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

THURSDAY, JULY 23, 2015

The hearing came to order at 8:00 a.m. in the Azalea Room at the Hilton Doubletree Hotel, located at 1981 North Central Expressway, Richardson, Texas, Clay G. Guthridge, Administrative Law Judge, presiding.

BEFORE:

CLAY G. GUTHRIDGE

Chief Administrative Law Judge

Federal Maritime Commission
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8:00 a.m.

JUDGE GUTHRIDGE: This hearing will come to order, please. Good morning. My name is Clay Guthridge, I am the Chief Administrative Law Judge of the Federal Maritime Commission and I have been detailed to the Department of Agriculture to preside over this public rule making hearing.

Before we go on let me ask you all, if you would, please, as I'm going to do right now and turn off or at least silence your cell phones and other noise-making devices that you might have.

Could I have appearances for the Department of Agriculture, please?

MR. HILL: Brian Hill, United States Department of Agriculture, Office of the General Counsel.

MS. CHILUKURI: Rupa Chilukuri, Department of Agriculture, OGC.

JUDGE GUTHRIDGE: And for the
proponent group?

MR. DAVIS: Dwight Davis, attorney for the proponent group.

MS. MYERS: Regina Myers, attorney for the proponent group.

MR. QUIROS: Paul Quirós, attorney for the proponent group.

JUDGE GUTHRIDGE: And these other folks over here to my right are from Department of Agriculture and they will also be asking questions.

We're here today on a proposal to promulgate a marketing agreement covering pecans pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937. The Act is codified at 7 United States Code Section 601 through 674. And this is docket number 15-0139(a)(o)-FD.

The proposal was published in the Federal Register on July 2nd, 2015, at 80 Federal Register 38021 through 38032. And the proposal would create, as I think probably most of you
know, an agricultural marketing order for pecans.

We -- the hearing began in Las Cruces, New Mexico, on Monday, July 20th, and carried through Wednesday, and is resuming here in Dallas on July 23rd and will be tomorrow, the 24th, possibly on Saturday, the 25th, and then we'll resume in Tifton, Georgia, next week.

It's my function and responsibility to conduct the hearing and to ensure that all persons who want to present relevant evidence or otherwise participate in the public hearing have an opportunity to do so. The information presented at the hearing will be compiled into a written record and used by the Secretary of Agriculture to make a decision on the proposal.

The decision will be based on the record made at the hearing and consisting of the testimony and statements of the witnesses and any exhibits submitted and entered into the record. Any person may testify, and the testimony may be admitted as long as it's not immaterial, irrelevant, or repetitious.
Seated I believe at the back, is that
Ms. Andrea Ritchy back there at the back wall?

If you want to testify and you're not already on
the list to testify, if you would see her at some
point during the day and let her know, and she'll
let me know.

You can also submit a statement in
writing. And if you submit such a statement,
please identify yourself, your name, address, and
other identifying information, and get it to the
Department of Agriculture personnel who will get
it to Ms. Peggy Brown, who's seated to my right,
who's the court reporter for this.

She's taking down everything,
recording everything that's being said. So if
you do testify, please speak clearly into the
microphone, so she can understand what you're
saying. After you testify, if you do testify, I
may ask you to, I will probably ask you to go
over and just check with her to make sure that
she doesn't have any problems with anything she
said needs any clarification or spellings of
words.

One other thing I wanted to mention is the Department of Agriculture personnel are the persons who are charged with the responsibility of making this decision. And under the regulations they may not talk to you about the proposal, anything substantive about the proposal itself. They may talk to you about procedural matters or the weather but they cannot discuss the merits of the proposal itself. And so if they look a little frightened if you approach them, that's why.

There have been 39 exhibits already admitted into the record in the Las Cruces portion of the hearing. And my understanding is that they are all available on line someplace.

And if somebody from Department of Agriculture can, if you would let us know what that web site is or how to get to those documents.

MS. SHARROW: Yes, Your Honor. The exhibits are available on the Agricultural Marketing Service web site at ams.usda.gov.
Michelle Sharrow, USDA.

JUDGE GUTHRIDGE: All right. With that, I ask the proponent group to call its first witness unless you have any preliminary matter you want to raise.

MR. DAVIS: Your Honor, we're ready to charge right into it. Thank you so much. Good morning, Your Honor and ladies and gentlemen. I'm Dwight Davis, counsel for the proponent group. And the proponent group calls as its first witness Ms. Helen Watts.

JUDGE GUTHRIDGE: Ms. Watts, could you please raise your right hand?

MS. WATTS: Yes, sir, I do.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Thank you.

Whereupon,

HELEN WATTS

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

DIRECT EXAMINATION
BY MR. DAVIS:

Q    Good morning, Ms. Watts.

A    Good morning.

Q    For the record, would you please spell your first and last name?


Q    And where do you reside, Ms. Watts?

A    I live in Florence, South Carolina.

Q    Ms. Watts, if I could get this on the record, I believe you are originally from Dillon, South Carolina. Is that correct?

A    Yes, sir, I am from the great city of Dillon.

Q    Now, for those in the audience, Dillon, South Carolina is probably best known as the home of South of the Border, a large tourist trap that's right on I-95 with beacons all up and down I-95, everybody knows that. But only slightly less better known is that is the home of Ben Bernanke. Is that not correct?

A    Yes, sir, that is correct.

Q    Is there any chance you knew Mr.
Bernanke, Dr. Bernanke growing up?

   A   Yeah, Ben and I were classmates, so, you know, I've got some good on Ben that I could disclose at the right --

   Q   You are under oath, so I will not ask you. In fact, I think you and Dr. Bernanke were in the same band. Is that correct?

   A   Absolutely. We were Dillon High School Marching Wildcats, and Ben played the saxophone and I played the flute, and we were rocking.

   Q   Yeah. I would venture to bet that that -- your band, with you and Dr. Bernanke on that band, had the highest average IQ of any band perhaps in the country.

   A   Actually I think that's written down in Dillon.

   Q   As well it should be.

JUDGE GUTHRIDGE: I might rule that testimony about Mr. Bernanke would be irrelevant, immaterial --

   (General laughter.)
MR. DAVIS: So noted, Your Honor. Now we're going to get to relevant information.

BY MR. DAVIS:

Q  Tell us a little bit about your educational background.

A  I went to school and graduated from Womick Selenia Business College back in the early '70s. I began work with Young Pecan about three years after that, and have been with Young Pecan for 35 years.

Q  What is your current position with Young Pecan?

A  I'm the Executive Vice President of the company.

Q  And what are your responsibilities as vice president of Young Pecan?

