he
hasn't seen it. And I don't know if that's again
because he's personally not been compensated for
this time. Therefore he goes there and maybe
works 12 hours a year and shows up to the meeting
and is not even prepared.

I guess if you have a fairly
compensated person that has expertise in that
operation with the expectation of actually doing
his job and bringing in the outside perspective
it would be helpful in my perspective.

MS. VARELA: Thank you. And then finally I wanted to ask you to look at Section 986.94. That's towards the end of this section on termination.

MR. MEDINA: Which number is that again?

MS. VARELA: And I'm specifically looking at paragraph (d).

JUDGE MENDEZ: Ninety-four.

MS. VARELA: 986.94.

MR. MEDINA: Yes.

(Off record discussion)

MS. VARELA: And just for the record, that's the section that deals with having a continuous referendum every five years. Is that something that you feel would be beneficial to the functioning of the council?

MR. MEDINA: I think it's important to have a beginning and an end and also always validating the process. I don't have enough experience to say three years or five years or
ten years would be an important time. I just
think it's always important to evaluate
yourselves and to have this conversation.

MS. VARELA: And I actually do have
one more other question for you if that's
alright. I want to go back to one of the
benefits that you stated in your testimony about
wanting to have a voice for the industry and at a
potential for risk management. That's an
interesting idea to us especially as there are
more and more safety regulations coming out.

Do you see a way that the council
could play a part in helping the industry comply
with some of those upcoming regulations? Is that
something that you think would benefit the
industry?

MR. MEDINA: I don't know if it's the
role of the marketing order to actually spend
money on those specific details of technology
side. I think it would be good to develop the
technology to maybe have the most efficient way
to market a product.
So I think a balance between pushing requirements on something that may not be the role or we use our resources to fit it on just to get out technology that saves a lower quality or make sure that safety aspect. I was more concerned on communications. If there is an issue specifically here, how do you go into the newspapers and how do you control the message or public relations that's on any risk management issue.

The other aspect is probably a little more long-term issue in a preventive process. And that's one concern is going too far into technology that doesn't really value the data on the first day to the growers. I mean this marketing effort has to be going to the market more than trying to develop technology and research on safety programs or on how do we prevent something that may never happen. I would say I would prefer to invest money into the marketing.

MS. VARELA: Okay. Thank you very
much.

MR. MEDINA: Thank you.

JUDGE GUTHRIDGE: Any more questions from the Department of Agriculture?

MR. HILL: No.

REDIRECT EXAMINATION

MR. QUIROS: Thank you very much, Mr. Medina. I'd like to ask you a couple of questions. The first one relates to your experience as a nurseryman. As far as you are aware, are there any genetically modified pecan trees?

MR. MEDINA: There isn't any.

MR. QUIROS: And so there are none grown in any commercial nurseries as far as you're aware of.

MR. MEDINA: None that I'm aware of.

MR. QUIROS: Thank you. You gave testimony with regard to being on the Texas Pecan Growers Board. I just want a clarification. Isn't it true that you are a member of the Texas Pecan Growers Association Board, a growers group?
MR. MEDINA: Yes.

MR. QUIROS: And you're not a member of the Texas Pecan Board. Is that right?

MR. MEDINA: Correct.

MR. QUIROS: Thank you.

MR. MEDINA: I'm always confusing that.

(Laughter)

MR. QUIROS: Thank you. I just wanted to clarify that. But while I have on the Texas Pecan Board I do want to ask you a few questions. I know I just qualified you as not being on that board, but I know you know something about it. I don't know a lot about it, but I understand that the voluntary program is only on acreage more than 30 acres, for growers more than 30 acres. Is that true?

MR. MEDINA: I'm not familiar with that.

MR. QUIROS: Thank you. You heard Dr. Palma's testimony yesterday and his Exhibit 19 discussion where he talked about being a free
rider. Are you familiar with that concept?

MR. MEDINA: Yes.

MR. QUIROS: And what does that mean in the context of a voluntary growers one and a half cent program?

MR. MEDINA: So I think I'll try to describe it very simple. When you see the budget of the Texas Pecan Board it's about $50,000 a year from which is contributed 80 percent from two growers. And we know that Texas has more than two growers. So that's what I call free rider when you have anybody else who is not contributing.

MR. QUIROS: So the economic motivation would be that if you don't think that everybody else is contributing you're not willing to contribute. Is that so?

MR. MEDINA: I guess that's part of it, yes.

MR. QUIROS: And on the other hand if you think everybody is contributing you don't feel like you may necessarily have to contribute.
MR. MEDINA: Yes, that they might not make a difference.

MR. QUIROS: That's right. Just sort of a quick question for you. If there was a product safety disaster in this industry, what happened to cantaloupes a few years ago, what happened to pistachios 15 years ago, in your mind who would react on behalf of the industry right now?

MR. MEDINA: Officially no one. But I'll say that everyone I think will call my house.

(Laughter)

But they think I'm the voice for the industry.

MR. QUIROS: Well, we all have. That's a good answer. But from the standpoint of a true safety recall that could affect the entire industries production for several years, is there any one industry group that you know of that could speak?

MR. MEDINA: No.
MR. QUIROS: And to the extent that there are current industry groups, they're mainly grower groups, sheller groups. They're specific interest groups or they're state boards that are funding promotion, etc. Is that correct?

MR. MEDINA: Correct.

MR. QUIROS: So we would really be -- We wouldn't have an industry spokesperson. We'd be looking to the federal or state governments.

MR. MEDINA: But not only it needs to be a spokesperson, it will need to be a person would need to be a person who knows about the safety and the issue and how to manage the media to be an expert on growing pecans and even having a leadership role in the industry. It goes to the experience of how do you manage the press and how do you communicate when you should not communicate and really have one voice for the industry and lots of different skills. And there are people who just do that.

MR. QUIROS: I know you had some hesitation about what the American Pecan Council
if the proposed federal marketing order for pecans is approved should do with regard to handling authorities. But do you think that as part of this handling authorities at least working with the federal/state governments to come up with maybe a best practices or preparing the industry even as we've discussed to be able to respond to a disaster like that would be of some benefit to the industry and to your farm?

MR. MEDINA: Right. It would be greatly appreciated.

MR. QUIROS: Thank you.

MR. MEDINA: Because once the next thing happens you don't have time to let's say let's go and think about it and I'll get back to you in a month. You need to know what to do.

MR. QUIROS: That's right.

MR. MEDINA: And not in a month from now. And even then you may not even have the resources to hire that person an external management.

MR. QUIROS: And experience has showed
us, hasn't it, from these other commodities, cantaloupes, pistachios, that once that happens if you cannot react you could lose a crop year or two?

MR. MEDINA: Not only that. Look at other outside industry. Look at petroleum. They have the stats where they ended doing it wrong and everybody from the top down had tough luck and lost their jobs. And so it's important to know how to manage the media and it's not a single person. We cannot do it all. So it shouldn't be surrounded by the best --

MR. QUIROS: So when you're referring to risk management as you have, is that in your mind that it's those type of risks that are also important to help manage through the American --

MR. MEDINA: Sure. I mean they receive a message like pecans and do this and someone goes out there and markets and throws -- The general in that perspective is the media. You should look and talk amongst yourselves. So they find something funny or interesting and they
will program it and see if it sticks. And there
is no response organized to say "We as an
organization don't think it's that way. And
this is the way we should be looking at this
issue." And have a spokesperson is very
relevant.

MR. QUIROS: Right. And in your own
mind is one of the best ways to manage those
risks making sure that as an industry we're ahead
certainly in compliance and ahead of the game
with regard to product safety?

MR. MEDINA: Yes.

MR. QUIROS: Thank you, Mr. Medina.

I have no further questions, Your
Honor.

JUDGE GUTHRIDGE: Department of
Agriculture, any further questions?

(No verbal response)

Does anyone in the audience have any
questions for Mr. Medina?

(No verbal response)

No. So you're excused.
MR. MEDINA: Thank you, sir.

JUDGE GUTHRIDGE: Can you go over and check with Mr. Gonzalez about anything.

MR. MEDINA: Thank you, sir.

(Witness excused)

MR. QUIROS: Your Honor, we would like to call our next witness.

JUDGE GUTHRIDGE: Is that Mr. Hudson?

MR. QUIROS: Dr. Randy Hudson.

JUDGE GUTHRIDGE: All right.

MR. QUIROS: But before we do, we would like to consult with Your Honor and also with the USDA for three to five minutes with regard to how to best take his testimony.

JUDGE GUTHRIDGE: All right. First let me ask. Ms. Wray.

MS. WRAY: Yes.

JUDGE GUTHRIDGE: Has anyone else signed up wanting to testify?

MS. WRAY: No.

JUDGE GUTHRIDGE: Does anybody out there want to testify that's not had an
opportunity to do so?

(No verbal response)

JUDGE GUTHRIDGE: Okay. So let's take a brief recess then about five minutes. And then a discussion.

MR. QUIROS: Thank you, Your Honor.

JUDGE GUTHRIDGE: Off the record.

(Whereupon, the above-entitled matter briefly went off the record.)

JUDGE GUTHRIDGE: The hearing will come to order. Back on the record.

Please raise your right hand.

(Proponent Witness Dr. Randy Hudson Sworn)

Mr. Davis. Mr. Quiros.

MR. DAVIS: Mr. Quiros.

DIRECT EXAMINATION

MR. QUIROS: Dr. Hudson, thank you for joining us this afternoon and for your work with regard to the portions of Exhibit 1, Sections 986.1 through 986.42, the definition section.

Before we begin that, please state
your name and spell it for the record.

DR. HUDSON: My name is Randy Hudson, R-A-N-D-Y H-U-D-S-O-N.

MR. QUIROS: And, Dr. Hudson, where do you live?

DR. HUDSON: I live in Osala, Georgia, .

MR. QUIROS: And please give us a summary of your educational background.

DR. HUDSON: I have a BS degree from the University of Georgia, soil science. And I have a masters degree from University of Georgia in plant science. And I have a PhD in entomology. I'm an inbred Bulldog.

MR. QUIROS: Dr. Hudson, what is entomology?

DR. HUDSON: The study of insects.

MR. QUIROS: Thank you. Describe your family's history in the pecan business.

DR. HUDSON: I am a 4th generation pecan farmer. I live on the farm that my great grandfather found many years ago. I live
approximately 200 yards from the home that my mom
and dad built and where I was born.

We all have been in the pecan
business. The initial pecan tree planted by my
great grandfather is still there. It was planted
by digging up wild seedlings, planting them in a
row which is across from my home today. And it
was initially planted to supply hog feed in the
winter when animal feed was short and hog could
feed on pecans. Obviously at that time pecans
were at a lower level.

I grew up in the pecan industry. I
grew up in the pecan industry. I
went to the University of Georgia, started
planting my first pecans, my home pecans, in
1981. Formed and organized Dutch Pecan Inc. also
in 1981 and vertically integrated the opportunity
to not only grow pecans, but also to process and
market pecans.

I've since formed five other entities
where we grow and market pecans. They are
growing operations. So I've been in the pecan
business for all of my life.
MR. QUIROS: Dr. Hudson, you're a grower. You're also I understand an accumulator, a sheller to some extent, a handler and a marketer of pecans.

DR. HUDSON: Yes, that is true. We grow about 2,000 acres of pecans and we handle between 10 million and 15 million pounds of pecans annually which is our growing point. I am not a sheller by definition. We only shell for our gift pack which we do for some customers.

MR. QUIROS: So you shell less than one million pounds.

DR. HUDSON: We shell less than a million pounds.

MR. QUIROS: So you shelf pecans.

DR. HUDSON: Yes, we shelf pecans. And we also have a cleaning plan. So we do cleaning. We clean our own production as well as clean some neighbors.

MR. QUIROS: Okay. So a custom cleaner as well.

DR. HUDSON: Yes.
MR. QUIROS: Under the Exhibit 1 which is the proposed federal marketing order for pecans, you cannot be both a grower -- You cannot be elected to the board as both a grower and a sheller. I wanted to ask you. As you self identify, do you self identify as a grower or a handler or both?

DR. HUDSON: I am a grower. I was born a grower and I will die a grower.

MR. QUIROS: All right. Dr. Hudson, under the guidelines of the small business administration I need to ask you a couple of questions. Do you consider yourself a grower that grows more than $750,000 or more of annual sales of pecans?

DR. HUDSON: Yes, I am.

MR. QUIROS: So you would be a large grower.

DR. HUDSON: Yes.

MR. QUIROS: And similarly, under the guidelines of the Small Business Administration, a large handler is one that has more than $7
million or more in annual sales of pecans as a handler. Would you consider yourself a large handler or a small handler?

DR. HUDSON: Yes, I am. I'm a large handler.

MR. QUIROS: Thank you, Dr. Hudson. Please describe your experience in industry trade organizations.

DR. HUDSON: Okay. I'm a member of the Southeastern Pecan Growers Association. I'm a member and board member of the Georgia Pecan Board Association. I am a member of the Texas Pecan Grower Association and Western Pecan Grower Association.

I am past president of the Georgia Pecan Grower Association and I'm president elect of the U.S. Pecan Growers Council.

MR. QUIROS: Are you president elect or are you president?

DR. HUDSON: Oh, that's right. I'm president.

(Laughter)
Doggone it. I became president about two weeks ago. Sorry.

MR. QUIROS: And you succeeded Jay Glover.

DR. HUDSON: I succeeded Jay Glover, yes.

MR. QUIROS: Thank you. How did you become involved in the efforts to get a federal marketing order for pecans established?

DR. HUDSON: Well, I've been active in trying to organize for a number of years. In fact, it became very apparent to me that our organization was disjointed. And for us ever to reach the levels that we've seen with other nuts in other industries, our industry had to work together.

I made the mistake of agreeing to give a paper at the Southeastern Pecan Growers Association several years back now. I think it was three or four years. And at that meeting, the discussion had already been out in regards to organizing the industry. And I gave a paper on
the concepts of unification of both growers and
shellers to be working together. For our family,
I had a real firm belief that we needed a very
strong domestic shelling industry. And growers
would have to pay a very important role in that.

MR. QUIROS: And you are a board
member of the American Pecan Board.

DR. HUDSON: Yes, I am.

MR. QUIROS: As part of your duties as
a member of the Board in the American Pecan
Board, did you participate in the drafting of the
proposed order?

DR. HUDSON: Yes, I did. I helped in
preparing the draft and I'd just like to say that
this came about after meeting for long hours of
discussions not only with our lawyers, but also
with other members on the board, but then
particularly in participating by going to any and
all grower meetings, creating a dialogue and
trying to find out exactly what it would take to
pull our industry together.

MR. QUIROS: And did the American
Pecan Board vote to approve the proposed federal marketing order for pecans before it was submitted to the Secretary of Agriculture?

DR. HUDSON: Yes, we did. It was a unanimous vote.

MR. QUIROS: In particular, did you participate in the development of the definitions included in the proposed order?

DR. HUDSON: Yes, I did. I discussed each of these details quite extensively with our attorneys as you will remember that first session.

MR. QUIROS: Have you received and reviewed what is now the notice marked Exhibit 1 in these hearings?

DR. HUDSON: Yes, I have.

MR. QUIROS: And to facilitate our discussion today, I am going to refer to Exhibit 1 specifically the portion containing the proposed federal marketing order for pecans at Section 986.1-986.42.