A  Primary responsibilities are sales and marketing. That's where I focus most of my attention.

Q  Okay. And if you would, please explain to us what is Young Pecan?

A  Young Pecan is a very large processor
of pecans founded in 1923. We would be considered a large business as defined by the SBA guidelines.

Q Now, does Young Pecan own any pecan orchards?

A We do not. We buy 100 percent of our raw material inshell acquisitions from, direct from growers and accumulators.

Q Okay. And if you would, please give us just a quick overview of the locations of Young Pecan facilities and kind of the scope of your business.

A Well, I'm located in Florence, South Carolina. That's where the company was founded. I still have our inshell buying acquisition and sales offices there, although our shelling facilities are located now in the west Texas region around El Paso.

Q All right. Could you tell us some of your associations and affiliation and work that you have done with pecan organizations?

A Yes. I have served as the general
chairman and as the secretary-treasurer, vice president of the National Pecan Shellers Association. I'm currently again on the board of directors of the National Pecan Shellers Associations. I've served as an ambassador on the International Tree Nut and Dried Fruit Congress, which is a huge organization that promotes all tree nuts and dried fruits internationally.

I have been the general chairman and served on the board of the South Carolina international trade conference for many years. I have made many pecan presentations to nut groups, such as the Peanut and Tree Nut Processors Association and others.

Q In particular, do you have any direct affiliations with the American Pecan Board?
A Yes. I was appointed to the American Pecan Board by the National Pecan Shellers Association. It was once the American Pecan Board was founded both the grower and the sheller communities came together and appointed members
of that board for the future hope of finding
marketing dollars and ways to promote pecans.

Q    And do you currently serve as the
secretary-treasurer of the American Pecan Board?

A    Yes, sir, I do.

Q    Do you have in front of you a copy of
your curriculum vitae?

A    A copy of what?

Q    Your curriculum vitae, your resume?

A    Yes, uh-huh.

MR. DAVIS: Your Honor, we have marked
as Exhibit 40 the curriculum vitae of Ms. Helen
Watts, and I tender that into the record at this
time.

(The document referred to
was marked for
identification as Exhibit
40.)

JUDGE GUTHRIDGE: Is there any
objection from the USDA?

MR. HILL: No objection, Your Honor.

JUDGE GUTHRIDGE: Any objection from
anyone in the audience?

(No response.)

JUDGE GUTHRIDGE: Hearing no objection, Exhibit 40 is admitted into the record.

(The document previously marked as Exhibit 40 was received in evidence.)

BY MR. DAVIS:

Q Ms. Watts, now I would like to focus on your work on the American Pecan Board. In particular would you give us an overview of the efforts that you have directly participated in in bringing us here today with the proposed Federal Marketing Order.

A Sure. Well, our first effort was a trip to Washington, D.C. where we met with members of USDA, who were very gracious to allow us the time to learn about any and all opportunities for different programs that could help promote our products.

Q And approximately when would that meeting have taken place? When did these efforts
begin?

A    Time flies when you're having fun.

I'd say it's probably been a year and a half to
almost two years ago.

Q    Okay. Sorry to interrupt. And so you
attended this meeting, and at this point you were
just exploring different options that the
industry might follow or follow up on. Is that
correct?

A    Yes, sir.

Q    What were some of those options, if
you recall?

A    We looked at a checkoff program, and
we also looked at the possibility for a Federal
Marketing Order. And under the definitions and
the guidelines of both of those programs we
determined that the Federal Marketing Order would
better fit our industry and what we were trying
to accomplish than the checkoff program.

Q    Now, since that initial meeting what
are some of the efforts that you and other
members of the American Pecan Board have
undertaken to gather information and inform
yourself what the industry was looking for in a
Federal Marketing Order?

   A  We came back, really reviewed the data
that we had learned in Washington, and then we
began reaching out to the industry, to all grower
groups, to accumulators, to handlers, shellers,
everyone that would be affected by this potential
marketing order. And we sat down with those
groups and we -- actually it was more of a
listening where we would try to find from them
what did they want to see, what were their
worries and their concerns.

    And we took that data from ever one of
those meetings, which were many, and then we came
back together on numerous board meetings and
tried to gather all of this data, look at the
concerns in particular, see what we could do to
try to ease those concerns and develop a program
that would work and take those concerns away.
Ultimately all of that led up to our rules
writing meeting that we held in January.
Q     Let me just stop you right there.

Again, you know, rough estimate, approximately
how many of these listening meetings did you
personally attend?

A     A lot. I would say probably 10 or
more.

Q     And could you give us some idea of
kind of the geographic scope of those meetings,
kind of where did you travel to?

A     All growing regions, basically, from,
you know, the Las Cruces, New Mexico region,
which was the furtherest west that I attended,
all the way to Dallas and meetings and all the
way back to Georgia.

Q     And did you find, as a board member
did you find those meetings helpful to you to
better understand what the industry was looking
for in this Federal Marketing Order?

A     Extremely. You know, I'm a handler,
so to be able to listen to other segments of the
industry helped me to better realize what the
opportunities were for the Federal Marketing
Order and great success that I believe we would have.

Q    And as a handler and serving on this board, were others in the industry reaching out to you to talk to you in private conversations -- or personal conversations, obviously not private.

A    Yes. Yes, handlers throughout the industry, many would call up or we would be at industry functions and we would talk in private. And so, you know, from every size of pecan handler I was reached out to numerous times, asking specific questions on, you know, how does this affect me, here's some of my concerns, here's what we would like to see.

So there was a lot of communication from every segment of the handler community, whether it be small handler or a large handler.

Q    And again in just a ballpark figure, how many of these conversations and small meetings do you feel like you participated in during the previous two years?

A    Over the last two years, minimally
eight to 12. We are -- because we are a handler, we go to a lot of association meetings, so we see a lot of our comrades at this meeting. So it's not even defined to, you know, a shellers meeting; it's a lot of association contact.

Q     Well, as a member of the board do you feel like that the board gave the industry adequate opportunity to be heard on this FMO and that their concerns were considered and addressed as the board moved forward in developing this program?

A     Absolutely. We've reached out with great zeal to make sure that we've reached everyone and that we've listened to everyone in the handler community and tried to answer any concerns that they had and answer any questions that they may have.

Q     By the way, obviously you have water in front of you. We're both going to get a little dry here, I think. Also if anytime you want to take a break and eat any of the delicious pecans here that are in front of you provided by
Royalty Pecan Company, please feel free to do so.

A  Thank you very much.

MR. DAVIS: I will strike that as irrelevant also, Your Honor.

Q  Now let's flash forward to the not-too-distant past here. In January of 2015 you attended a meeting in Washington, D.C. with representatives of the Department of Agriculture concerning the actual drafting of the FMO. Is that correct?

A  Yes.

Q  Tell us about that meeting.

A  It was a three-day summit. All of the members of the American Pecan Board and many members of the USDA came together in Dallas and we began the process of trying to take all of the data that we had learned from these different meetings that we had been to and try to lay them out into the rules segment of the proposed FMO.

It was a long process, it was extremely detailed. The USDA was very helpful in helping us manage through the data and trying to
get it written properly. And there was a lot of
conversation amongst all of the American Pecan
Board members. There are growers on that board
and shellers on that board. And so we were able
to listen to all of the concerns and come up with
the best possible solution that all of us thought
would help our industry move forward when we were
writing those documents.

Q Now, tell us next in the process what
happened after that summit in Washington, D.C. in
January of 2015.

A Well, after that Mike Adams, the
president of our association, and Melissa
Schmaedick came together and finalized the
writing of the rules and then reached out to our
legal counsel to assist in making sure that we
wrote everything properly.

At which time that we then reached
back out to the various groups within the
industry to try to help them see what the rules
look like, to hear if there were any other
concerns not addressed in the document. And
after that then we moved forward with pushing to
the next step.

Q     Now, during this drafting period as a
board member were you kept apprised of the
various drafts? Did you have an opportunity to
review those drafts and have input on them?
A     Yes.
Q     And do you feel like you were given an
adequate opportunity to have your concerns and
the concerns of your fellow shellers addressed as
this proposal was being formulated?
A     Yes.
Q     Okay. So at some point you eventually
came to a resolution. Was there a vote by the
board on the language that was going to be put in
the proposed order?
A     Yes.
Q     And could you tell us what was that
vote, if you recall?
A     It was unanimous.
Q     Unanimous vote, okay. Do you have in
front of you Exhibit 1 in these proceedings?
A     Yes, sir.

Q     And this is the official publication
of the proposed Federal Marketing Order for
pecans. Is that correct?

A     Yes.

Q     Okay. Are you familiar with that
document?

A     Yes.

Q     Is this the document that you as a
member of the board and as a concerned sheller
reviewed and tweaked, worked on for over I guess
almost five months or maybe for a total of two
years really if you are talking to people a long
time? Is that the document that the board voted
unanimously to proposed to the U.S. Department of
Agriculture?

A     Yes, it is.

Q     Okay. I want to talk with you
specifically about some provisions of the Federal
Marketing Order as proposed. And so we will be
referring to them as section, by section number,
Kind of the lead-in section -- I'll probably try
to truncate it a bit but if you were going to
have the full citation to the proposed Federal
Marketing Order, it would be 986.1 through, I
believe, .99. You and I are going to focus this
morning on Sections .75 through .99 [sic].

MR. DAVIS: It's the number after the
point, if anyone's wanting to follow along. And
for the benefit of the audience, there are copies
of the proposed order in the rear of the room,
and we're also going to put it up on the
overhead, the sections that Ms. Watts and I will
be talking about here this morning. As I said,
specifically we'll be talking about paragraph .75
through .79.

Ms. Watts also, and for the benefit of
the audience, will tell you we spent some time
with Dr. Randy Hudson, another board member, when
we were in Las Cruces, and he testified about the
definitions. So a lot of the words that we're
going to use in your -- in the sections we
discuss today the words have already been
defined. And for ease, hopefully, unless there's
some confusion about one, we probably will not go
back and keep redefining those terms. We would
not get finished here. But the terms that are in
this have been defined already on this record.

BY MR. DAVIS:

Q    Now, also, since we're going to have
it on the overhead and you'll have it in front of
you, it might not be necessary to reread or read
into the record every single one of these, but
sometimes if it would help your thought process,
feel free to do so. All right?

   Now, the first little group of
sections we're going to talk about are Sections
.75 through .78, reports by handlers. And
obviously you are a handler so we thought that it
would be appropriate for you to talk about the
kind of reports that are envisioned by the
Federal Marketing Order as it applies to
handlers.

If you would, just scan -- you have in
front of you Exhibit 1, scan Exhibits 1 Section
986.75 through .78 and in general, just in
general terms -- we're going to talk about
specifics in a second but in general what do
these sections address?

A    Well, one of the principal duties of
the council will be to gather information and
disseminate this information into accurate market
data, and it will them to create the market
policy each year. These sections specify the
reports that the handlers will prepare to give
the council the information it needs to create
the market reports and marketing policy.

Q    Okay. Now, during the formulation
period were these reports or reports like this
discussed with handlers?

A    Yes, they were. The general need for
reporting was discussed with handlers during
various association meetings and in general
conversation with handlers through meeting
gatherings and phone conversations. The American
Pecan Board members, which include handlers,
discussed reporting during our board meetings and
rules writing summit as well.
Q     Now, were there any concerns expressed
that perhaps these reports might be too
burdensome on handlers?

A     No, there really weren't. And the
reason is because even today the handlers provide
to USDA on a voluntary basis much of this
information. We report our inshell and shelled
inventories on a monthly basis. Further, once a
year we also provide USDA with a recap of our raw
material inshell purchases. So the type of
reporting that we've been talking about should
not be burdensome to the handlers.

I would also like to say that the data
collection component of the FMO is one of the
most important if not the most important aspect
of the FMO. We do not today have enough accurate
data to make good business decisions. The time
to gather the data outlined in this part will
provide the industry much greater benefit than
the time spent to produce the reports.

The council will work with handlers to
develop the reporting format and minimize the
burden. And hopefully we'll be able to get this
information in such a form so that we can provide
it electronically.

Q    Okay. Do you believe that this, that
these reporting requirements will duplicate in
any way the current FDA reporting requirements or
any state reporting requirements that may exist?

A    No. Actually I think it's far more
comprehensive and would be a help to the groups.

Q    In particular in this section there's
a requirement for a three-year record retention.
Why this period?

A    Well, the information that we gather
to try to determine the definition of a grower or
a handler encompasses volumes handled over
multiple years. So it's important to have the
three-year retention data so that we have the
ability to go back and confirm that information
if we needed to to confirm a grower size or a
handler size.

JUDGE GUTHRIDGE: I'll move for the
record that's in 986.82.
MR. DAVIS: Thank you, Your Honor.

BY MR. DAVIS:

Q Now, has the board begun to draft any of those forms?

A No. That would be a function of the council once its seated. We would hopefully have input with USDA and look at other forms that are developed in other industries similar to ours to try to help develop those reports.