Dr. Hudson, I'll now ask you about
specific definitions. Since the USDA has introduced the actual definitions into the record I will not ask you to read each one. But I'll refer to each by its number designation in Exhibit 1 and ask you a few questions about each. Feel free to comment. Is that agreeable to you?

DR. HUDSON: Yes, it is.

MR. QUIROS: Dr. Hudson, Section 986.1, accumulator, is the word generally used in the pecan industry?

DR. HUDSON: Yes, it is.

MR. QUIROS: Is this the definition consistent with the industry usage in your experience?

DR. HUDSON: Yes, it is.

MR. QUIROS: Did you consider other definitions?

DR. HUDSON: No, not really because this is the term that is generally used in the industry.

MR. QUIROS: Under the definition, would Hudson Pecan Company be an accumulator?
DR. HUDSON: Yes.

MR. QUIROS: Thank you, Dr. Hudson.

Section 986.2, act, why did you use this definition?

DR. HUDSON: We use this definition because it's used in other --

MS. CHILUKURI: Your Honor, if I may interject. It was my understanding that we would have an opportunity to ask questions under each definition.

JUDGE GUTHRIDGE: I think that's what we were going to start doing.

MR. QUIROS: Let's start now. Sure. Whenever you want to, you can interrupt.

CROSS EXAMINATION

MS. CHILUKURI: Thank you. Dr. Hudson, can you tell us what an accumulator is?

DR. HUDSON: An accumulator is a person who accumulates nuts. He may buy these nuts from his neighbors as we often do in everything from a medicine back to several containers. Or we may buy them from other
accumulators. Or we may buy them from growers across the country as we have in the past if they can't be purchased in this area of the country.

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

DR. HUDSON: Randy is fine.

MS. SCHMAEDICK: On the topic of accumulator, is that type of business entity found here in the production area?

DR. HUDSON: I think I heard your question. There's a little vibration here. But as I understand it, you're asking me if there are accumulators across the production area of the United States. And that answer is yes.

MS. SCHMAEDICK: So in all three regions.

DR. HUDSON: There is numerous accumulators across the region. Not hundreds, but I would say there are numerous accumulators. Exact number I'm not sure.

MS. SCHMAEDICK: Now I see the definition as it is published in Exhibit 1. But
can you tell me in layman's terms what exactly
does that accumulator do? What purpose do they
serve?

DR. HUDSON: The accumulator buys
pecans. I mean that's about as simple as I can
put it. He goes anywhere and everywhere and
locates pecans. And he compiles those pecans,
puts those pecans together and may sort them by
grade and quality and then sells them and puts
them into his chain of commerce.

MS. SCHMAEDICK: Do you all
accumulators perform that detail and that
transaction?

DR. HUDSON: There are some
accumulators that are extremely specific and they
may have contractual relationships with just a
single sheller or with a single exporter. But
for the most part, once you put together a load
of pecans and you have it in your possession then
it becomes a matter of where the house price is
that you sell, whether domestically or
internationally.
MS. SCHMAEDICK: So accumulators may purchase product from growers.

DR. HUDSON: Yes.

MS. SCHMAEDICK: Do they purchase product from non growers?

DR. HUDSON: Yes.

MS. SCHMAEDICK: Would that be in the context of the medicine bags and totes of pecans?

DR. HUDSON: That's a possibility.

MS. SCHMAEDICK: And what do the accumulators do with their pecans? Do they place them into the stream of commerce or do they have an alternate handler? What do they do?

DR. HUDSON: Well, if you get extremely complicated and we will address this later on in the definitions of asking what might happen once the accumulator receives these nuts. I mean at all levels in the chain of marketing there are opportunities to add value obviously to that product.

So I would say that the term accumulator for the most part would refer to that
first principle organizer or compiler of product, of commodity. You would for the most part be in many cases particularly in east the first person to receive pecans from the growers.

MS. SCHMAEDICK: Thank you. No further questions at this time.

MR. QUIROS: Dr. Hudson --

JUDGE GUTHRIDGE: Any questions from USDA?

MS. CHILUKURI: I just have one question. Would an accumulator be classified as a handler?

DR. HUDSON: Yes.

MS. CHILUKURI: Thank you.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, now turn your attention to Section 986.2, act. Why did you use this definition?

DR. HUDSON: We used this definition because it is consistent and generic with other market orders. It is included to clearly identify the legal authority under which the USDA
can establish federal marketing orders.

MR. QUIROS: Was there any controversy with regard to this definition?

DR. HUDSON: Absolutely not.

MR. QUIROS: Any questions?

MR. HILL: None.

MR. QUIROS: They have no questions.

JUDGE GUTHRIDGE: Is that all? Any questions from USDA?

MS. CHILUKURI: No questions.

MR. QUIROS: Dr. Hudson, I'll now turn your attention to Section 986.3, affiliation.

And, Dr. Hudson, we also have that on the screen behind you if it would help you read.

MR. DAVIS: It's three pages. I can't get them all on there.

MR. QUIROS: So the affiliation definition if you need to see it. Is this term generally used in the pecan industry?

DR. HUDSON: No, not really.

MR. QUIROS: Why did the board need to define this term?
DR. HUDSON: Affiliation is one of those issues. Particularly where it's used is concerned with voting procedures as in Section 986.46 and also referred to in Section 986.31 related to proprietary capacity.

MR. QUIROS: Did you consider other alternatives to this definition?

DR. HUDSON: Yes, I'll be honest with you. We did. We considered this. There was considerable amount of debate and we could have had each subsidiary vote. But we felt that it was fair to have all affiliated organizations have only one vote.

And this comes to democracy issues here. There are some large growers like myself who have several corporations. They have LCs, loose-tail corporations or other entities for their various farms or handling elements of their overall business.

We did not think it would be fair to small and mid-sized growers or shellers to let each part of a large organization have a vote.
They should be considered and it was our position that they should be considered that it would be one entity for voting purposes to allow that.

In Georgia I personally know of one grower who has 40 entities and I hold an ownership of five different entities. I do not feel like and we do not feel like that I should be given five votes and he should be given 40. Each entity should be one vote.

MR. QUIROS: Thank you, Dr. Hudson.

No other comments from us. We'll reserve any questions after we hear of any other questions from the USDA.

JUDGE GUTHRIDGE: Does the USDA have any questions?

(No verbal response)

Okay.

MR. QUIROS: All right. Dr. Hudson, I'll now turn your attention to Section 986.4, blowout. Is this term generally used in the pecan industry?

DR. HUDSON: Yes, it is.
MR. QUIROS: Is this definition consistent with the usage of this term in your experience?

DR. HUDSON: Yes, it is.

MR. QUIROS: Why did the board define this term?

DR. HUDSON: We defined this term principally because it's used in the definitions of substandard pecans and also in assessments. In Section 986.28, paragraph 3 and Section 986.61.

MR. QUIROS: Your Honor, we have no further questions with regard to this definition.

JUDGE GUTHRIDGE: Does Agriculture have any questions?

CROSS EXAMINATION (Cont'd)

MS. CHILUKURI: Dr. Hudson, can you tell us what a blowout is?

DR. HUDSON: Well, it's what it is. It's a blowout. And most of the nuts when they go through the sizing and cleaning process will go across an aspirator. And what happens here is
if you have light nuts in the samples, this large vacuum is pulled on these nuts and these lighter nuts are really literally pulled off.

A high quality desirable pecan would break 50 to 52 percent meat. A blowout might very well break 18 to 20 percent edible meat. And they also hurt your grade involved in handling. And we pull these nuts off, put them over to the side and they have value.

MR. QUIROS: Your Honor, I want to question whether we go on like this. The American Pecan Board has defined its federal marketing order and it has sent it to the Secretary. That's been acceptable and published. It is already an exhibit.

And if we have definitions and then ask Dr. Hudson to redefine what's in the plain meaning already been filed as part of Exhibit 1 it will take a long time. But more than that, we don't want a re-definition of this. We don't want plain terms.

We've stated with specificity what
each one of these definitions means and I know they're odd definitions. They're sometimes definitions that are unique to this industry. But they have been defined. They are an exhibit.

And I don't want us to get into controversy later that something that Dr. Hudson said and trying to clarify what a definition meant. We'll have plenty questions regarding that. It's his attempt to redefine how these definitions should be defined.

JUDGE GUTHRIDGE: Well, Mr. Quiros --

MR. DAVIS: Your Honor, if you could one second.

(Off record discussion)

MR. QUIROS: And so I'm objecting to the form of the question.

JUDGE GUTHRIDGE: Mr. Quiros, you called Dr. Hudson as a witness. And because as I understood our procedural conversation earlier you thought that there should be testimony about how these definitions came about.

You seem to be switching to a 180 that
the -- let me finish -- definitions as they stand
are sufficient. They are the record. They are
what they are and that there need to be any
questioning of Dr. Hudson on these definitions.
So if you have no questions about the definitions
themselves, would USDA want to -- I don't know
what the USDA has an interest in asking about any
particular definitions or feels the need to do
that. But he was called as your witness.

MR. QUIROS: Yes, Your Honor. And I
agree to that. We wish this to go on and there
could be questions with regard to those. But we
don't want Dr. Hudson to be asked as a form of a
question to redefine what the definition of
blowouts is. He and his board -- He does not
have the authority to do that.

The board has defined and has voted on
these definitions and then on the entire proposed
federal marketing order. He can interrupt what
he means by that or what the industry means by
that. But I don't want us to be on every
definition asking him to redefine what a blowout
is. The blowouts are defined.

I think the form of the question if 
the USDA wants to ask what does that mean that's 
different. And that's what I'm objecting to.

JUDGE GUTHRIDGE: You're objecting to 
them asking what he means by -- 

MR. QUIROS: No, just the opposite. 
I'm encouraging them to ask him what he means by 
the definition. I'm not wanting him to be asked 
to redefine it. Then I think we've created a 
record that's different from Exhibit 1, the 
proposed federal marketing order which has been 
voted on by the board and been published in the 
notice. And that's the form of the question that 
I object to.

JUDGE GUTHRIDGE: I'm then sort of at 
a loss as to why you called him in the first 
place. If the proposal as submitted was intended 
to stand on its own and if I assume any problems 
that anybody else has with the definitions would 
be articulated in some sort of filing to the 
Secretary or in the comments.
I would assume that the Proponents would have an opportunity at that point to respond to objection of the definitions. But I'm just not sure why he's here other than to answer questions as the Department has.

MR. QUIROS: Again, Judge, perhaps I was unclear about this. We have Dr. Hudson read every definition into the record. I don't think that's necessary since Exhibit 1 has already been admitted as evidence.

JUDGE GUTHRIDGE: I don't think so either.

MR. QUIROS: Dr. Hudson --

JUDGE GUTHRIDGE: We already assume that the USDA doesn't just want to listen to him, Dr. Hudson, read each definition.

MR. HILL: That would be correct.

JUDGE GUTHRIDGE: Okay.

MR. QUIROS: Dr. Hudson has already testified that there was a unanimous vote by the American Pecan Board with regard to the proposed federal marketing order for pecans including
these definitions. So the American Pecan Board
has proposed these definitions.

A question asking him about the
definitions or about what they mean is something
different than asking him to redefine what they
mean. And that's what I object to. Or else I
would need him to read in every one of these and
say, "I believe that blowouts are" and then read
the definition. This is what the American Pecan
Board believes blowouts are. If they want to ask
questions about that, that's different from
saying "Please define what blowouts are." Then
you've got competing definitions unless he uses
the exact same words.

JUDGE GUTHRIDGE: I guess what we're
going to have to do is if you're going to
continue asking questions and asking about the
definitions and then the USDA follows up with
their questions I'd have to take the objection at
that time. I don't think I can make a blanket
ruling that this is what kind of question USDA
has to ask of Dr. Hudson.
But again it goes back to is his
testimony necessary at this point in this hearing
since the definitions are already in, the
proposal is already in, and that's the
submission. And as far as you know, neither the
USDA nor anyone else has any objection to those
definitions.

MR. QUIROS: Your Honor, we'll be glad
to object on a case by case basis, on a
definition by definition basis, if Dr. Hudson is
asked -- and we will object -- to redefine any of
these definitions. If he is asked questions
about the definition or about its meaning, we
think that's appropriate in this context.

JUDGE GUTHRIDGE: And as I say, I
think that's what we'll have to do is go question
by question if he's going to be continuing to
testify.

MR. QUIROS: Then we object to the
USDA's last question with regard to asking Dr.
Hudson to define blowouts.

JUDGE GUTHRIDGE: Actually, I found
his answer kind of helpful. He described as I recall his testimony the process of how these lighter-weight pecans are vacuumed out of the flow I guess of the pecans going by.

(Off record discussion)

And I don't think he was redefining what a blowout is. He was more telling us how they got them out of the production.

MR. DAVIS: Your Honor, we're co-counsel. If I may jump in.

JUDGE GUTHRIDGE: Are you breaking this in?

MR. DAVIS: No, I agree with him. And again, we don't want to be pedantic or overly legalistic about this. Representing Dr. Hudson because he helped develop these, he also knows the process. We were led to believe and we were told in our preparation that it's very helpful for the record to understand that these things were not just ran down. It was thoughtful. They considered alternatives. You're going to hear a lot about different alternatives.
But once the definition is set, it is
the definition. So truly you have noticed we
have not said anything about any of the other
questions. But it's only when you say "What is a
blowout?" In this record, the definition of a
blowout should be "Blowout means lightweight or
undeveloped in shell pecan nuts that are
considered of lesser quality in market value."
If a question were raised "Why are
they of lower market value" that would be a
perfectly legitimate question. If he was asked,
"How exactly are those separated," that would be
perfectly legitimate question.
But you understand our concern is that
if you asked a witness every one of these
definitions "What does that mean," I would hope
we could take a break and we will instruct the
witness to read it into the record because that's
the definition that the American Pecan Board
voted on unanimously to say "If we're going to
operate, that's the definition."

JUDGE GUTHRIDGE: Let me ask this.
Might a faster way or a more efficient way to do is anyway since Dr. Hudson is here to explain and I assume he's here -- I gather the USDA told you that you should have somebody to explain this.

MR. DAVIS: We've got to say something about every element of the FMO and we will.

JUDGE GUTHRIDGE: Maybe a more efficient way to handle this though would be there are some definitions for which USDA has no problem and so maybe shifting to USDA -- and I'm thinking out loud and this is a problem I have. I tried to anticipate this as much as I could in these hearings. But this is one that I had not anticipated.

Whether USDA should bring up any questions on any of the specific definitions for which it might have a problem or might need some more foundation in its view as the decision maker on this. So rather than have Dr. Hudson go through each definition, they could ask about specific ones. Because as you say, they are already in the record. If they don't have any
questions, if nobody in the audience has any
questions about a particular definition, why talk
about it at all at this point?

MR. DAVIS: I'll be interested to hear
Ms. Chilukuri's response to that.

JUDGE GUTHRIDGE: Or Mr. Hills'
response.

MR. QUIROS: We understood we had the
burden to prove every element of the federal
marketing order for pecans, including all of the
definitions. So we felt like we needed to -- The
entire thing has been entered into the record,
Your Honor. And taking that logic to its
furthest extent, we could say nothing about it
and have no witnesses and say "If there are any
objections we'll answer."

So we had understood that under the
law that it was our burden to establish every
one. We're glad to have questions. If our
witness has to redefine these, we are going to
instruct him to read the definition and that will
be the extent of his testimony. If they ask him
any questions about those definitions and how it relates to the industry, we are willing to have our witness answer those questions.