Q Okay, thank you. Thank you. Yes, so put another way, at this time the American Pecan Board really does not have the authority to develop these forms, do they.

A That's correct.

Q But ideally or once the council has been elected and put in place that will be one of its functions.

A Yes.

Q And, of course, there will be handler input in that process at that time. Is that correct?
A Yes.

Q Okay. All right. Now let's walk through these sections individually.

MR. DAVIS: Ms. Myers, if you would us here. Let's put up 986.75, Report of Handler Inventory.

Q Now, if you would, please, kind of tell us the thought process or the intent of the board in putting forward a general proposal like this.

A Well, it's important to gather accurate data so that we can find out what true crop sizes are and have good data to make good business decisions on. This just requires that handlers report their inventory of shelled and inshell pecans. As stated earlier, we're already doing this on a voluntary basis with USDA. And for the FMO to require this data to be provided by all entities will help us to gather more accurate data.

It's important that any growers that are not considered handlers also report the same
information. Without a full accounting of all of
the inshell and shelled pecans at any given time
our data will not provide the overall benefit for
the entire industry. So we need all of that
gathered.

Q    Anything else you'd like to add about
this particular section and the thoughts on the
writing?

A    Again, you know, it's not a burdensome
thing, it's just a continuation of what we're
currently doing, but it will be a mandatory
reporting instead of voluntary reporting. So
it's a good thing.

Q    Okay. All right. Let's move on then
to Section .76.

MR. DAVIS: Put up .76 next.

MS. CHILUKURI: Your Honor, my
understanding was that we'd have --

JUDGE GUTHRIDGE: Oh, I'm sorry.

MS. CHILUKURI: -- an opportunity to
JUDGE GUTHRIDGE: I'm sorry, you're exactly right.

Put .75 back up.

Any questions from the FDA? Not the FDA, USDA. Is anyone from FDA present? Okay, now we'll turn to the Department of Agriculture.

Thank you.

MS. VARELA: Jen Varela, USDA.

CROSS-EXAMINATION

BY MS. VARELA:

Q   Thank you so much for being with us this morning, Ms. Watts. I wanted to clarify a reference you made to reports that handlers are already making to USDA. First of all, do you know where those reports are going to? My guess is most likely you're referring to maybe cold storage reports?

A   Yes. That's right.

Q   And those go to the National Agricultural Statistical Service, which we refer to as NASS?

A   Correct.
Q  Okay. And how often do those reports get sent in to NASS?

A  Monthly. The cold storage report is monthly. And then once a year the first of May they send out a questionnaire asking for information. How many marketable pecans did you purchase, how many did you shell, how many did you sell in the shell. And all of that information is gathered to help the USDA put out the final crop report for the prior harvest.

Q  Thank you. And are you aware -- I know that you're a handler so you might not know this. But are you aware of any efforts from that agency to collect inventory information from growers or are they just doing cold storage that is already in the market?

A  I can't definitely say.

Q  Oh, thank you.

JUDGE GUTHRIDGE: Somebody give us a nod if you're --

MS. VARELA: No more questions.

MR. DAVIS: Any more US -- no more
USDA questions? All right. I'll do one quick
follow-up.

DIRECT EXAMINATION

BY MR. DAVIS:

Q     On the current reports, you had some
experience in, I guess in looking at those,
they're published. Right? Do you have an
opinion on how accurate on an industry-wide basis
those reports are?

A     Having spent 35 years in this
industry, I can honestly say that I would believe
that there is not one entity that looks at those
reports, whether it be a grower or a sheller,
that comes away with a complete confidence that
the data is accurate. There's just too much --
it's too voluntary. So, therefore, you just
can't take that to the bank that it's completely
accurate.

MR. DAVIS: No further questions on
this section, Your Honor.

JUDGE GUTHRIDGE: Anything else from
USDA?
MR. HILL: No, Your Honor.

MS. VARELA: No, thanks.

MR. DAVIS: And from time to time I assume you'll ask if anyone from the audience has any --

JUDGE GUTHRIDGE: That's true. Does anyone from the audience have any questions about this particular section or Ms. Watts' testimony so far?

(No response.)

JUDGE GUTHRIDGE: No?

MR. DAVIS: Okay. Thank you. All right. Now we'll move on to Section .76. Thank you.

BY MR. DAVIS:

Q And this is the report of merchantable pecans handled. Do you see that?

A (No audible response.)

Q Okay. So this is a second type of report that is contemplated by the proposed FMO. Again give us the board's thoughts on why and what were your intentions in proposing this.
A Well, the merchantable pecans is defined as those meeting the regulations --

Q I see.

A -- for quality, size, et cetera. It is in the document 986.26. This is a valuable market information; however, handlers should be involved with the council in the development of any of these reports to ensure that the data collected does not negatively impact the handler's ability to market these pecans profitably.

Q All right. Let me address something that has come up in some of the previous testimony. If you will, look with me for a second as the way Section .76 interfaces with Section 26. So under Section .76 there will be a report of merchantable pecans that they're handled. Okay? And then, of course, as I said earlier, merchantable pecans is defined in this under 26 as -- and I'll just highlight inshell, merchantable inshell pecans means all inshell pecans meeting the minimum grade regulations that
may be effective pursuant to Section 986.69, authorities, regulating handling.

And the question that kind of came up was, well, how would you do a report on merchantable pecans if the council has not yet had an opportunity or just has elected not to do any of these regulations in defining merchantable pecans.

And the question was posed, I suppose, was what do you think as a board member, how would you react if someone were to propose that a friendly clarification to Rule 26 was proposed that said -- and I'm just paraphrasing now -- that merchantable pecans will be those that meet the minimum grade regulations.

But in the event that such regulations have not been proposed, merchantable pecans would mean grower-cleaned production -- the sum of grower grower-cleaned production and handler-cleaned production as those terms are defined there, paragraph 17 and 19. Would you be amenable to such a --
A     Yes.
Q     -- clarification?
A     Yes, absolutely.
Q     All right. All right. Anything else you'd like to say about this particular report or the value that you believe that it would bring to the industry?
A     No.
MR. DAVIS: Then no further questions on this section, Your Honor.
JUDGE GUTHRIDGE: Does the USDA have any questions?
MS. SHARROW: No, Your Honor. No questions.
JUDGE GUTHRIDGE: Mr. Davis?
MR. DAVIS: All right. Thank you. Let's get all those back in order. There you go, all right. Let's move on to Section .78, Other Handler Reports.
JUDGE GUTHRIDGE: Are you going to do .77?
MR. DAVIS: Thank you, Your Honor.

JUDGE GUTHRIDGE: I'm sorry.

MR. DAVIS: No, I am going to do .77.

Thank you. Section .77, Reports of Pecans Received by Handler. Again it's now on the overhead projector.

BY MR. DAVIS:

Q Give us some of the board's thoughts on what they intended by a provision like this.

A Well, the handlers will report on all pecans that have been received from whatever source, whether it comes from growers, other handlers or anyone else. This is paramount in helping the industry to get an accurate picture of the entire crop, and it's necessary for accurate accounting of the monies paid to the council, the assessments collected.

Q Well, as this draft language was circulated and discussed were there any real concerns about this being too burdensome on handlers?

A No. We're already doing it. Again
that's the May report that we put out basically, and that's really our handle, what we purchased and where we purchased it from.

Q     Okay.

A     So it should not be burdensome.

Q     Well, once again tell us about what was the intention of the board in proposing a section like this?

A     To help gather accurate data. Data collection again is the most important segment of this proposed Federal Marketing Order. And we need these rules in place in order to be able to gather accurate data so that we can provide good data to the industry so that they can make better business decisions.

Q     Ms. Watts, on a couple of occasions already you have emphasized the important of accurate gathering. This might be a good spot to step back for a second and why don't you explain to us as a handler why accurate market data is so important. And in that regard, just maybe explain the chain of commerce in the handler
process, if you will.

A  Okay. Data for the entire industry, grower or handler, is very important. Because you do not know how to market your crop until you know how large the drop is. But for our industry it's very unique. The handler is paying for every load of inshell that they purchase at the time they purchase it. And so all of the risk for selling that material --

Q  So I mean when you say pay for it, that's like cash transactions.

A  That's right.

Q  If you're buying product you give the grower cash at that time for the product.

A  That's right. You wire the funds.

Q  In a typical --

A  Yes.

Q  So somehow the handler either has to borrow it on a line of credit or have cash reserves, but pays out cash, gets the product, there's a change of ownership. You now own the product. What happens next?
And just as one other bit of information with regard to that. Pecans grow across 15 U.S. states. Almonds and walnuts grow in California, so your harvest is generally in the same time period. For pecans the harvest period is three or more months.

So as you are harvesting your pecans and you're selling them, as a handler we're buying them. So we think we know what the crop size is because of the data we've received. We're paying a price based on what we think the supply is. And if that number on the crop size is wrong, we've already committed and purchased those pecans, it's our responsibility as a handler to be able to market 100 percent of those pecans back into commerce.

So we think we know what we're doing but it's going to take us three months to gather our entire supply. We don't know what our average raw material price is going to be until we've gathered the majority of what we plan to handle. And so the industry is at risk during
that buy-sell period if you are unable to sell
100 percent of the output of what you bought that
day the next day.

So the pecan industry, the shelling
industry borrows money to buy that crop every
year. And if there is a mistake, if the crop is
bigger than the estimates predicted and there's
too much supply and the tail end of the harvest
comes in and there's either not enough money to
buy it because we've overspent the money in the
early part of the buy or if the market falls
because there's no home for it, then the
sheller's at risk for every pound that they've
bought and paid for through the course of that
time. So it's a very volatile industry.

So accurate data is paramount to the
sheller's ability to determine what level they
should be buying at, and how to turn around and
market that product back into commerce.

Q Let's see if we can kind of walk
through a hypothetical that will have both a
geographic span and a chronological span. So you
said that, you know, pecans obviously we know
from previous testimony grow in 15 states,
stretching all the way from North Carolina
through the southeast, the midwest, as high as
Oklahoma, down to the Rio Grande Valley and
Texas, Arizona, New Mexico, on even into southern
California.

And you say the harvest kind of rolls
across that. Is that correct? Or kind of tell
us chronologically how the harvest rolls.

A Generally the southeast is the first
area of the country that's going to harvest any
volume.

Q And that would be in and around early
October?

A Mid to late October usually.

Q Mid to late October, okay.

A Some growers may start shaking trees
a week or so early but generally it's the third
week of October or fourth week of October before
you get any really volume of inshell offerings.

Q Okay. And then the harvest, where
would it roll chronologically and geographically?

A The central part of the U.S. is comprised not only of orchard improved varieties but also of wild native seedling-type pecans, and to a large extent some of those are harvested by hand. So you're waiting for nature really to take them off the trees and put them on the ground where you can pick them up and bring them to market. Generally --

Q And those are primarily native, I assume. Is that correct?

A Yes. Uh-huh.

Q Okay.

A So generally the central part of the U.S., eastern Texas, Louisiana, Oklahoma, Arkansas, those regions will be in full swing production in our eyes about the middle of November --

Q All right.

A -- before you get any volume of offerings coming to you. And then the western U.S., the Las Cruces Valley, the lower valley and
El Paso, those nuts really don't even begin to harvest until after the first of December.

Q     All right. Okay. Now let's follow up on that hypothetical. So the nuts are being harvested in the southeast and you're a handler, you're a sheller, you're wanting to buy those nuts as they become available on the marketplace. Correct?

A     Correct.

Q     And at that time in order to set a price for those you've got to make -- you've got to have a estimate of some type about what the overall size of the harvest is going to be as it rolls on October, November, December, maybe even into early January.

A     Correct.

Q     Is that correct?

A     Yes.

Q     So you set a price, and it's a cash price for the buyer in the southeast. You now own the nuts and are ready to start putting them into commerce. And then the harvest continues to
roll on. Now, when you make that initial
purchase in the southeast you had to make a
estimate, have you not, not just of the southeast
crop but the entire United States crop.

A     That's correct.
Q     That's correct. Now, do you feel that
in recent past years or in your experience that
you have enough accurate market information when
you start this rolling process?

A     No.
Q     And it would be your goal as a member
of the -- I guess as a member of this industry
that if the FMO is passed you could begin this
pricing process with more accurate, both you and
the seller would have more accurate information
in gathering your information. Right?

A     Absolutely. And it would also give us
the opportunity to work with the consuming
community, whether it's a food manufacturer or a
retailer, in trying to help them understand what
the likely prices will be. So that there's no
surprise on their end whenever they get offerings
to contract pecans for their needs for the next year.

Q    Well, in that, since you've touched on that, forward contracting is very common in almost all commodities. Have -- well, first of all, is it common in the pecan industry? And does the lack of more accurate market data have any influence in that?

A    Yes. In fact, because most of the shelling community has to borrow money from banks in order to acquire their raw material each year, often those banks want some kind of security to know that the output of their handle has been sold profitably. In order to do that you have to show them contracts with the customers that you do business with to show the sales price that you were to sell at, which gives the banks the confidence level and continuing to allow you to borrow money from them.