JUDGE GUTHRIDGE: At this point he has explained how the definitions were formulated. That's now on the record. That goes beyond just the specific proposal itself.

But let me hear from USDA on this.

MS. CHILUKURI: Your Honor, on this initial matter, I was intended to ask Dr. Hudson or anyone else to read the definitions which I understand what the definitions are both for our purpose as decision makers, but also so that it's public information.

Obviously, these have been admitted into the record. My questions are for the audience and other stakeholders to be able to hear some of these. I think our intent is also to go in-depth on certain definitions. But we're early in the process. So obviously we need a basis for what some of those definitions are.

As part of the proceeding they were
talked about in terms of general use. But we'd like to know what those terms mean. So I was trying to address that issue. And that was my intent in asking what does something mean and for instance to ask for that it is clear.

JUDGE GUTHRIDGE: Are there other definitions of specific terms that you know you do want to ask questions and others that you know you don't have any questions?

MS. CHILUKURI: Again, it depends on what Dr. Hudson testifies to with regard to the definitions that we will focus time on.

JUDGE GUTHRIDGE: Do you know what those are at this point?

MS. CHILUKURI: Some we do know and others we'll have to hear testimony.

JUDGE GUTHRIDGE: Let me ask this and maybe I guess since most of the marketing orders are old, aren't they? Or were any of you involved in any of the development of any specific marketing orders? Ms. Schmaedick, you were. Is this sort of testimony about each
specific definition normally required in this
kind of process?

MS. SCHMAEDICK: Thank you, Your
Honor. I would like to clarify that in my past
experience with this, the Proponent group has
entered into evidence for example an exhibit that
has the proposed language. And instead of
reading that language verbatim, they have offered
testimony in support of that language. But that
testimony always includes an explanation in
layman's terms of what the meaning is, what the
intent is, what the purpose is.

And it is very important to capture
that information on record because this record if
this program is implemented serves as the basis
for understanding the intent of every single
section. So if we simply take the proposal on
its face value and say, "Okay. This is approved
by the American Pecan Board and because it was a
unanimous approval, we're not going to assess it.
We're just going to accept it at face value."

And I understand the frustration and
I certainly don't want to be advocating reading it verbatim long sections. But I do think that with the benefit of futures yet to come and the benefit of those at USDA who need to be able to look at the record and understand what the intent is of the captures of this proposal, we need to have a statement of what the meaning is that is parallel to the definition.

Secondly, we are not -- Introducing a new definition into the record is simply not a result of an answer to a question. If the Proponent group were to enter in the new definition, they would have to go through a process of crafting that language and submitting it as an exhibit.

We are simply taking testimony to what was submitted as this proposal and whether or not this proposal is justified.

JUDGE GUTHRIDGE: And I think that's part of your meaning. If an existing board were to take the terms in the regulations and to redefine it, they would have to go through the
same kind of process of justifying why they're changing it, why the new definition is better than the old definition or more justified than the old definition.

MS. SCHMAEDICK: Correct. It would not be --

JUDGE GUTHRIDGE: This is the same kind of foundation that you're trying to build by your questions.

MS. SCHMAEDICK: Correct. It would not be a capricious act of saying "Oh well, he used this word instead of that word."

JUDGE GUTHRIDGE: But not he. The American Pecan Board did.

MS. SCHMAEDICK: Right.

JUDGE GUTHRIDGE: He's here as well as the American Pecan Board.

MS. SCHMAEDICK: Correct. So to reiterate, it would be helpful in just very general terms of this term means X. It's important because of that. And certainly that will be received as information supporting the
definitions that are published in the Federal Register exhibit.

JUDGE GUTHRIDGE: Would I correctly understood from what you're saying, Ms. Schmaedick, that if they were an NP definition that that issue why the board chose one that's in here rather than the NP definition should be part of the record?

MS. SCHMAEDICK: Yes.

JUDGE GUTHRIDGE: The development of this component?

MS. SCHMAEDICK: Yes, absolutely.

MR. QUIROS: Your Honor, we're in violent agreement with that. But I don't want a parallel definition. Dr. Hudson can be asked any questions about what a definition means or what we were thinking at the time. I just don't want to create a record that has a parallel definition for which the American Pecan Board hasn't voted on.

When those questions come, I'll be glad to ask him what the definition should be.
But we absolutely expected that. We've prepared questions for Dr. Hudson to in fact draw out the meaning and whether these are industry standard meanings. And we invite the audience and the USDA to ask questions about that. But I can't have a redefinition of those without objecting to the form of the question and asking Dr. Hudson which I'm going to do as soon as we go back on this issue to define blowouts.

Again, I don't mind talking about how they're used in the industry and otherwise. But if somebody asks for a redefinition, we will have to come back to the one that was voted on.

JUDGE GUTHRIDGE: Well, I think it's fair if there's a competing definition out there. I think it's fair that we have that in the record and the American Pecan Board's reason for choosing definition A over definition B.

MR. QUIROS: Exactly, Your Honor.

MR. HILL: I just want to make clear of the record when we say what does this mean.

We're not looking for a new definitional
language. We're just simply asking for an understanding of what your definition is.

MR. QUIROS: That's what a definition is. When you say what does it mean, if I know a way to do that and say "How is it used?" But if you're asking that, I will be on alert to look to protect the integrity of what has been voted on by the American Pecan Board as their definition. So I'm just forewarning.

JUDGE GUTHRIDGE: Thank you. Are we finished with blowout?

MR. QUIROS: No, Your Honor. I've got one other question.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, does blowouts mean lightweight or underdeveloped in shell pecan nuts that are considered of lesser quality and market value?

DR. HUDSON: Yes.

MR. QUIROS: Thank you, Dr. Hudson.

Section 986 --

JUDGE GUTHRIDGE: Are there any
questions from the USDA?

MS. CHILUKURI: No.

JUDGE GUTHRIDGE: Okay. Proceed.

MR. QUIROS: Thank you. Dr. Hudson,

Section 986.5, to certify. Is this term generally used in the industry?

DR. HUDSON: No, it's not. Not before now.

MR. QUIROS: Why did you create this definition?

DR. HUDSON: The definition was created because the industry has not had uniform inspections. The federal marketing order will permit uniform standards for inspections that will help the industry as referred in Section 986.69.

MR. QUIROS: Explain to us how this will help the industry.

DR. HUDSON: Well, it will help the industry by increasing consumer confidence and safety and quality of product and would and should increase sales by confirming the
assessment payments and also ensuring that everyone involved pays their fair share.

MR. QUIROS: How will it help consumers?

DR. HUDSON: By having more consistent quality product and ensuring compliance.

MR. QUIROS: So in the way that you're using it in this definition it's both to certify as to handling standards and to certify as to receipts of assessments. Is that correct?

DR. HUDSON: Yes, that's correct.

MR. QUIROS: And is this term used in other federal marketing orders as defined here?

DR. HUDSON: Yes, it is.

MR. QUIROS: Any discussion or controversy at meetings with growers or shellers?

DR. HUDSON: No, there wasn't.

JUDGE GUTHRIDGE: Does USDA have any questions?

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Dr. Hudson, the term to certify, if I
understood your statement correctly, this term
would become relevant in the event that there are
handling preadmissions in effect. Is that
correct?

DR. HUDSON: Yes.

MS. SCHMAEDICK: And who in your
opinion would do the certifying?

DR. HUDSON: In my opinion, it would
probably be the Federal/State Inspection Service.
But here again, I cannot answer that
definitively.

MS. SCHMAEDICK: So I'm looking at the
definition as it is published in Exhibit 1. And
it says "To certify means the issuance of a
certification and inspection." So at this point
you're not sure who would do that inspection or
who would issue the certification?

DR. HUDSON: At this point, I am not.
But I'm sure someone is.

JUDGE GUTHRIDGE: Let me ask about
this point. It says "certification by the
inspection service." And I see in Section 986.24
there is a definition of the inspection service
as means the "Federal/State Inspection Service or
any other inspection service authorized by the
Secretary."

    DR. HUDSON: Yes, I think that's a
good definition.

    MS. SCHMAEDICK: I'm sorry. Just one
clarification. What would be the answer to that
question?

    DR. HUDSON: I would only add the
current inspection that goes on in the State of
Georgia is made by the Federal/State Inspection
Service.

    MS. SCHMAEDICK: Thank you. And that
is used in compliance. Is that correct?

    DR. HUDSON: Quite frankly, there is
no required inspection of pecans that are going
into trade. Most of the inspection is done on a
volunteer basis.

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

    DIRECT EXAMINATION (Cont'd)
MR. QUIROS: Dr. Hudson, just to clarify, in the definition of the certified where it says "of pecans by the inspection service" you meant inspection services defined in Section 986.24, did you not?

DR. HUDSON: Yes, I did.

MR. QUIROS: Thank you. Dr. Hudson, Section, Section 986.6, confidential data or information, why do you have this definition?

DR. HUDSON: Confidentiality, in this discussion both the growers and the handlers, there was an expressed concern that personal business information would be or could be disclosed. We added this definition and then forwarded it to the federal marketing order as Section 986.81 to assure all of the concerns that their individual data would be protected and that they would only be disclosed in a collective or as an accumulated data pool.

MR. QUIROS: No further questions on this definition at this time.

JUDGE GUTHRIDGE: USDA?
CROSS EXAMINATION (Cont'd)

MS. CHILUKURI: Dr. Hudson, can you give some examples of what confidential data or information would entail?

DR. HUDSON: Certainly. Data in regards to -- and I'll use my own personal case -- would be my personal inventory, in other words, how much inventory I have which I think I would take good care of how many pounds I may or may not have of cold storage. Collectively though, I certainly want to know how many everyone else has if I can get that information.

So I think that kind of information. Certainly customers that might be a party to this. So there has to be confidentiality here.

JUDGE GUTHRIDGE: Anything else?

(No verbal response)

REDIRECT EXAMINATION

MR. QUIROS: Dr. Hudson, I'd like a follow-up question. I'm showing you on the screen Section 986.81 of Exhibit 1, confidential information. Would you take a moment just to
quickly review it? And definition 986.6 really addresses the issue that is further addressed in 986.81. Is that true?

DR. HUDSON: Yes.

MR. QUIROS: And the idea you mentioned about you wouldn't want others to know about perhaps your -- you used as an example -- your carry in or frozen inventory. But to the extent that that was kept, that information was kept confidential by the employees of the council and was only disclosed to no person except for the Secretary, would that seem like an appropriate balance between your confidentiality and the need of the American Pecan Council to have accurate data and information?

DR. HUDSON: Yes, I do. It's absolutely necessary.

MR. QUIROS: Thank you. No further questions on this definition.

JUDGE GUTHRIDGE: Anything else, Agriculture?

RECROSS EXAMINATION
MS. SCHMAEDICK: Melissa Schmaedick, USDA. Just a quick question. Dr. Hudson, are you aware of any other witnesses that will be testifying to Section 986.81?

DR. HUDSON: No, I am not.

MS. SCHMAEDICK: Thank you.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, I'd like to draw your attention to Section 986.7, container. Is this term generally used in the industry?

DR. HUDSON: Yes, it is.

MR. QUIROS: Is this definition consistent with the way the term is generally used in your experience?

DR. HUDSON: Yes, it is.

MR. QUIROS: Why do you need this definition?

DR. HUDSON: We need this definition because it's used in various places in the marketing order draft.

MR. QUIROS: Thank you. No further questions at this time on this definition.
JUDGE GUTHRIDGE: Any questions from Agriculture?

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. Dr. Hudson, in putting together this definition, were there any other types or descriptors of containers that the board considered that might need to be added to the definition? Or was this a compilation of earlier ideas?

DR. HUDSON: What I'm saying is there were others considered, but it was a decision of the board that this list must appropriately described containers as it relates to the pecan industry.

MS. VARELA: In your opinion, does this capture all of the possibilities of the types of receptacles that are used in the industry right now?

DR. HUDSON: Yes, to the best of my ability it does.

MS. VARELA: And do you think it gives you enough flexibility for the future that if
some new products are developed that it will
still be included under this definition?

DR. HUDSON: I think that that
adequately covers most any issue in regards to
containers, yes.

MS. VARELA: Thank you.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick,

USDA> Dr. Hudson, you stated that container as
currently used is the term currently used in the
industry, correct?

DR. HUDSON: Yes.

MS. SCHMAEDICK: How is it currently
used?

DR. HUDSON: Well, quite frankly, in
a very broad sense, if you talk to me as an
exporter and talk about containers, we're talking
about 44,000 pounds or 20 mix of tons going to a
C gram container. But on a more specific basis,
I also have a shelling company and we sell 12
ounce bags. For that matter, we sell two ounce
bags.
And in regards to trying to confine a catchall term that could describe how pecans packaged, sold, transported, container was the best selection that we could come up with.

MS. SCHMAEDICK: So, in your opinion, is the inclusion of the words "including you tell (phonetic) packaging", is that to capture the marketing use of container versus a shipment use of container?

DR. HUDSON: I would say it would be inclusive of that. I mean because as an example a container or a palette of 12 ounce bags would be a container or probably 30 or 60 12 ounce bags wrapped in a box which very well could be also a container used in a prescriptive mode composed of 42 cases which in terms could be a container put into a 44 foot container and then shipped to China. So the best catchall word to define pecans that are put to exist and be marketed would be the container.

MS. SCHMAEDICK: Thank you. No further questions.
DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, Section 986.8

and again there's a reference in 986.45 council,
Mr. Adams is going to testify in more detail
about the creation and the operation of the
American Pecan Council under Section 986.45. But
in general terms, did you participate in the
process of defining the council and its duties as
set forth in the federal marketing order?

DR. HUDSON: Yes, I did.

MR. QUIROS: Do you agree with the
definition and structure of the council?

DR. HUDSON: Yes, I do.

MR. QUIROS: Again, in general, what
did you want to accomplish in the creation of the
council?

DR. HUDSON: If we had to put it into
one word, it would be diversity. As I mentioned,
we wanted this to be industry wide. We wanted it
to be composed of growers and shellers both big
and small. We wanted geographic diversity. And
we wanted it to be national in scope to include
the pecan growing industry.

MR. QUIROS: Why are there more
growers than shellers on the council?

DR. HUDSON: Well, because quite
frankly there are more growers across the
producing regions than there are shellers. And
in past history, marketing orders have been
predominantly composed of mainly growers.

MR. QUIROS: Thank you. Did the board
consider other alternatives?

DR. HUDSON: Yes, they did.

JUDGE GUTHRIDGE: Are you comparing
other alternatives to the term council as defined
in 986.8 or others as in 986.45 which you seem to
have segued into?

MR. QUIROS: Thank you, Judge, for
asking for that clarification. Did the board
consider other alternatives in the structure of
the council?

DR. HUDSON: Yes, we did. This was
debated at considerable length at numerous
meetings. But we thought that this was the best structure.

    MR. QUIROS: Explain that please.

    DR. HUDSON: Well, first under the Act, quite honestly we were not required to put any shellers on the council. But again, as I mentioned, the board wanted wide industry input and we certainly wanted the shellers or processors to be represented.

    But since there are far more growers than shellers, we thought that the growers should have more members. To be fair to the shellers, however, the board did in fact create a super majority position which must include both growers and shellers mode to pass any significant decision.

    And I refer to Section 986.55 paragraph (c). In other words, although the shellers have fewer votes nothing of significance in regards can be done without a buy-in by both the growers and the shellers.

    MR. QUIROS: Dr. Hudson, take a look
at Section 986.45(b)(1)-(2) for a moment.
986.45(b)(1)-(2). It starts off with "In each region..." Do you see that? Just take a moment for that.

(Off record discussion)

DR. HUDSON: Yes.

MR. QUIROS: Dr. Hudson, please tell us why we use these particular size cutoffs with regard to Seat 1 and 2 and then in regard to Seat 3 in Section 986.45(b)(1).

DR. HUDSON: Well, here again, in one word it's diversity, to ensure diversity.

MR. QUIROS: You wanted both small and large growers to have a seat at the table within each regional grower seats.

DR. HUDSON: Yes, we did.

MR. QUIROS: Thank you. Take a look at Subsection (2) of that section 986.45(b)(2). Take a look at those size cutoffs for a moment and tell me why those you thought were appropriate.

DR. HUDSON: Of?
MR. QUIROS: Yes, in Section 986.45 of Exhibit 1, Subsection (b) Subsection (2), sheller seats.

DR. HUDSON: Sheller seats, yes.

MR. QUIROS: "And each region shall have sheller seat one allocated to a sheller who handles more than 12.5 million pounds of in shell pecan and a sheller seat two allocated to a sheller who handles less or equal to 12.5 million pounds."

DR. HUDSON: Here again we wanted to make sure that both the large side of the sheller industry was represented as well as the smaller shellers.

MR. QUIROS: In each region?

DR. HUDSON: In each region.

MR. QUIROS: Why no specific seat for accumulator in the region?

DR. HUDSON: Well, that is because there really is no pure accumulator and almost all or either a grower or sheller or both like myself. My company is really a good example and
although we do accumulate from others it would be best -- And a few others as well are generally nature in scope. Many of them are purchased from all across the country. We did not feel it necessary to assign an accumulator to a specific region.

MR. QUIROS: And you were aware that Mike Adams will also review this section 986.45 on the council in the Dallas hearings.

DR. HUDSON: Yes.

MR. QUIROS: Thank you. No further questions on this definition at this time, Your Honor.

JUDGE GUTHRIDGE: Department of Agriculture.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Dr. Hudson, in your testimony, you testified to both the term council and then you also gave us some statements on Section 986.45 which is American Pecan Council. I'd like to ask you some questions on both these sections. Is
that okay with you?

DR. HUDSON: If it's okay with my attorneys.

(Laughter)

MR. QUIROS: Yes, it's okay.

MS. SCHMAEDICK: So you stated that you are a part of the American Pecan Board.

DR. HUDSON: Yes.

MS. SCHMAEDICK: And you were involved in the discussions that resulted in the adopting of the language of 986.45 which is American Pecan Council.

DR. HUDSON: Yes.

MS. SCHMAEDICK: Can you tell me about some of the other alternatives that were considered in those discussions?

DR. HUDSON: Yes, I can. Obviously, there were different numbers all around I think and initially we considered a very large number. And quite frankly there were those in the industry that felt like that that would be cumbersome and inoperable. We had those who
wanted a very small board of less than 10. And
quite honestly that was too small.

So we were trying to look for a number
that would be representative of the industry,
that would be diverse represented by both growers
and shellers, but then beyond that also allow the
membership to make sure we satisfy diversity at
other levels. So after considerable -- This was
debated quite extensively at several of our
meetings and post meetings, the 17 number that we
came up with we felt like fairly represented the
industry as a whole.

And I would say this, too. In that
vote when it was finally decided, our board voted
unanimously and on that board were growers and
shellers. And both growers and shellers voted
unanimously to accept the number that we put
forward in our order.

MS. SCHMAEDICK: And during those
discussions that you had, was feedback from
industry taken into consideration? For example,
you mentioned that you have traveled to other
meetings and met with individuals in the industry. Did this discussion process then follow that feedback?

DR. HUDSON: Yes, it certainly did at all levels, individually with growers for different reasons, as well as growers in general which endorse this round.

MS. SCHMAEDICK: Thank you. I wanted to ask you about the, let's see, 986.45 paragraph(a). I'm sorry. Excuse me. Paragraph (b)(1) grower seats. In this proposed section, there are two seats, grower seat one, grower seat two.

And there is a threshold that is described between seat one and seat two, all related to record. And seat one and seat two are allocated to growers whose acres are equal to or exceeds 176 pecan acres and then goes on to seat three as allocated to a farmer whose acreage does not exceed 175 pecan acres. Can you talk to us about the discussion you had revolving around seats one and two and their association with 176
pecan acres versus seat three and their 175 pecan acre section?

DR. HUDSON: Yes. Here again, this paragraph was put in here to ensure a broad base, diverse support of the growers in that we didn't want the board to be made up of a bunch of very large, old white men like myself with several thousand acres of pecans.

So the idea here is that allowing a grower who has 175 acres or less ensures that we have a small to moderate what we consider grower on the board. Above 175, there is criteria such that one is based on total acres produced or quantity of nuts produced, what is the total production produced. And the vote would be weighted toward the production.

And then the other would be voted just at large. So the opportunity comes in to have a very large grower and then maybe a moderately sized popular grower who is in the popular vote, but does not win the weigh-in vote. So that gives you an opportunity for having a diverse
group of members not just from one region, but from the three different regions across the country.

MS. SCHMAEDICK: Thank you. I want to ask you about the relationships between your definition of commercial grower. I believe you said commercial viable is set at 30 acres. Is that correct?

DR. HUDSON: Yes or 50,000 pounds.

MS. SCHMAEDICK: And so then you have this 175 pecan acres demarcating --

DR. HUDSON: Right.

MS. SCHMAEDICK: -- large or small.

Can you talk how those numbers worked again?

DR. HUDSON: Well, obviously, the 30 acres or 50,000 pounds would be on the very bottom of the small. And I think if you were to look at our industry as a whole, you would see that by sheer numbers a majority of the growers would come somewhere between 175 and probably 550 pounds. That's not a sizeable resource there.

That's just my opinion.
And so in looking at a number that we felt like would encompass not only sufficient number of acreage but also sufficient number of growers it just worked out where 175 acre plateau seemed to be the best. Here again this was a discussion that we had in trying to ensure that we had grower diversity. We wanted the small growers to be involved.

MS. SCHMAEDICK: Thank you. And so in the industry in terms of the industry's description of itself, would 175 acres be --

Well, what I'm wondering about is you have the Small Business Administration definition that identifies small businesses and you know by default large businesses. Sometimes that SBA definition doesn't apply to the real world of an industry. Does the 175 acres more accurately describe the threshold for your industry between large and small?

DR. HUDSON: I'm going to just have to say I don't know.

MS. SCHMAEDICK: Okay.
DR. HUDSON: I can't tell you where the median income level or median acre level for our industry. I can tell you this that as we go above 30 acres and get into the area where pecans become a profitable entity it is north of 30 acres obviously.

MS. SCHMAEDICK: But in the pecan industry standards, someone who has 150 acres, are they relatively small by industry standards?

DR. HUDSON: No, I would not say they're relatively small. I would say probably they're more in the range of medium sized producer, not a small size, not a large size. But in the medium range.

MS. SCHMAEDICK: Thank you for that clarification. I want to turn your attention to 986.45(b)(2), sheller seats. And we have sort of a similar concept applied here. And for the record, you have seat one allocated to the sheller if he handles more than 12.5 million pounds of in shell pecans. And seat two is allocated to a sheller who handles less than or
equal to 12.5 million pounds.

Again, can you tell me about the
discussion around that number, 12.5 million
pounds?

DR. HUDSON: I would probably just
refer you to Bruce Caris' discussion on that
matter as a sheller representative on that board.
Quite frankly and as a grower and a very small
sheller, I deferred that conversation to those
who are involved in the sheller industry and
accepted what they said or what they determined
to be a small and a larger sheller.

And I did not have input into that
decision other than taking their recommendation
and accepting it and voting in favor of it. But
I would say this, there's a very simple math that
can be accomplished here. And that is that if
you take 12.5 million pounds of in shell and you
assume a 50 percent shell out which would give
you about 6.25 million pounds of meats and you
multiply that times the margin that most shellers
are making in regards to marketing that meat, in
that case that number would fall below what the SBA designates as being a small business.

MS. SCHMAEDICK: Thank you. There's a sentence in this section 986.45. It's towards the bottom of the introductory paragraph. I'll read it for the record. It says, "Grower and sheller members and their alternates shall be selected by a secretary from nominees submitted by the council." Was this process discussed during your meetings on this proposed language?

DR. HUDSON: Yes, it was.

MS. SCHMAEDICK: What is the intent on this statement?

DR. HUDSON: The intent quite frankly I think -- No, I'm not even going to think here. I cannot elucidate what it might be, but I can tell you what I think it is.

MS. SCHMAEDICK: Okay.

DR. HUDSON: And that is to guarantee the opportunity for diversity in all ways.

MS. SCHMAEDICK: Thank you. In your reading of the statement, what is the role of the
secretary vis a vis the members of the council?

DR. HUDSON: Quite honestly, I look at him as the boss. You know we serve at the pleasure of the secretary. And we understand that. And we appreciate that.

In fact, quite honestly, we welcome that. We need authority. He has the authority. And so, quite honestly, we welcome that.

MS. SCHMAEDICK: And then nominees, what is your understanding? Who are the nominees?

DR. HUDSON: The nominees would be those respective individuals who are respected, an active part of the industry and not just a part of the industry and individuals who would be willing to represent the industry as a grower or a sheller or an accumulator or in another who can help guide our industry into the future and the leaders.

MS. SCHMAEDICK: Thank you. No further questions on that particular section or definition.
JUDGE GUTHRIDGE: I have one thing and I think it was Mr. Keck earlier today was testifying about everybody he works with are geeks and I have my own geeky aspects myself. I look at this definition of grower seats and what occurs to me is somewhere in this great land there is some farm that's 175.5 acres. Where does that fit in?

DR. HUDSON: If he wants to be a small grower, we just go out and cut him down an acre.

JUDGE GUTHRIDGE: Or you go ahead and help him plant another half-acre.

DR. HUDSON: I would just say that that would be an issue for USDA to determine if he is in fact a small grower or a large grower. We're going to accept their determination.

JUDGE GUTHRIDGE: All right. Thank you.

CROSS EXAMINATION (Cont'd)

MS. CHILUKURI: Just to follow up on what you were saying, Judge Guthridge and Dr. Hudson, so how would the grower with 175.5 acres
be treated under 986.45(b)(1)?

DR. HUDSON: Well, he would be treated very kindly. Does that answer your question?

MS. CHILUKURI: No, it does not.

DR. HUDSON: Well, if it's less than 176, then -- May I consult with my attorneys here?

MS. CHILUKURI: We can discuss the clarifying changes on record or feel free to discuss that.

DR. HUDSON: I would refer that to the attorneys.

CROSS EXAMINATION (Cont'd)

MR. HILL: Well, the USDA asks would you be fine if it reads "equal to or exceeds 176" just like "exceeds 175 pecan acres"?

DR. HUDSON: Would I be welcome to that? Certainly. I would have no objection to that. But I'm just one poor, simple pecan grower from Georgia.

MR. HILL: Thank you.

MR. QUIROS: Your Honor, we have
several questions if the USDA has no others.

REDIRECT EXAMINATION (Cont'd)

MR. QUIROS: Would it be clearer in
that section, Dr. Hudson, if it said less than
176 acres?

DR. HUDSON: Yes, it would.

MR. QUIROS: Thank you. And would you
object or do you think the American Pecan Board
would object if that language was changed to less
than 176 acres?

DR. HUDSON: If so passed by the
board, yes.

MR. QUIROS: Thank you.

JUDGE GUTHRIDGE: Which number are you
changing?

MR. QUIROS: This is the seat number
three which would Exhibit 1, Section 986.45(b)(1)
picking up on the sentence that says, "Each
region shall also have a grower seat three
allocated to a grower whose acreage does not
exceed 175 pecan acres." And the clarifying
question I was asking Dr. Hudson is if that
language was changed to say instead of "does not exceed 175 pecan acres" said "is less than 176 pecan acres."

DR. HUDSON: And my answer on this is yes.

MR. QUIROS: Thank you. I'd like to hand you a calculator and ask you to run some numbers for me if you would, Dr. Hudson. I'm referring to a question that Ms. Schmaedick asked with regard to whether 176 would represent a small grower in your industry. So I'd like you to put in 176. Why don't we use that as the dividing line?

DR. HUDSON: Certainly.

MR. QUIROS: And then I'd like to refer you to Exhibit 23 that was entered into the record yesterday where Dr. Palma referenced that across the production area the average in shell pounds per acre were 1,666.67 pounds. Would you please multiply 176 times 1,666.67?

DR. HUDSON: Yes, that's $293,333.92.

MR. QUIROS: Thank you. That would
just be pounds, not dollars.

DR. HUDSON: I mean pounds, yes.

MR. QUIROS: Thank you. And then I'd like to refer you to what was entered by the USDA, Mr. Hinman Exhibit 6, Table 23, the price of pecans across the production area of improved pecans for 2014, the highest value of pecans relative to natives and seedlings and improved of $2.12. Would you now multiple that by $2.12?

And what number do you get?

DR. HUDSON: $621,869.90.

MR. QUIROS: Is that more or less than $750,000?

DR. HUDSON: Yes, that would be less.

MR. QUIROS: And so under the definitions provided by the Small Business Administration, that would be a small grower.

DR. HUDSON: A small grower.

MR. QUIROS: And was that part of the considerations that were made by those discussions about whether or not that seat three would represent a small grower under the Small
Business Administration? Was that discussed amongst you?

DR. HUDSON: Yes, it was. Thank you for reminding me.

MR. QUIROS: Thank you, Doctor. I have no further questions on this subject.

JUDGE GUTHRIDGE: Does the Department of Agriculture have anything else?

(No verbal response)

Carry on.

MR. QUIROS: Thank you, Dr. Hudson.

Under Section 986.9, crack or cracks, is this term generally used in the industry?

DR. HUDSON: Yes, it is.

MR. QUIROS: Is this definition consistent with the usage of the term in the industry based on your experience?

DR. HUDSON: Yes, it is.

MR. QUIROS: Why define this term?

MR. HINMAN: This term was defined because cracks were less valuable and therefore should be assessed at a lesser amount. We
addressed this in the definition of substandard at Section 986.28, paragraph (3) and at Section 986.61.

MR. QUIROS: No further questions of the witness on this definition at this time.

JUDGE GUTHRIDGE: Any questions from Agriculture?

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. I just want to make sure I'm getting the full idea of this. In that last sentence there, it's saying that it can refer to causes of crack in harvesting or handling. Is the intent there just to make sure that crack applies to anywhere in the process?

And maybe I should rephrase that. I'm sorry. Is there anything not included in this definition, any situation where a crack could occur? Or is this covering every possibility?

DR. HUDSON: Okay. I'll answer that. Cracks can occur any time an in shell pecan is handled. In fact, some of the very thinner skin
varieties are subject to cracking. And that is
an issue.

Typically, cracks are taken out in the
cleaning process and sorted in the cleaning
process and separated. Here again, they help
out. So they're not discarded. And they are
handled quite gingerly in the process. But that
does not prevent particularly some of the thinner
shell varieties from cracking. Did I answer your
question?