So forward contracts are very important. The shelling industry needs those contracts because their exposure is paramount
already. They've already paid for the product. If they can't sell it at a certain price, they can go bankrupt in a year.

So the forward contracting is paramount to the success of the sheller to be able to continue to buy raw material and sell it into the marketplace. They have to have the security that they've been able to sell that material. So forward contracting is the way that the industry markets their pecans.

Q So once again would more market, more accurate market data assist everyone in this chain of commerce? We've already discussed from the seller of the nuts to the sheller. How about from the sheller to the food processors or the people that are going to be buying on large contracts, will more accurate data help that process?

A Absolutely.

MR. DAVIS: I believe that those are my questions on Section .77, Your Honor.

JUDGE GUTHRIDGE: Are there any USDA
questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q  Good morning, Ms. Watts.
A  Good morning.

Q  Thank you for your testimony. You just gave us some testimony on forward contracting. And I'm wondering if the lack of accurate information has also had an impact on your ability to secure contracts with food manufacturers in terms of not just pricing but knowing if a consistent supply is going to be available to meet their needs. Has that lack of information impacted you at all?

A  Yes, and it can be on both sides. For instance, if there is a short crop estimate, for instance --

JUDGE GUTHRIDGE: What do you mean by short crop?

THE WITNESS: A small crop, a small
crop. Your customers may want to book very
heavy. Because they're scared that they may get
to the end of the contract period and not be able
to buy additional pecans if it's needed.

JUDGE GUTHRIDGE: Could I ask you what
does book very heavy mean?

THE WITNESS: More than their normal
handle, more than they believe that they would
use for the contract period.

JUDGE GUTHRIDGE: And the reason I'm
asking these is I know less about pecans than
anyone in the room. And so if I understand it,
some other person who is not so familiar with
pecans may need that sort of definition.

THE WITNESS: Yes.

JUDGE GUTHRIDGE: Okay? To understand
what you're saying.

THE WITNESS: Yes. On the flip side
of that, if the crop is estimated to be very
large, then a customer may say, well, there looks
to me like there's more than ample supply out
there, so I don't think I'm going to forward
book, I think I'm going to stay on the spot market, which means that when I need something I'll call you and if you've got it I'll buy it from you at that time.

Whenever that happens, it can hurt the sheller who has acquired the raw material at a certain level. And if they are not able to contract all of that tonnage at a profitable level, then it leaves them exposed to possible losses during the course of the year. So inaccurate data can cause issues on both sides.

BY MS. SCHMAEDICK:

Q Thank you. One quick question to clarify what might be included in reports of pecans received by handlers, definition 986.77. Would that also include product that you've received from outside the production area? So imports for example, would that be included in that report?

A If the council so develops it that way, yes. And I think it would be very, very meaningful information to have.
Q    Okay. Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. VARELA: Yes. Jen Varela, USDA.

BY MS. VARELA:

Q    I would just like to go back to a few things that you just testified to to make sure that I'm understanding everything. You mentioned in a couple different ways the specific geography of this industry and that as a sheller you're buying from multiple places and multiple regions. We heard some testimony earlier this week about how the board defined those regions when you proposed this order.

Does -- in your opinion, is having one national program as a marketing order the only effective way to put any of these regulations in place, or would it be possible that smaller orders would work?

A    I think you need the one order. It needs to be countrywide. Because with fragmented
orders I just do not believe you would have the
same success in promoting the pecans and data
collection or in R&D projects. I think it would
be too disjointed. I believe one order would be
a better solution.

Q Thank you. And in going back to some
of the forward contracting concepts, do you see
that practice occurring more often in any
particular region, or is that pretty much uniform
across the industry?

A It's uniform across the industry.

Q And would you say that both large and
small growers and handlers participate in that
process?

A Yes.

Q Okay. And then I just wanted to go
back to this definition in particular. When you
were describing some of those reports, you
mentioned that handlers might receive product
from other handlers. And earlier we entered the
definition of an inter-handler transfer into the
record. Can you tell us a little bit about why
the board thought that that was an important concept to include in the order?

A. There are regions of the country -- again 15 to 20 percent of all pecans that grow grow in what we call a casual production environment. Those are not in managed orchards. They are in your back yard, my back yard, they may be in river deltas. They are, to a large extent, picked up by hand and brought to market.

And the way that you buy those pecans is by setting up buying stations in a lot of the rural communities across the country. And those guys are just small guys, you know, mom and pop guys that set up at a farm feed store. And as these people pick these pecans up off the ground and bring them to market they get paid for them.

Well, this small accumulator isn't necessarily going to do anything with those pecans other than gather them and then turn around and sell them to a larger handler or sheller. So we put the inter-handler transfer definition in place for those guys who can
collect the pecans but they really are not sophisticated enough to be able to create the documentation they need to make sure that the assessment is handled right and all of that.

So they can choose to follow the handler definition or they can be an inter-handler transfer, which means that they will hand it off to another handler who will then be responsible for the assessment.

Q Thank you very much.

MS. VARELA: That's all of my questions.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Ms. Watts, to further clarify, you mentioned an inter-handler transfer. Is it required that the receiving handler pay the assessments, or is there an option for that assessment to be paid by the first handler?

A There's an option. Either the first handler can pay it or they can pass it off so
that the next handler pays it, and there will be
documentation that would prove which entity was
responsible for paying it at the time of
transfer.

Q   Thank you. And if, for example, there
were handling regulations in effect, would it be
possible for the first handler to pay the
assessment but the second handler to be required
to meet those regulations that are in effect?
Would that be possible?

   For example, if there were let's say
a certain size regulation in effect, so you have
handler number one who received --

JUDGE GUTHRIDGE: When you say size,
you mean size of load or --

MS. SCHMAEDICK: Size of pecan, let's
just say, okay.

BY MS. SCHMAEDICK:

Q   For example, if there's a pecan size
regulation in effect, if handler number one
receives pecans and they say, okay, well, I'm
going to pay the assessment for that but I don't
have the ability to process this load so that it meets the size requirement, so I'm going to sell these pecans to handler number two, and there's an inter-handler transfer that occurs.

Is it possible then for handler number two to say, okay, I will be responsible for meeting that size requirement?

A I would say yes. Because as handler number two if you make an agreement to purchase the load from handler number one, then you have already looked at the load, you've already tested the load, you know what you're buying. So with that in place, then handler number two knows what he's getting and, therefore, would have to comply with the regulation, the size regulation.