MS. VARELA: Yes, that gets me
farther. I also want to be sure that I'm not
confusing this with part of the shelling process
that's intentional.

DR. HUDSON: Right.

MS. VARELA: So does this definition
mostly apply to unintentional cracking?

DR. HUDSON: Cracks is referred to in
this document to be exclusively an issue
addressed at each grower.

MS. VARELA: So the intent is just to
apply to those that have not been sent to
shelling.

DR. HUDSON: Right.

MS. VARELA: Okay. Thank you.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Dr. Hudson, I'm looking at this definition 986.9. I'll read it into the record. "Crack means to break, crack or otherwise compromise the outer shell." What does otherwise compromise the outer shell mean? Could that include holes? Or is there some other type of compromise that you have?

DR. HUDSON: Now here again, if that shell, if the integrity of that shell, has been in any way damaged, then it considered to be a crack. And that's a very distinct service. There are insects that can in fact crack the shell. And they're obviously removed in the cleaning process.

MS. SCHMAEDICK: Thank you. So then as in the handling process with how this crack actually are hulled together or they're taken out
and then they are further processed?

DR. HUDSON: They are typically pooled together and then processed, generally processed together. A cracked in shell pecan has to go through a much more extensive sanitation process during the processing procedures because of the risk of contamination by the shell being cracked and exposed to other insects and pests and disease and contaminants.

MS. SCHMAEDICK: Thank you. And you mentioned that this term is also used in the context of substandard costs or price.

DR. HUDSON: Yes, it would be classified as substandard.

MS. SCHMAEDICK: So in that sub category of substandard, are the cracks pooled with the blowouts to use a previous term?

DR. HUDSON: Typically, cracks are kept separate from blowouts because they may go in different directions. There are very few processing companies that will take cracks because of the contamination risk, the additional
risk from contamination as opposed to blowouts which the shell is not broken and they're just thin weighted nuts.

MS. SCHMAEDICK: Thank you. I want to maybe take a quick leap here to connect some dots. So we talked about the term to certify which relates to inspection. Do you foresee the term crack or cracks being used potentially in future handling that might try to pinpoint certain defects within pecans? So does it have a relevance outside of just substandard?

DR. HUDSON: Do I see? It might help if I explain just briefly how these cracks and blowouts and standard pecans are handled. They're coming through a graded process at the rate of thousands of pounds a minute, hundreds of thousands pounds a day. They're sorted out both by electronic eyes. They're blown out by blowers. And then there's a spiral human inspection.

As the blowouts come out or as the cracks come out, they are sorted and kept
separate. And more times than not cracks are put
directly into the cold storage facilities and
kept separate because they would mold very
quickly particularly if there was any moisture.

Now in regards to the future
regulations that might occur, it is a very good
point. It's an excellent point. Because of the
issues in regards to contamination because of
that crack -- here again this is strictly my
opinion -- there will probably come a time when
cracks will probably be discarded. But here
again that's just my opinion.

Again, this is a very small percentage
of the total sample as are blowouts. You're
talking about in most cases less than three
percent of the total sample would fit into those
classifications.

MS. SCHMAEDICK: Thank you. I
appreciate you're making that connection with the
safety component. My question to you came from
the context of my familiarity with pistachios
where they at one point very carefully identified
all the different types of defects and the potential risks associated with that. So that was why I was asking that question.

DR. HUDSON: Right. If I might follow up with one more comment here and not to belabor your point. Cracks is also one of the standards that the USDA uses in certifying pecans. So cracks is something that goes in as a defect.

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

JUDGE GUTHRIDGE: Mr. Quiros.

MR. QUIROS: Yes.

REDIRECT EXAMINATION (Cont'd)

MR. QUIROS: I think the USDA raised some very interesting questions that I'd like to talk with you about them, Dr. Hudson, with you a little further. Take a look at that first sentence and let me direct your attention to it. "Crack means to break, crack or otherwise compromise the outer shell of a pecan so as to expose the kernel inside to air outside the shell."
But notice the term is "crack." And I want to ask you. That's also applied in shelling, not just in grower harvesting. For instance, in Section 986.19 to handle means to receive shell crack. Is that right?

MR. HILL: Your Honor, I have to object at this time. I think the counsel is testifying now. Do you have a question that you want to ask this witness?

MR. QUIROS: Sure. Let me restate it. Please take a look at the general definition in sentence one. Does that apply to both grower cracking of the shells and also handler cracking of a shell?

DR. HUDSON: Yes, it does.

MR. QUIROS: And as evidence of your contemplation of that, I refer you to Section 986.19. And is that what you meant by using the term crack when you were defining the word to handle?

DR. HUDSON: Restate that for me. I'm a little confused here.
MR. QUIROS: Sure. I thought the USDA raised a very good issue and Ms. Varela about the second sentence which is the term cracks. And cracks refers to an accumulated group or container of pecans that have been cracked in harvesting or handling. But it's the idea that that happens often times for a grower. Do you understand where I'm coming from?

DR. HUDSON: Yes, I see where you're coming from, yeah.

MR. QUIROS: Okay.

DR. HUDSON: They're not the same. They're quite different. I mean I understand what you're saying. In fact, to crack pecans is typically used in our industry also synonymously with the share at that level of processing. To crack or a crack at this level of processing in the in shell basis is totally different where one has a very positive connotation and the other has a negative connotation.

MR. QUIROS: Right. So the first sentence relates to the general definition of
exposing the meat.

  DR. HUDSON:  Exposing the meat, yes.

  MR. QUIROS:  That's right.  And the second, the word cracks which is plural --

  DR. HUDSON:  Right.

  MR. QUIROS:  -- defines generally that accumulated group that can happen at any time.

  DR. HUDSON:  Right.

  MR. QUIROS:  But generally it happens with regard to the harvesting and the cleaning operations.  Is that correct?

  DR. HUDSON:  Certainly.

  MR. QUIROS:  Thank you.  You testified that cracks have value, but a lower value.  Is that true?

  DR. HUDSON:  Yes.

  MR. QUIROS:  Does anyone that's a grower really want to have cracks?

  DR. HUDSON:  No.  Cracks cost you money.

  MR. QUIROS:  Right.  So you're not looking to crack that shell.  Is that correct?
DR. HUDSON: Certainly not.

MR. QUIROS: Because you compromise the meat and lower the value.

DR. HUDSON: As opposed to being a value added process that is quite the opposite.

MR. QUIROS: All right. Now later down the chain as you just testified.

DR. HUDSON: That becomes positive.

MR. QUIROS: When you crack a pecan, when a handler cracks a pecan that's using the general sentiment term of the cracking.

DR. HUDSON: Yes.

MR. QUIROS: And those are used in the industry. Is that correct?

DR. HUDSON: That is correct.

MR. QUIROS: Thank you, sir. No further questions at this time of this definition.

RECROSS EXAMINATION (Cont'd)

MS. CHILUKURI: Just to clarify for my own understanding, this is a clerical change.

But would it make sense to separate the
definitions, crack versus cracks and have them as
two?

DR. HUDSON: Now, quite frankly, I
think as described in the document and taken into
context of where it is described, I think it
satisfies all that would be subject to the
guidelines. Now, would it clarify? Yes, perhaps
it would. But I honestly don't think it's
necessary.

MS. CHILUKURI: And for my own
understanding, crack can refer to part of the
handling process.

DR. HUDSON: To crack would be more of
a process associated with shelling. To crack a
pecan for shelling or for your own use. Cracks
plural in reference to a product being brought in
in the process would be an in shell pecan where
through the process of shaking or sweeping or
harvesting the outer hard shell has been broken.

MS. CHILUKURI: And would those
cracks, the plural noun, be substandard pecans?

DR. HUDSON: Yes, cracks, plural noun,
are substandard.

MS. CHILUKURI: And cracking is the --

that is part of the handling process.

DR. HUDSON: Right. It's best

identified as the verb for shelling, to crack.

MR. QUIROS: Thank you.

DR. HUDSON: Or adverb.

JUDGE GUTHRIDGE: Are we ready to go

on?

MR. QUIROS: Yes sir.

JUDGE GUTHRIDGE: We're no longer on

crack.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, if I could

turn your attention to Section 986.10, custom

harvester. Is this term generally used in the

industry?

DR. HUDSON: Yes, it is.

MR. QUIROS: Is this definition

consistent with the terms used in the industry

based on your experience?

DR. HUDSON: Yes, it is.
MR. QUIROS: Why define it?

DR. HUDSON: It's a very important concept and we need to make clear that a custom harvester that although he is involved in the handling of pecans will not be assessed under Section 986.61.

MR. QUIROS: Why should they be exempt?

DR. HUDSON: Well, this is a proprietary issue. It goes back with the grower or the custom harvester never takes title to the pecans. There is no proprietary interest in the crop. They are just getting a fee for service. In this case, they're harvesting. And this was covered quite extensively I think yesterday in Mr. Phillip Arnold's testimony.

MR. QUIROS: Thank you, Dr. Hudson.

I have no further questions at this time on this definition.

CROSS EXAMINATION (Cont'd)

MR. HILL: Just a couple of quick questions. A custom harvester, do they ever take
possession of the crop to their own site of
custom harvesting or do they do it on the site
where they collect the harvest?

DR. HUDSON: Customer harvesting
occurs in so many different ways from mechanical
to hand harvesting. But it is a process whereby
the pecans, the grower will pay someone to come
in and harvest his pecans. If it's the more
typical manner whereby about 99 percent of the
pecans are harvested mechanically, the pecans are
custom harvested and then taken to the sheller
and then they're custom cleaned.

MR. HILL: Right.

DR. HUDSON: But this is for a fee
basis. There never is a -- Well, not never, but
typically there is no proprietary ownership of
the customer's nuts.

MR. HILL: So it typically never
leaves the site to the site of the harvester.

DR. HUDSON: No, it will leave the
farm and often times whoever custom harvests will
also haul those pecans to the cleaner.
MR. HILL: Okay. I just want to go ahead just a little bit to Section 986.19, to handle. Let me see if I can find it for you. It says, "The term to handle," 986.19 about halfway down. It says, "The term to handle shall not include sales within the area of production to handlers, growing warehouse, grower warehousing, custom handler."

I notice they use a different term there. Is that custom handler referring to the same custom harvester in 986.10?

DR. HUDSON: Well, here again, custom labor occurs at nearly every level of pecan production particularly for smaller growers. They cannot afford the very expensive equipment. They may hire a custom harvester to come in. They may very well hire a truck to do their hauling. They may very well then have to have them custom cleaned. And to take it even further they may have to hire a broker to custom sell them.

There are a lot of opportunities here
for custom work to occur. But I think the issue here is proprietary or ownership. Who owns the nuts because that's very important to determine in later chapters where we talk about this. So custom harvesting, custom hauling, custom labor, custom cleaning, all of these the grower never loses the ownership of those nuts.

MR. HILL: So you're saying custom handler might be something more than just custom harvesting. Is that right?

DR. HUDSON: I'm not really familiar with custom handling. I'm not familiar with that. But that is a possibility to handle all of it and call it a handler.

MR. HILL: I don't have anything else.

JUDGE GUTHRIDGE: If I could just interject because it occurred when Mr. Hill was saying the custom harvester could also be a contract carrier of the pecans to the sheller for the same person. In neither case would he have a proprietary interest in pecans.

DR. HUDSON: No, he would simply be
hired for the purpose of hauling or harvesting.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Dr. Hudson, I want to keep your attention on this to handle here in the bottom part of the definition and how it relates to custom harvester. So if you were to continue to read back that sentence that starts with the term "shall not include." It continues on to say "or other similar activities paid for on a fee for service basis by a grower who retains ownership of pecans."

In your opinion, does custom harvesting fall under that broader category of a fee for service basis paid for by the grower who retains ownership of pecans?

DR. HUDSON: It is a fee for service. And here again it goes back to proprietary ownership of the nuts. It is a fee for service.

MS. SCHMAEDICK: So just to clarify, custom harvesting is not necessarily captured in the term custom handling. But in your opinion,
it is covered in the statement fee for service basis by a grower who retains ownership. Is that correct?

DR. HUDSON: That is correct, yes.

MS. SCHMAEDICK: Thank you. No further questions.

MR. QUIROS: None from the Proponent counsel.

JUDGE GUTHRIDGE: All right.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, Section 986.11, Department or USDA, why define this?

DR. HUDSON: It is defined because it's used throughout the federal marketing order. It's used in other marketing orders. And we needed it to clearly identify the USDA's role in the oversight of the administration of the federal marketing order.

MR. QUIROS: Any discussion or controversy with regard to this definition?

DR. HUDSON: None at all. We accepted that.
JUDGE GUTHRIDGE: Any questions from the USDA?

MR. HILL: No questions.

JUDGE GUTHRIDGE: Are you well defined?

(Laughter)

MR. QUIROS: Section 986.16, disappearance. Is this term generally used in the industry?

DR. HUDSON: Yes, it is.

MR. QUIROS: Is this definition consistent with the usage in the industry based on your experience?

DR. HUDSON: Yes, it is.

MR. QUIROS: Why define?

DR. HUDSON: Well, disappearance is a very important aspect in that the industry needs data on the amount of product that disappears in the production process. Under the federal marketing order, the council can collect such data and report to the Secretary and to the industry as outlined in Section 986.65(a)(2).
MR. QUIROS: Dr. Hudson, I'm going to put that up on the board. This is Exhibit 1, Section 986.65.

MR. DAVIS: What subsection? I'm sorry.

MR. QUIROS: Subsection (a). I'm sorry. Subsection (b). The 986.65(a)(2) I want you to take a look at.

MR. DAVIS: I don't have (a) and (b).

MR. QUIROS: You should. It says -- Dr. Hudson, can you refer to your Exhibit 1 that you have there, 986.65?

JUDGE GUTHRIDGE: This one.

DR. HUDSON: Yes, 986 where?

MR. QUIROS: 986.65 subsection (b).

It should be on your page 380030.

DR. HUDSON: 986.65.

MR. QUIROS: (b).

DR. HUDSON: (b)?

MR. QUIROS: Yes.

DR. HUDSON: Okay. That's for disappear.
MR. QUIROS: Right. So in your reference just into Section 986.65(a)(2), that reference should have really been 986.65(b). Is that correct?

DR. HUDSON: Yes.

MR. QUIROS: And that is part of the duty of the council to make a report and recommendation to the Secretary which includes the estimate of disappearance.

DR. HUDSON: Yes, it is.

MR. QUIROS: And that why you used it in that definition.

DR. HUDSON: Yes, I did.

MR. QUIROS: Thank you. How would such information be useful to you or to the council?

DR. HUDSON: I would simply say that this is probably one of the most important statistical pieces of data that I use. If we asked me why our industry has floundered for 50 years, I would say that this missing piece of data is the most important.
How in the world can any industry make a business decision, a sound business decision, without a grasp of supply and demand? And a very important part of that is disappearance.

In fact today, discussions are being held about where the pecan crop might be positioned this coming year as far as the price. Absolutely no way to do this under current metrics. We make projections. We make estimates. But we need this opportunity in this market order to give us that.

MR. QUIROS: Thank you, Dr. Hudson.

No further questions from the Proponent at this time.

JUDGE GUTHRIDGE: Any questions from Agriculture?

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Dr. Hudson, can you explain how disappearance is defined please?

DR. HUDSON: Disappearance to a very simple, simplistic answer is it's the difference
between supply and demand. You have a certain amount of supply. You have a certain amount of supply. You have a certain amount of demand over a given period of time. And disappearance is a relationship if you want to survive.

MS. SCHMAEDICK: Thank you. Given that response, would supply then be the sum of grower pecan production and handler clean production?

DR. HUDSON: I wish it was that simple. It's not. It's also a function of imports. It's a function of grower inventories. So there is a very complicated set of matrix that associated with disappearance. And estimates don't just get you where you need to be.

I think it was quoted earlier. We can't even currently get together on what we think the U.S. pecan supply might be this fall. If you ask growers, one grower and the next, there's a difference.

MR. QUIROS: Your Honor, we've been at this a little over an hour and 45 minutes. Could
we take a break and resume inside this? We'll not
move onto another definition and resume and maybe
just a five minute break.

JUDGE GUTHRIDGE: You look -- Ms. Schmaedick looks like she's just about halfway.

MS. SCHMAEDICK: I'm only a minute away from a question.

JUDGE GUTHRIDGE: Why don't you go ahead and ask this one?

MS. SCHMAEDICK: Thank you. I appreciate that. So I'm confused on disappearance. And perhaps my confusion will be clarified when we move onto the other definitions of grower and clean production and handling clean production. But if I read this definition, it says, "Disappearance means the difference between the sum of grower clean production and handler clean production and the sum of available supply of merchantable pecans and merchantable equivalent of in shell pecans."

You said that disappearance is that you calculated by the difference of supply and
demand. Is that what you said?

DR. HUDSON: Yes.

MS. SCHMAEDICK: I'm trying to make sense of that definition. It seems like you're saying disappearance is the difference between the two sums of supply. And with that, perhaps it's a good time to take a break.

DR. HUDSON: Yes.

(Laughter)

JUDGE GUTHRIDGE: Off the record.

(Whereupon, the above-entitled matter briefly went off the record.)

JUDGE GUTHRIDGE: Okay. We're back on the record. I think we're at the point where Ms. Schmaedick could ask the question. So there's been some discussions off the record. Where do we go right now?

MR. QUIROS: Dr. Hudson, do you have anything?

DR. HUDSON: Yes, I do. I would first like to humbly offer my apology in regards to my utmost misunderstanding or -- not my
misunderstanding, but my misquoting in regards to disappearance. And this in fact relates to shrinkage which occurs at the growers and at the handler processing facilities and has absolutely nothing to do with what I stated. Please forgive me. I am just a simple, humble pecan farmer from Georgia and you know that.

(Laughter)

MS. SCHMAEDICK: Certainly. Thank you.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Just to clarify shrinkage as I understand from your statement that it is the difference from between what is harvested and what is then forwarded to the market. So it's that portion between the harvest and going to market that you referred to shrinkage. Is that correct?

DR. HUDSON: Yes. More accurately disappearance.

MS. SCHMAEDICK: And in your industry it's disappearance.
DR. HUDSON: Yes.

MS. SCHMAEDICK: Okay. Thank you.

JUDGE GUTHRIDGE: Is that measured in weight? Or is that measured in --

DR. HUDSON: Yes, it would be measured in pounds.

JUDGE GUTHRIDGE: So weight.

DR. HUDSON: Yes.

JUDGE GUTHRIDGE: Okay.

MS. SCHMAEDICK: Can I ask a further question related to this definition?

DR. HUDSON: Yes.

MS. SCHMAEDICK: I realize we have not addressed the definitions of grower cleaned production and handler cleaned production. And you have not yet been asked the definitions of merchantable pecans. Correct?

DR. HUDSON: Yes.

MS. SCHMAEDICK: But if we are to direct your attention to grower cleaned production which is 986.17, I'll read that definition.
MR. QUIROS: I'll get it up there, too.

MS. SCHMAEDICK: "Grower cleaned production means the production of harvested and processed through a clean plant to determine volumes of improved pecans, native and seedling pecans and substandard pecans to transfer for sale." So for example, let's say that the handler cleaned production definition also identifies the difference between what is harvested and what results after cleaning. Is that correct?

DR. HUDSON: Yes.

MS. SCHMAEDICK: So if we take that assumption and then look at the definition of merchantable pecans which is 986.26, that definition is broken into two sections (a) and (b). I'm sorry. Two paragraphs (a) and (b). But essentially I'll read into the record. It says "Merchantable pecans means pecans meeting minimum grade regulations that may be effected pursuant to 986.69." Do you see that?
DR. HUDSON: Yes.

MS. SCHMAEDICK: The term merchantable pecans, does it only come relevant when there are handling regulation in effect?

DR. HUDSON: Now here again merchantable pecans whether they're at the growing clean level or at the shell clean level in regards to poundage, if the growers -- It may very well not go into the chain. It's still in the handling room. And it may continue to dry out.

I guess the answer is -- Would you restate the question, the relationship between the two?

MS. SCHMAEDICK: Sure. I'm just trying to understand that merchantable pecans as described in Exhibit 1 meaning pecans meet the minimum grade regulations that may be in effect. So my question to you is if there are no handling regulations in effect is the term merchantable pecans relevant.

DR. HUDSON: No.
MS. SCHMAEDICK: Thank you. So
disappearance in absence of handling regulations
simply means if we were deduce logically based on
your testimony the difference between what's
harvested and the cleaned product. And that
difference is disappearance or shrinkage. Is that
following what's lost in clean process?

DR. HUDSON: Yes.

MS. SCHMAEDICK: Thank you.

JUDGE GUTHRIDGE: Volume or weight?

DR. HUDSON: Weight.

MS. SCHMAEDICK: Weight. Thank you
for the correction.

DR. HUDSON: You got that one right.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Are you
contemplating another question?

MR. HILL: No more questions.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Thank you, Dr. Hudson,
for your explanation there. So your concept is
shrinkage and the definition is as it's currently
used 986.12, disappearance, which is part of Exhibit 1. You still agree with that definition.

DR. HUDSON: Yes, I do.

MR. QUIROS: Thank you. Section 986.1

3, farm service agency, why define?

DR. HUDSON: We defined this because it will be the essential agency in establishing our voting eligibility and gathering accurate crop data.

MR. QUIROS: Any discussion or controversy?

DR. HUDSON: No, there was not.

MR. QUIROS: Has this been used in other federal marketing order?

DR. HUDSON: Yes, it has.

MR. QUIROS: Thank you. No further questions at this time.

JUDGE GUTHRIDGE: Any questions from Agriculture?

MS. CHILUKURI: No questions.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Thank you. Dr. Hudson,
on Section 986.14, fiscal --

MS. CHILUKURI: I'm sorry. Do you have a question, Melissa? I apologize. Okay.

No questions.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Actually, I do have a question. I apologize. Melissa Schmaedick, USDA. Dr. Hudson, I believe in previous testimony we heard a term called pecan acre. And I'm wondering if there's a connection between what pecan acre means and the farm service agency.

DR. HUDSON: Yes, there is. An acre of pecans as identified is not consistent across the pecan industry as evidenced by the fact that in Oklahoma there may only be one pecan tree on 10 acres. But a pecan farmer may have 10,000 acres and he's commercial spread across 10,000 acres.

Whereas in the west, historic pecan men may have 40 or more trees on an acre. And in the east generally about an acre of pecans for
the most part is considered to be an acre of land
and wider spaces.

But there are exceptions. As for
example you may have a pecan orchard that has a
small pond in the middle of it. There may be 24
acres of land and a two acre pond. So there's
only 22 acres of actual orchard.

So you know pecan acres is kind of a
relative measure. But farm services sorts that
out in regards to how that would be determined.

MS. SCHMAEDICK: Thank you. And again
based on your previous testimony, is the term
pecan acre as defined by the farm services agency
relevant in analyzing the native pecan
production?

DR. HUDSON: Yes.

MS. SCHMAEDICK: Or native pecan
orchards?

DR. HUDSON: Yes.

MS. SCHMAEDICK: How is that?

DR. HUDSON: Well, there is no other
way for the determination to occur than for
someone like farm services to do that. Yes.

MS. SCHMAEDICK: Is that because
native production is not immediately divided into
rows on acres?

(Off record discussion)

DR. HUDSON: Yes, by sheer nature,
it's very widespread. In these cases,
particularly for the southern areas along river
bottoms. And so an acre of pecans may not
necessarily be an acre of land.

MS. SCHMAEDICK: So in terms of fair
when you're trying to capture both native and
improved pecans and looking at acreage and acres
of production, for example, is it important to
have a farm service agency's definition of pecan
acre?

DR. HUDSON: Yes, it's extremely
important.

MS. SCHMAEDICK: Thank you. No
further questions.

REDIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, your opinion
is still that the definition of farm service agency is the appropriate definition. Is that correct?

DR. HUDSON: Yes, it is.

MR. QUIROS: And we'll have a further discussion of FSA pecan acres in Section 986.16, will we not?

DR. HUDSON: Yes, we will.

MR. QUIROS: Thank you. I'd like to go onto the definition of fiscal year, Section 986.14. Is this term used in the industry?

DR. HUDSON: Yes.

MR. QUIROS: Is this definition consistent with industry usage in your experience?

DR. HUDSON: Yes, it is. There are those that might use calendar year, but most use fiscal year which is also compatible with us growing pecans or in our circumstance. So yes.

MR. QUIROS: How does this relate to the planning and harvesting of pecans?

DR. HUDSON: Well, it fits very well
into the cycle. The pecans are generally harvested at the beginning of October. By late winter, early spring the pecans are fully harvested, either sold or in storage. And so in regards to quantifying production, it fits very well and assessing production, it fits very well into that cycle.

MR. QUIROS: Does the Proponent group ever anticipate that they need to change the definition of the fiscal year?

DR. HUDSON: In my opinion, no.

MR. QUIROS: And was there any discussion of controversy with regard to this issue?

DR. HUDSON: No, there was not.

MR. QUIROS: Will the councils have any flexibility if they want to change that in the future?

DR. HUDSON: Yes.

MR. QUIROS: Thank you. No further questions of this definition at this time.

JUDGE GUTHRIDGE: The USDA, any
CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Dr. Hudson, we've received testimony from growers in the western region who have indicated that their harvest starts much later than October. But you must mentioned that harvest starts in October.

DR. HUDSON: Right.

MS. SCHMAEDICK: Where does harvest start in October?

DR. HUDSON: The harvest in the east and some of the southern regions will begin pre-checking in early October. And then as time goes on, it progresses across the production belt. Most production in the fall begins in early November and is usually completed by mid to late December provided that there's pretty good weather.

In the east because of rains we have on occasions started harvesting October and not completed the harvest until really early spring
into March if we have adverse harvest conditions. So there is a variation across the pecan belt of when harvest begins in the industry.

MS. SCHMAEDICK: Thank you. In your work with the American Pecan Board, did you select the dates October 1st and September 31st so that those dates would be workable in all regions?

JUDGE GUTHRIDGE: September 30th.

DR. HUDSON: Yes.

MS. SCHMAEDICK: I'm sorry. September 30th.

DR. HUDSON: Yes, it was.

MS. SCHMAEDICK: So that decision was an all-inclusive decision.

DR. HUDSON: Yes, it was. It was a unanimous vote by the board.

MS. SCHMAEDICK: Thank you. No further questions.

MS. VARELA: I'm sorry. I have one more question.

JUDGE GUTHRIDGE: Sorry.
CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. Dr. Hudson, I want to ask you a couple of questions about using fiscal year as defined. In your discussions of determining what the start dates were, did the board take into account the administration of the council and what dates might work well in terms of setting a budget for each year?

DR. HUDSON: Yes, we did. And in doing so by setting those dates to start creating that budget which would begin late spring/early summer, then we would have a fair handle on how much money you could be dealing with. Most of the production would be at least in some level in the process. We would have a better understanding of where it might be as compared to moving it up to January 1. We would still be in harvest and would not have a good handle on it.

MS. VARELA: And just to follow along that line, if you were trying to start in a different part of the year it might make it more
difficult to have the same accurate idea of how much income you would have.

DR. HUDSON: Right.

MS. VARELA: And earlier we heard testimony about the August 31st rule.

DR. HUDSON: Yes.

MS. VARELA: Can you link together because I do believe that's connected to your --

DR. HUDSON: Right.

MS. VARELA: Can you please relate what some of the discussions were in terms of how those dates work together?

DR. HUDSON: Yes. The first rule simply allows us to get a handle on the amount of inventory that might still be held in the Rule 11. So we would have an accounting of that.

Those inventories are on the farm would be counted. And then that would give us a handle as to what that production would be that had not going into the chain of commerce.

MS. VARELA: That's very helpful.

Thank you. I just have one other more general
question regarding these dates. As an industry, do you generally refer to your crop from a specific year?

DR. HUDSON: Pardon?

MS. VARELA: As an industry, do you typically refer to your crop year 2013, '13-'14? Is there an industry standard for defining a certain year's crop? Or does that not --

DR. HUDSON: I don't think there's a general standard because it's referred to both ways. We start harvesting in '14 and finish up in '15 and we say it some days as '14-'15 and then some years it will just say '15 data, although some of the harvest actually occurred over into '16.

MS. VARELA: All right. Thank you very much.

JUDGE GUTHRIDGE: Anything else from Agriculture?

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. To clarify if you have a reporting date on
August 31st and your fiscal year ends September 30th, does that not give you a whole month to analyze that data prior to the next fiscal year starting and budget sessions starting?

DR. HUDSON: Yes, it is. In fact, that was the purpose of that meeting.

MS. SCHMAEDICK: Thank you. No further questions.

JUDGE GUTHRIDGE: Anything else?

(No verbal response)

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Thank you, Dr. Hudson.

If you'd now turn your attention to Section 986.15, grade and size. Prior to the proposed federal marketing order for pecans, are there uniformly established grade and sizes for pecans that are used in the industry?

DR. HUDSON: Yes, they are. There are current USDA standards. But quite frankly these standards are antiquated and a regular source of some confusion. We felt that the industry will need the ability to redefine size and grade
standards in the future.

Of course, this will require full industry input through the council so the definitions are more precise and are used uniformly. The council with input from the industry will recommend to the Secretary what should be done here as outlined in Section 896.69, paragraphs (1) and (2).

MR. QUIROS: Is there any controversy about whether uniform grades and sizes should be established?

DR. HUDSON: Sure there is. But I would not think that there will be -- This can be resolved. And I do not think there will be very much if growers and shellers have a chance to sit down around the table and decide together what these standards should look like.

There certainly will be discussion about what they should be and we're going to make sure everyone has an opportunity to have input into this process.

MR. QUIROS: The Judge has some
JUDGE GUTHRIDGE: Yeah, when you say there's controversy, is there controversy on whether or not they have standards or controversy as to what those standards should be.

DR. HUDSON: Well, quite frankly, it's in all of them. There is no mandated standards that are currently used in the industry. Currently, USDA has standards for size. They have standards in regards to grade or percent of meat per unit. And then they have color standards.

In fact, there's not even a standard that is required as far as moisture. So there needs to be some unified standards throughout, some new standards, and then there needs to be some teeth put into the fact.

We need standards. My goodness, how do you run a business without standards. I hope that answers your question.

JUDGE GUTHRIDGE: I'm not sure that it did. I'm still not sure whether there are some
pecan growers and/or shellers who think there
should be no standards.