Q Thank you. And you mentioned that there would be documentation in place to basically track both the assessment of that load as well as the compliance to the size regulation of that load?

A Yes.

Q Is that correct?
Q And so that information would be shared with the council. Is that correct?

A Yes. Uh-huh.

Q And would that documentation then facilitate compliance, the council's compliance with you of handlers to the order?

A Yes.

Q Thank you. I do have one question that kind of draws from two sections, the current section 986.77 and a previous section 986.75. 986.75 is Reports of Handler Inventory, and 986.77 is Reports of Pecans Received by Handlers. And what I'm wondering is where does warehoused pecans fall? Do they -- are warehoused pecans captured in handler inventory or received by handlers or both?

A Both. With the sheller reported inventories -- I see that as something that would be reported more often than the handle, I mean how many total pecans did I handle out of this crop. That's data that would be important to try
to gain the actual crop size.

The inventories would be something that is looked at like it is now, on a monthly basis, that lets you know what your supply is in the industry. Right now it is a voluntary program, and shellers, for instance, report every month, public cold storages are supposed to report every month, and but individual private cold storages that may be held by growers are not. I am not -- it's a voluntary program so are they being reported or not.

By creating a mandatory report, then the warehouse stock would also be reported at whatever, you know, increment that the council sets up, whether it's monthly or something less than that.

Q Thank you. And does Young Pecan warehouse, I mean, yeah, does your company warehouse pecans?

A On our property, we have cold storage on our property.

Q Okay. I have some further questions
about warehousing specifically. Could I ask you those questions?

A     Sure.

Q     Thank you. So, first of all, can you explain to me when you warehouse pecans what do you mean by warehousing pecans?

A     Pecans are harvested, again, basically through a three to four month period of time. Pecans are semi-perishable. In order to maintain the quality and the freshness of the product the raw material, the inshell needs to be stored really, really frozen to maximize that shelf life.

So when we talk warehousing for our industry we're talking about cold storage. We bring the nuts in. Every load that backs up to our door, if they're not going to the plant for immediate shelling, then they're placed into zero degree freezer storage. So that's what we call warehousing.

In general, that's how the industry handles its raw material. You may find in the
heart of the harvest period nuts that are
harvested and cleaned that are not yet on the
market for sale. And they will be warehoused
somewhere, whether it's in a grower location or
in a public cold storage. But other than that
once the harvest is over everything's under cold
storage for sure, and whether it's your own
personal cold storage or a publicly held cold
storage.

Q     Thank you. And under the proposed
marketing order, would it be possible that an
individual, either -- well, would it be possible
for a handler to be warehousing both assessed and
unassessed pecans?

A     Yes, it would be possible. Yes.

Q     Okay. So you mentioned that you were
also part of the American Pecan Board. Correct?

A     (No audible response.)

Q     So were you involved in the board's
discussions about the concept of warehousing,
reporting, and what has been referred to in
previous testimony as the August 31st date
Q     Are you familiar with that concept?
A     Yes.
Q     And you were involved in those discussions?
A     Yes.
Q     Okay. So I'd like for you to kind of walk through this scenario that I've been trying to clarify in my own mind, and maybe you can help me. So if you're a handler and you purchase pecans and you decide that those pecans need to be put into cold storage, so you're warehousing those pecans, what I'm trying to understand is currently under definition 986.41 -- and I'll read it for you.
A     Okay.
Q     It's the definition of warehousing. And it says "warehousing means to hold unassessed inventory." And then if I look at that definition in conjunction with the August 31st reporting requirement under assessments, which is
986.61, 986.61 paragraph 8 requires that "every handler warehousing inshell pecans" and then it goes on further to say they shall be required to pay the assessment rate on that date.

But if a handler could theoretically be holding or warehousing pecans that are assessed, I'm wondering does that definition of warehousing need to be modified.

A     The definition of warehousing for -- that you read is -- came out of the, more of the growing community. Because let's say that I grow pecans and I handle pecans. Okay? So I am not only growing my own raw material but I'm going to shell that raw material and sell it into commerce.

So I may, as a grower, have this volume of pecans, and I don't want to sell it all right now. I want to hold some of it for the future. So, therefore, I am not a first handler in this instance, I am a grower in this instance. So I'm going to warehouse those nuts in cold storage, and I'm going to market them in the
Those would be unassessed warehoused pecans. The balance of my production, my harvest I am going to market into commerce, I'm going to shell them and sell them into commerce. I at that point become the first handler of those nuts, and I am required to make the assessment for those nuts.

So the definition of warehousing may need to be clarified so that it's understandable how one handler, quote unquote, a handler could have unassessed and assessed inventory in their facility or in their cold storage.

Q    Thank you.

A    Likewise, you know, if you are a grower and you have your own cold storage or you choose not to market your pecans during the time of harvest or anytime during that crop year, you can store your pecans unassessed. But when you finally do make that sale or move them to a handler then that assessment occurs.

Q    Thank you for that explanation. So
would it be correct to say that the intent of the board in drafting both the definition of warehousing and the sections that are related to warehousing, the intent is to, on August 31st is to report everything that's in cold storage. And if you're a handler that is holding cold storage that has not been assessed, that you pay that assessment at that time?

A     Yes.

Q     Okay. And so, again to clarify, you would be comfortable with clarifying changes to make sure that that intent is clear. Is that correct?

A     Yes.

Q     Okay. Thank you.

MS. SCHMAEDICK: I have no further questions on the sections relating to reports. Thank you.

JUDGE GUTHRIDGE: Are there any other USDA questions?

(No response.)

JUDGE GUTHRIDGE: No? Okay.
MR. DAVIS: Let me do one follow-up, and I with great trepidation wade into this briar patch here.

DIRECT EXAMINATION

BY MR. DAVIS:

Q     But in your drafting sessions, both with the USDA and as a board, was it not made very clear that there cannot be a direct assessment against a grower. Correct?

A     That is correct.

Q     That's kind of a starting, a threshold rule. So when you're addressing this issue of a grower holding product in inventory with that rule in mind it's kind of difficult to say that the grower is going to be assessed.

So didn't the board consider that and came up with a tweak that said that for grower inventory, if it's held on August 31st, the consequence of that is it loses that inter-handler transfer exemption so that the very first person that gets it after that will -- it will have been reported, but the very first person
that handles it, then that person will be assessed.

A That's correct.

Q Isn't that correct?

A Uh-huh.

Q Okay. Now, contrast, compare and contrast that to a handler. If a handler has inventory on August 31st, he or she will be assessed the assessment. Is that correct?

A That is correct.