DR. HUDSON: I would say this. The
pecan growers or shellers who think that there
should be no standards should not be a pecan
grower or sheller. We need standards. And we
need enforcement of those standards. And I think
the general consensus of the industry would buy
that.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick,
USDA. Dr. Hudson, at the bottom of that
definition, at the bottom of 986.15, grade and
size, the language states "...or other variations
in the grade and size based thereon recommended
by the council and approved by the Secretary."

Based on your knowledge and the
discussions of the proposed draft, are there
certain requirements that need to be met in terms
of the council making that recommendation? For
example, is a super majority required in that
recommendation?
DR. HUDSON: Yes, in the adoption of something as important as standards if a standard required a super majority vote we need both growers and shellers to approve this before we would recommend it.

MS. SCHMAEDICK: And could it be possible to develop different levels and grades and standards for example for native versus improved varieties? Could there be two different variety size for example? Could you have a different size scale for native versus improved?

DR. HUDSON: Yes. I really believe that there would be an opportunity here to develop a standard or standards that would more properly reflect the diversity of the nuts and the size and the quality in our industry. And certainly it would need to be a standard for seedlings and natives.

MS. SCHMAEDICK: Thank you. And to your knowledge the current United States standards for in shell and shelled pecans, are they met on a voluntary basis currently? Or are
they mandated?

DR. HUDSON: They're not mandated. In fact, a very small percentage of the in shell we market requires that there be examination and determination in regards to the quality of a standard pecan. So there's a some confusion about the terminology, grade, use, channels, in commercial marketing of pecans.

MS. SCHMAEDICK: In previous testimony, we've had some witnesses refer to or speak to U.S. standards and characterize them as being outdated. Do you share that opinion?

DR. HUDSON: Yes, I do.

MS. SCHMAEDICK: So the inclusion of this particular term as well as the inclusion of the proposed authority for the council to make recommendations, would that provide the opportunity to create updated grades that are better?

DR. HUDSON: Yes, it will. My understanding is that the last provisions to standards occurred in 1986 and before that it was
in 1969. So there needs to be a renewing of these standards.

MS. SCHMAEDICK: Tying back to your comment on the super majority requirement for making recommendation, does that indicate that any formulation of a proposed grades and standards would involve a discussion vetting with the industry to ensure that they are appropriate?

What do you think of that?

DR. HUDSON: Yes, it would. And I can tell you that in discussions we've had with the processing industry it is just essential as the rules are in this process.

MS. SCHMAEDICK: Thank you. I have no other questions.

CROSS EXAMINATION (Cont'd)

MS. CHILUKURI: Dr. Hudson, with the voluntary standards that are in place, do you know how much of the industry is following the standards?

DR. HUDSON: No, I do not. I can tell you that particularly on the in shell side, the
marketing of the in shell side, the large containers domestically are not asked to get a USDA assignment or termination made. It's generally January-ish.

MS. CHILUKURI: Okay. Thank you.

JUDGE GUTHRIDGE: Anything else?

MS. CHILUKURI: No more questions.

JUDGE GUTHRIDGE: Back to you.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Thank you, Dr. Hudson.

Now I'd ask you to turn your attention to Section 986.16, grower. Take a moment to please read that definition again. And then we're going to break it down.

DR. HUDSON: Okay.

MR. QUIROS: Dr. Hudson, first in the industry, is a grower generally considered the same as a producer?

DR. HUDSON: Yes, he is.

MR. QUIROS: Why the discussion of owning and leasing?

DR. HUDSON: Here again reflects the
industry practices. Both arrangements are common. And the phrase for proprietary capacity as used in the Act to signify ownership and control of the product is defined in the marketing order in Section 986.31.

MR. QUIROS: How do owners and lessees fit into the concept of proprietary capacity?

DR. HUDSON: Well, here again, it goes back to who in fact owns the nuts. It is a very common relationship where an owner will lease his orchard to a producer for a price or crop. But he loses the proprietary ownership of that crop. So he is owner, but he is not the grower.

MR. QUIROS: Thank you. And how prevalent is the lessee scenario in the industry across all areas?

DR. HUDSON: It is fairly prevalent.

MR. QUIROS: Thank you. I'd like to ask you to turn your attention about halfway down the definition on the provision after the word provided. Why did the board select these cutoffs?
DR. HUDSON: Well, the board selected this because in the smaller are really not commercial. And for the amount of investments and expense that it takes anything below this level would be considered to be an noncommercial grower. A considerable amount of equipment that it would take to harvest and grow the crop and then looking at the level of profitability, it was not considered to be commercial.

Our intent was to include all truly commercial growers, but exclude those that might be called yard owners or hobby farmers. The proposed market order quite honestly in our opinion was meant for truly commercial pecan growers who have their lives and livelihood at risk.

MR. QUIROS: Thank you. And Ms. Schmaedick asked you a little bit about the FSA and a pecan acre. What is a pecan acre? Do you understand anything more about that, but do you think it was fully covered?

DR. HUDSON: I honestly think we
adequately covered that. But here again it is another one of these nebulous terms which would have different meanings in different areas of the pecan industry.

MR. QUIROS: And so the FSA is used to help sort that out amongst the regions and amongst the states.

DR. HUDSON: Yes, the farm service agency handles that.

MR. QUIROS: Thank you. Why did you use both an acreage and a poundage threshold in that sentence?

DR. HUDSON: We wanted to make sure that particularly those new growers that were coming into the industry would be able to have input and so that a grower who may be a new grower who has planted 30 acres or more would be considered in the market order.

MR. QUIROS: How about in the west region where they may have more poundage?

DR. HUDSON: Well, in the west region, if they indicate that their average yields are
higher, then it's possible that at the 50,000 pound level might be obtained or could be expected to be obtained on average in less than 30 acres. So that is why we use the 30 acres or 50,000 pound rule.

MR. QUIROS: Dr. Hudson, did you hear the testimony of David Salopek this morning?

DR. HUDSON: Yes, I did.

MR. QUIROS: Did you hear him testify that he thought that the average in shell pounds per acre in the west was approximately 2,000 pound per acre?

DR. HUDSON: Yes, I did. And that would be consistent with the --

MR. QUIROS: So 50,000 pounds divided by --

DR. HUDSON: Two thousand would be 25 acres.

MR. QUIROS: Exactly. So in the west that would be inclusive of a smaller acreage farmer that had larger yields per pound. Is that correct?
DR. HUDSON: Yes, it would.

MR. QUIROS: But in the east where they have a smaller poundage the 30 acres would be a fairer approximation to central and the east regions. Is that right?

DR. HUDSON: Yes, it would. Both in the east and in the central in regards to current commodity programs, Georgia has a Georgia Commodity Commission. Ours is based on acreage as well as the Texas Pecan Board. Their assessments is based on acreage.

MR. QUIROS: And what's their minimum size of acreage in the Georgia and Texas?

DR. HUDSON: Thirty acres is a consistent number.

MR. QUIROS: Thank you. Did you consider any other standards besides the one that you included here?

DR. HUDSON: Yes, we did. In fact, there was a considerable amount of discussion in regards to where the standard might be that we opted for, what we thought would be fair across
the industry.

MR. QUIROS: Do you want to discuss any higher or lower thresholds if you remember that were talked about?

DR. HUDSON: Well, you know yes I can. Quite frankly, we had growers in Georgia who wanted the pecan tree to be allowed. But if you've driven through Georgia beginning about Macon, Georgia and all the way to the far land, there are pecan trees in just about every yard and the probability of determine that universe.

And then there were others quite extreme that felt like the numbers should be higher. But based on data that was collected and will be presented by Dr. Wells in Georgia and Dr. Palma, we felt like that the numbers for acres would be used or would be the fairness investment of termination for what would constitute and identify a grower.

MR. QUIROS: Dr. Hudson, this is America. And I know that you've addressed it and just touched on it. But I'd like to hear more
about that. Why not let anybody who grows pecans vote?

DR. HUDSON: Well, quite frankly, that's an improbably possibility. We could never have of course a real true record of everyone that should vote. But the purpose of the market order is to support, to help, those people, those individuals, whose livelihood depends on pecans. So the numbers that we used throughout have been based on what we considered to be a commercial level industry.

MR. QUIROS: And have you heard testimony from other growers in the last two days as to whether or not that was fair?

DR. HUDSON: Yes, I have.

MR. QUIROS: Have you heard anyone disagree with that as a fair standard?

DR. HUDSON: No, I have not.

MR. QUIROS: Thank you. Did you attend the meetings with growers where this standard was discussed?

DR. HUDSON: Yes, I did.
MR. QUIROS: And any controversy there?

DR. HUDSON: None.

MR. QUIROS: Thank you. No further questions on this definition at this time.

CROSS EXAMINATION (Cont'd)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Dr. Hudson, at the end of 986.16, grower, there's a sentence that reads "The council may recommend changes to this definition subject to the approval of the Secretary." Can you comment on what might cause the council to want to change this definition and how would it change?

DR. HUDSON: Do I have to?

MS. SCHMAEDICK: Well, let me ask you a question.

DR. HUDSON: No, I will answer the question.

MR. QUIROS: Break, Your Honor. I need a break.

(Laughter)

DR. HUDSON: Yes.
MS. SCHMAEDICK: Okay. Let me ask another question. So if we pretend for a moment and project ourselves 50 years into the future, do you think that definition of 30 acres and 50,000 pounds still be the appropriate threshold to define grower? Or could it possibly change?

DR. HUDSON: Thank you for answering that question. And certainly it will and I think dynamically the industry's dynamics are going to change with what's happening in the marketing orders. And if it's successful which we all hope it will be, then I think what we want to see is this industry grow quite significantly.

Certainly, as it grows and as our children take over our enterprises, that there may be flexibility to redefine that. So that is the reason why we wanted to make sure that the council had that opportunity and that it was subject to approval by the Secretary.

MS. SCHMAEDICK: Thank you. In your opinion, is that an issue that would require extensive discussion and deliberation prior to
getting a recommendation?

DR. HUDSON: Oh yeah. That's one of those that we would all discuss. Yes.

MS. SCHMAEDICK: Just to clarify that, in your opinion it would require a super majority vote?

DR. HUDSON: Yes, it would.

MS. SCHMAEDICK: Thank you. No further questions.

CROSS EXAMINATION (Cont'd)

MS. VARELA: Jennie Varela, USDA. At this time I'd think to think backwards a little. Melissa likes to go in the future. I'm trying to go backwards. When you all were developing this definition was there any discussion that had to do with professional management? Because earlier we had some testimony about different custom and procedures. But was there any consideration of whether we wanted to exclude anybody in particular because it didn't have a proprietary interest?

DR. HUDSON: No. There never was any
discussion of excluding anyone.

    MS. VARELA: Maybe exclude was the
wrong term. You were all aware that there are
professional managers in the industry, correct?

    DR. HUDSON: Yes.

    MS. VARELA: But they're not
considered growers, correct?

    DR. HUDSON: They are growers if they
meet the definition of grower.

    MS. VARELA: Right. Your intent was
to make sure that you were capturing proprietary
interest.

    DR. HUDSON: Yes.

    JUDGE GUTHRIDGE: Anything else?

    MR. QUIROS: Yes.

    REDIRECT EXAMINATION (Cont'd)

    MR. QUIROS: Dr. Hudson, if I could
ask you to turn your attention to Section
986.55(c)(1)(vii). I've got it up there. This
is part of the super majority procedures that are
required of the council members.

    So when you were referring to that
super majority you were referring to modifying
the definition of growers and shellers. Is that
correct?

DR. HUDSON: Yes.

MR. QUIROS: Thank you. No further
questions from this definition.

JUDGE GUTHRIDGE: Nothing else?

(No verbal response)

MR. QUIROS: Thank you.

DIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, please turn
now to Section 986.17, grower clean production.

Is this term used in the industry?

DR. HUDSON: Yes, it is.

MR. QUIROS: Is this definition
consistent with the usage in the industry in your
experience?

DR. HUDSON: Yes, it is.

MR. QUIROS: Why define?

DR. HUDSON: It is defined because the
council will collect data on the amount of clean
production and distribute that collected data as
identified in Section 986.61(5).

MR. QUIROS: Thank you. No further questions at this time of this definition.

MS. SCHMAEDICK: No questions.

MR. QUIROS: Dr. Hudson, I'd not like to turn your attention to actually two definitions at the same time which is Section 986.18 and Section 986.19, handler and to handle. Would you take a moment to refresh your memory with regard to those two definitions? This is very weighty and important and packed. So let's take a some time to review that and then we'll get into questions.

DR. HUDSON: Okay.

MR. QUIROS: Let's address the easy thing first. Section 986.18, handler, just means one that handles pecans as defined in Section 986.19. Is that correct?

DR. HUDSON: Yes, it is.

MR. QUIROS: Before we get into this definition, I think it might help and we haven't had testimony yet on this if you could describe
for us, Dr. Hudson, what happens when a nut is harvested. Take us from the harvesting through the transfer of that nut and give us some idea of how the industry handles its product. And then we'll go back and take a look at these definitions and see if they make sense.

DR. HUDSON: Understanding that there's exceptions to this that the pecans are in early fall wherever that might be across the belt. We'll shake the pecans off the trees with a mechanical shaker. These pecans will then be swept into windrunners by a specialized sweeper. Then a harvester, a mechanical harvester will come back and literally pick up these pecans and do a very superficial cleaning at that time.

These pecans then go onto a wagon and then these wagons are dumped into trucks and taken to the cleaning vats where they're cleaned. And this just involves dumping the pecans into a large vat. They're elevated through multiple sections of cleaning and taking out limbs, leaves, rocks, farm material, cracks, blowouts.
Then sorted and bagged and then graded and stored.

MR. QUIROS: Let me interrupt you just a second. At that time in a normal situation, this nuts are still owned by the lessee or the grower. Is that correct?

DR. HUDSON: That is correct.

MR. QUIROS: Okay. Then what happens next?

DR. HUDSON: Then the pecans are sold or they are cracked or they are put into warehouses for storage. But more times than not, they're sold at that time.

MR. QUIROS: And who are they sold to, Dr. Hudson?

DR. HUDSON: They can be sold to numerous groups. They can be sold to the accumulators. Most often, they're sold to shellers. Or in some cases like ours, they're exported. So there are opportunities that are involved with this.

MR. QUIROS: And you're familiar with
the concept that growers do not pay assessment, but only handlers. Is that correct?

DR. HUDSON: That is absolutely true, yes.

MR. QUIROS: So when you were discussing this definition were you conscious of that issue and the way the Act is formulated in that regard?

DR. HUDSON: Yes, I am.

MR. QUIROS: And is there an overall concept with regard to this handling definition with regard to the transfer of these nuts or sale and money? What's that concept?

DR. HUDSON: That overall concept is that as long as the grower owns or maintains proprietary rights to those nuts than they have not commit the level of being passed to a handler. Once the nuts are entered into the chain of commerce, then they at that level cross that boundary from being a commodity to being a product that is susceptible to an assessment.

MR. QUIROS:
JUDGE GUTHRIDGE: May I clarify something in my own mind here? I think one of the people who testified yesterday talked about— I thought he mentioned that he sold his crop on occasion while it's still on the tree. Do I remember that correctly?

MR. QUIROS: That's a good question, Your Honor. I've heard that term before. It's sort of a forward purchasing term. The buyer obviously in most situations can't take control of that until it's harvested. But I'll let Dr. Hudson-- Have you ever heard that term before, Dr. Hudson?

DR. HUDSON: Yes, I have. This does occur.

MR. QUIROS: In that situation, when does the handler take control of the crop?

DR. HUDSON: Here again, it goes back to who owns the nuts. In other words, at what point do the nuts go where they're going?

My understanding is some of this gets kind of blurry. I would say this is a blurry
position.

MR. QUIROS: And is that term often
times used as part of a forward contract term?

DR. HUDSON: Right. Very well could
be.

MR. QUIROS: And so often in that
situation you would be required as a grower to
deliver those nuts to the handler that had bought
the crop on the trees. Is that correct?

DR. HUDSON: Yes. That is, in some
cases.

MR. QUIROS: Let's go back to talking
simply about a handler. Describe the different
types of handlers that exist in the industry.

DR. HUDSON: Well, here again, there
are accumulators which are very common who
compile large pecans from the growers and they
put lots together. Those are accumulators.

The most obvious are shellers where
growers will get their pecans cleaned and the
shellers return them to the warehouses. They
were sample nuts. And then they buy them. And
then the sheller gets them to the handler.

And then there are situations where the growers themselves would be identified as handlers if they sold pecans directly outside of their area. So both the growers in this case become handlers and typically with accumulators and shellers.

MR. QUIROS: Dr. Hudson, if you were thinking about all of those groups that are handlers and again thinking big concept here, where does actually handling begin?

DR. HUDSON: Handling begins at that point that the pecans no longer are a commodity but rather a product at that point of monetary exchange.

MR. QUIROS: So when money changes hands.

DR. HUDSON: When money changes hands and a value is put on that load, hands are shook, the trade is made.

MR. QUIROS: How about when a growers loses control?
DR. HUDSON: It's at that point where a grower loses control.

MR. QUIROS: Okay. Thank you. Is the selling function of handling because the pecans are placed in the stream of commerce?

DR. HUDSON: I'm sorry.

MR. QUIROS: Is selling a function of handling because the pecans are placed in the stream of commerce in the case of a grower?

DR. HUDSON: Yes.

MR. QUIROS: Does selling apply to a sale by grower to a person with handling facilities in the proposed production area?

DR. HUDSON: Yes.

MR. QUIROS: To be clear, do the activities of shelling, cracking, roasting, packing pecans constitute handling?

DR. HUDSON: Yes.

MR. QUIROS: If yes, is this because these activities involve the future preparation of pecans for the market?

DR. HUDSON: Yes, it does.
MR. QUIROS: And as a grower would you ever let a person do that to yours if they hadn't given you money?

DR. HUDSON: Only in a custom shelling relationship where I retained the ownership of the pecans.

MR. QUIROS: Where you retained the title of. Why is cleaning not considered a handling function?

DR. HUDSON: It is not considered a handling function because here again it is a process of simply getting the pecans prepared for the market. And so here again it is a service and the grower still maintains proprietary ownership of those nuts.

MR. QUIROS: Okay. I'm going to give you an allied concept now, but I think it's important.

DR. HUDSON: Okay.

MR. QUIROS: And I know we'll get to the definition later of inner handler transfers. But do inner transfer transfers occur in the
pecan industry?

DR. HUDSON: Yes, they do.

MR. QUIROS: If so, how will these be handled under the marketing order?

DR. HUDSON: Well, I would simply refer to Section 986.62 in that regards. Which handler will be required to meet these requirements in Section 986.62?

DR. HUDSON: The receiving handler where here again the nut goes from the commodity to being a crop.

MR. QUIROS: And won't both handlers in that situation be required to comply?

DR. HUDSON: Be responsible for them.

MR. QUIROS: All right.

DR. HUDSON: And they certainly will be responsible for many records.

MR. QUIROS: Let me focus your interest real briefly on that last phrase where we say "or transfers between handlers" in that definition.

DR. HUDSON: Right.
MR. QUIROS: Focus on it. Tell us why you put that in there.

DR. HUDSON: Because it is a situation that does occur where you have companies in some cases that serve as a means of putting loads together where they might go to a grower, work for a company compiling pecans.

I'll give you another good example of this out of my own personal business. In Georgia, there are literally hundreds of small buying groups. They buy pecans from growers. But in many cases, these buying groups are affiliated with larger accumulators like myself who in turn take this small amount of product, bring it in, compile it, clean it up, put it with larger lots and then market.

In that case, it would be extremely difficult to get and burdensome. Pretty small buying points to be able to maintain all of the necessary documentation that it might require to be able to handle those nuts.

MR. QUIROS: Thank you, Dr. Hudson.
I think I may have led you a bit astray.

DR. HUDSON: Right.

MR. QUIROS: And that was helpful and we will get to it in Section 986.62, but I just meant in that last phrase. Is this a placeholder and a reminder that we're going to get in the inner handler transfer section?

DR. HUDSON: Yes. I'm sorry. It is in fact.

MR. QUIROS: Thank you.

DR. HUDSON: It is the placeholder.

MR. QUIROS: We talked about custom cleaning. What other types of fee for service based activities occur in this industry?

DR. HUDSON: Custom harvesting, warehousing, cold storage, transportation. So particularly for smaller growers who can't afford the equipment and do not have access to the equipment, the ability to hire many of their work responsibilities to the customer they do that.

MR. QUIROS: In those situations, does the grower retain title and control of the
product?

DR. HUDSON: Yes, in a custom relationship regardless of where it might be the grower still retains the ownership.

MR. QUIROS: Should the persons providing these custom services be considered handlers?

DR. HUDSON: No, they should not.

MR. QUIROS: So that second sentence which is the exception there of the terms of "to handle shall not include" you think that accurately reflects the industry.

DR. HUDSON: Right. It does. They should not be included as handlers.

MR. QUIROS: Okay. And that's because of what again?

DR. HUDSON: Because they do not have proprietary ownership of the product. They never take the product and have control of it.

MR. QUIROS: Explain the general intent of the first sentence of the definition to handle.
DR. HUDSON: I mean to handle, we wanted to cast a wide net so that everyone after the grower who processes pecans for sale or to consume is considered handling or handler. But we also wanted to make it very clear that a grower or someone who is merely transporting pecans for a grower or who is performing a service for a fee for a grower is not a handler. Only handlers as defined are going to be assessed. This is a very important point in regards to assessment.

MR. QUIROS: Again, let's explain the last sentence. What were you trying to get to here?

DR. HUDSON: Well, here again, we just wanted to make sure that given how broad the definition is in the first sentence one could argue that a grower who sends his crop to a handler is in fact a handler as defined. So the sole purpose of the last sentence is to ensure that a grower is not assessed as a handler.

MR. QUIROS: Okay. Focus on the term
custom handling and tell us a little bit about that.

DR. HUDSON: Okay. Custom handling, all right, except for selling, consigning or exporting or similar activities paid for on a fee for service basis by a grower who retains the ownership of the pecans.

MR. QUIROS: Yes, what is that and why are you exempting it from the definition of handler?

DR. HUDSON: Well, under very limited circumstances, where a grower is not selling to a sheller or handler but is just paying for these services as mentioned and then in turn getting his product back. Perhaps they may sell this at a roadside stand or they may give it away. But here ultimately the grower is with the nuts.

And we do not want a grower assessed unless they've become a handler. So we made the limiting exception. This will rarely come up in the industry as it is structured.

MR. QUIROS: Could this exception lead
to leakage of assessments?

    DR. HUDSON: No. In my opinion, this is why we did not include selling, consigning or exporting in this exception. This should be very limited. But certainly here again we can revisit this. The board can revisit this if there's a need.

    MR. QUIROS: Dr. Hudson, overall how workable do you think this definition is in the industry as you understand it?

    DR. HUDSON: I consider it to be absolutely the best solution for these services.

    MR. QUIROS: Thank you. No further questions at this time of this definition.

    JUDGE GUTHRIDGE: Questions from Agriculture?

    CROSS EXAMINATION (Cont'd)

    MS. SCHMAEDICK: Melissa Schmaedick, USDA. Thank you, Dr. Hudson. That's quite an notion there. You just gave some testimony relating to the exception from the proviso of exceptions. Let me just clarify that. You gave
some testimony about except for custom selling, consigning and exporting.

I'm wondering. Is part of your consideration in terms of accepting the activities of custom selling, custom consigning and custom exporting because even though those might be custom activities it involves placing pecans into the stream of commerce?

DR. HUDSON: Yes.

MS. SCHMAEDICK: Thank you. I have another question. You made a brief mention to growers who may use a custom service of some sort to prepare pecans, for example, to sell at roadside stands. And you do remember making that comment.

DR. HUDSON: Yes.

MS. SCHMAEDICK: So if a grower is placing product into the stream of commerce typically does that make them a handler because they're doing that function? They're selling or putting it into the stream of commerce?

DR. HUDSON: Yes, it does.
MS. SCHMAEDICK: Would that be the same for a grower that decides to export product outside the production area? Would that grower become a handler?

DR. HUDSON: Yes. And that is certainly a very much clearer situation.

MS. SCHMAEDICK: Thank you. So keeping this definition in mind and what we just discussed as far as a grower who becomes a handler by selling product, I want you to look at 986.86, exceptions.

(Off record discussion)

DR. HUDSON: Yes.

MS. SCHMAEDICK: Do you recall the American Pecan Board's discussion about these exceptions?

DR. HUDSON: Yes, we did. Or, yes, I do.

MS. SCHMAEDICK: I want to tie this section to the definition of handle. And I want to focus on situations where a grower might become a handler. So the grower is placing
product into the stream of commerce. And I want
to focus specifically on your comment about
roadside stands. In your opinion, do roadside
stands describe small grower businesses that are
trying to earn some extra cash?

DR. HUDSON: Yes, in most cases, that
is true.

MS. SCHMAEDICK: In the context of
this Section 986.86, exceptions, you have a small
grower and he's putting his product in the stream
of commerce. So all of a sudden he becomes a
handler. Is that correct?

DR. HUDSON: Possibly yes.

MS. SCHMAEDICK: But under this
exemption, would that grower be subject to
regulation or would he be exempted if that grower
is selling let's say 450 pounds of product on the
side of the road?

DR. HUDSON: Right. He is exempted.

We have a 1,000 pound exemption level. So he's
exempted up to 1,000 pounds.

MS. SCHMAEDICK: And why did the board
contemplate this type of exemption? What was the purpose?

DR. HUDSON: Here again, as a grower, I have given away a lot of nuts. So what it did was allow for a handler to have at least some way, a leeway, in regards to those types of circumstances.

MS. SCHMAEDICK: And, in the industry, are you aware of some grower operations who also have roadside stands but they sell more than 500,000 pounds?

DR. HUDSON: Right. In that case, they would be a handler and would be expected to pay the assessment.

MS. SCHMAEDICK: And I'm curious. I want to just carry this one step further. In paragraph (c) of 986.86 you have mail order sales. And they're not exempt. Why are mail order sales not exempt?

DR. HUDSON: Here again, that is a very high end trade and small amounts of pecans and large amounts of money. And so we felt like
that they should not be exempt.

**MS. SCHMAEDICK:** So if you have a
grower that uses a custom harvester and a custom
cleaner and a custom whatever and that product
comes off the trees and get prepared for the
market by a custom service and then that grower
decides to sell all of that product through the
mail, does that grower become a handler?

**DR. HUDSON:** Under that scenario, yes.

**MS. SCHMAEDICK:** Thank you. I believe
that is the extent of my questions regarding
handling and handler. Thank you.

**JUDGE GUTHRIDGE:** Ms. Chilukuri, you
look like a question.

**MS. CHILUKURI:** Yes.

**CROSS EXAMINATION (Cont'd)**

**MS. CHILUKURI:** Dr. Hudson, I just
have a question regarding testimony as it relates
to pecan handling transfers just in terms of when
a transfer takes place what is your understanding
of who will be assessed.

**DR. HUDSON:** The receiver shall be
assessed, but both shall be -- There will be
documents tracking these pecans.

MS. CHILUKURI: And just to clarify,
you may want to take a look at both 25 and 62.
Is this an absolute in the sense that the
receiving handler must always be assessed or is
this permissive?

DR. HUDSON: I would rather take a
field on this one. But here again inner handler
transfer occurs in our system. And we have
facilitated that transfer.

I don't think that it will be a
process that will be used extensively. And again
it will require record keeping to track those
pecans as they are accumulating and then transfer
at some point to a handler at a point in time
that the product, I mean, the provided product
and the money is changed from the two parties.

Now the entities that are responsible,
the handlers that are involved in inner handler
transfer would require record keeping on the
loads that were in fact handled in that manner.
And at a point in time that the load is delivered, then that person, that sheller or that handler, would then pay the assessment. That is my understanding. Now if it's different now, I'm sure you'll quiz me on it and find out.

MS. CHILUKURI: Okay. Thank you.

JUDGE GUTHRIDGE: Any more Agriculture questions?

(No verbal response)

REDIRECT EXAMINATION (Cont'd)

MR. QUIROS: Dr. Hudson, thank you.

This is a bit like a jigsaw puzzle and every piece of the testimony for the next seven days will all fit together at some point. Then we'll all have a better understanding. You've done a great job.

I'd like you to turn though to Section 986.62 in response to that question from the USDA. And I'd like you to take a minute to read that section and then let's have a quick clarification. Tell me when you're ready after you've had a chance to read it.
DR. HUDSON: Thank you. Yes.

MR. QUIROS: Okay. Dr. Hudson, would you like to change your answer with regard to the inner handler transfer with regard to especially focusing on the intent there and the last sentence?

DR. HUDSON: On the intent, I don't understand. But the assessment would be assumed by the receiving handler if that clarifies it.

MR. QUIROS: Please read that last sentence.

DR. HUDSON: "The assessor must state which handler has the assessment responsibilities."

MR. QUIROS: And again I want to ask you to take a look at that and correct the answer. Isn't it true that either handler could agree to pay that assessment. And in some situations where there is a multiple stream of handlers, there may be more than just two that are involved. But there may be multiple handlers. Is that correct?
DR. HUDSON: Yes.

MR. QUIROS: So in a situation when each handlers hands it off to the next handler, there is a transaction that needs to be documented according to this section. Isn't that correct?

DR. HUDSON: That is correct.

MR. QUIROS: And either of those handlers can determine who pays if an assessment has not been yet paid. Isn't that correct?

DR. HUDSON: That is correct.

MR. QUIROS: Doesn't the last sentence indicate that either handler may in fact pay the assessment as long as the forms reflect which handlers paid that assessment?

DR. HUDSON: Yes, it does. Thank you.

MR. QUIROS: Thank you. And are you aware that Mr. Wilson will give testimony on this section in Tifton, Georgia in approximately a week?

DR. HUDSON: I was not aware of that, but I assumed that someone more qualified than
myself would.

MR. QUIROS: Thank you, Dr. Hudson.

No more questions on this section.

JUDGE GUTHRIDGE: Any follow-up?

(No verbal response)

Can we go off the record for a minute?

(Whereupon, the above-entitled matter
briefly went off the record.)

JUDGE GUTHRIDGE: Back on the record
for a minute. We've been off the record for a
minute and reached a consensus that it's now 6:11
p.m. and we're going to recess until tomorrow
morning at 8:00 a.m. and resume Dr. Hudson's
testimony.

MR. QUIROS: Thank you, Your Honor.

JUDGE GUTHRIDGE: Off the record.

(Whereupon, at 5:36 p.m., the above-
entitled matter went off the record.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Proposed Marketing Order and Agreement for Pecans

Before: USDA

Date: 07-21-2015

Place: Las Cruces, New Mexico

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

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