Q That's your understanding of how those fit together.

A (No audible response.)

MR. DAVIS: The witness says yes. I don't know -- any follow-up for that, Ms. Schmaedick?

MS. SCHMAEDICK: Thank you for that clarification.

MR. DAVIS: Okay. All right. And this last section on handler reports, which again is kind in your wheelhouse and we've taken a good deal of time talking about these others, is the
last one, Section .78.

Ms. Myers, if you'd put that up for us?

MS. SCHMAEDICK: Excuse me. I just have one further question that came to mind.

Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Ms. Watts, the term warehousing is also included in the definition of handle, to handle. Let me refer you to that section. It's 986.19. But in that definition of to handle there is also a proviso that says "the term to handle shall not include" and then one of the activities is grower warehousing.

So based on your work with the American Pecan Board, I want to just again clarify for the record is it your intent that growers who are warehousing their own product, they are not considered handlers in that situation. Is that correct?

A That's correct.
Q Thank you.

MR. DAVIS: Okay, let's take that down and put up Section .78.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Ms. Watts, why don't you tell us what the board was intending by proposing Section .78.

A Well, this was, for lack of a better word, a catch-all. It gives the council the flexibility to ask for other information to help it perform its duties. However, handlers must be a part of the development and agree to the suggested reporting as to ensure such requested information does not negatively impact handler's ability to market pecans in a responsible and profitable manner.

Q Was there any concern, either from the handler community or raised at the board, that this may be just too open-ended?

A No. Again you've got growers and shellers on the council. As long as the shellers are part of the process, we do not feel that this
would be too open-ended. It's limited to the
information to help the council perform its
duties. And the handlers on the council will
have to participate in the creation of the
documents and the development of those. So as
long as they are part of that process, we feel
comfortable that that information, as long as
it's kept confidential, would be -- would benefit
the industry.

Q Okay. And when you say confidential,
the individual -- information from an individual
would be kept confidential but of course
collectively, again with permission of the
council, could be disseminated. Correct?

A Correct.

Q Okay.

MR. DAVIS: I have no further
questions on that section.

JUDGE GUTHRIDGE: Does USDA have any
questions?

MS. VARELA: Jen Varela, USDA.
BY MS. VARELA:

Q    This will be kind of a quick one, just
to wrap up this whole reporting section. You've
mentioned very clearly that the board understands
that there would be a process to creating these
reports, and everybody would have input. Do you
think the board and the industry members that
you've spoken to also have a fairly clear
understanding that even when the council makes a
recommendation all of these types of reports will
still have to go through a government-approval
process that will give them notice and comment,
to have other people in the industry look at them
as well, not just members of the council?

A     Yes. And that's a very important
aspect of the success of the document.

Q    Great. Thank you.

MR. DAVIS:  All right. Thank you.

JUDGE GUTHRIDGE:  Any other USDA
questions?

MR. HILL:  No, Your Honor.

MR. DAVIS:  Thank you. Your Honor,
we'll move on then to Section .79, Verification of Reports.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Just take a second to familiarize yourself with that. Again what was the intent of the board in providing -- it looks to me that they will have the ability to enter up on the premises of various entities and verify the accuracy of reports that they've gotten.

A Well, the industry needs accurate information. This section authorizes the council to have access during business hours to locations where pecans and pecan records are kept for the purpose of verifying and checking reports from handlers. It also requires handlers to keep accurate records and make them available for inspection.

Most handlers maximize their cold storage freezers so that literally they are stacking them one pallet on the next pallet to the next pallet to the ceiling in order to
utilize all of the cold storage space possible.

So trying to -- the group, let's say
the council comes in and it wants to look at one
identified load. That may be difficult in the
first half of the year whenever they're stacked
to the moon, as I like to call it. And other
shellers handle their inshell storage in
different ways, like in silos, which would make
it impossible to, you know, pull out one specific
load.

However, having the ability to go on
site and talk with the handler, to be able to
view its documentation is paramount in verifying
the accuracy of the data, which again is
paramount to the success of our industry.

Q     Okay. Any concerns voiced that this
may be just too intrusive?

A     No. The expectation would be that the
handler has to report his handle. So obviously
with assistance from USDA if there is some
question on that handle, then the handler

certainly understands that he would need to
verify that information, so.

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

JUDGE GUTHRIDGE: Are there any questions from USDA?

MS. VARELA: Jen Varela, USDA.

CROSS-EXAMINATION

BY MS. VARELA:

Q     I'm going to try to walk through a few different parts of this process with you, if that's okay, Ms. Watts.

A     Sure.

Q     When the board sat down to discuss this language and to write their rules did you look at any other orders to pull out language to try to craft your order?

A     Yes, we did.

Q     And is this, to your knowledge is this one section that you really looked closely at some other orders to pull similar language to make sure that it was consistent with what some other industries have done?
A: Yes.

Q: Okay. Moving more from the theoretical sense to the practical sense, when you mentioned the council coming in to verify something give me your understanding who would be doing that type of verification. Who are you referring to when you say the council?

A: It is my understanding that we would set a third-party administrative group in place once the FMO passes and the council is seated. That administrative body would be in dependent and would not have any direct relationship with any one particular grower or handler. That third-party entity administrative group then would be the body that would verify documentation and any other process that needs to be done with growers and handlers.

Q: Okay. And to your knowledge is this consistent with the way that most marketing orders are locally administered?

A: Yes.

Q: Okay. Thank you. And get to the next
slide. Okay. And in your discussions with USDA and maybe with members of other marketing orders have they described what a typical compliance review process is like? Are you familiar with that terminology or that concept?

A I am. I have talked with other industries and how they go through a verification process. Ours is not put in place. You know, it would be decided once the council is set, I would assume. But I understand generally how it should work.

Q Fantastic. Thank you. So do you envision that the council will -- let me backtrack a little bit. Have you heard anybody mention something called a compliance plan? We had some testimony from Mr. Keck a couple days ago referring to the date committee carrying out a compliance plan. Is that familiar to you?

A No, it's not.

Q Okay. So let me try to see if some of the other pieces of that were brought up. In discussions with the Department was there some
type of discussion about needing to have a
regular review of handler information and of
council information?

A  In our planning sessions?
Q  Yes.
A  Yes.
Q  So is this section intended to set up
the process by which the council will regularly
review the reports that are coming in and its
internal processes to make sure that everything
is being carried out on the up and up?
A  Yes.
Q  Okay. Thank you very much.

JUDGE GUTHRIDGE:  No?
MS. VARELA:  No further questions.
JUDGE GUTHRIDGE:  No further USDA
questions?
(No response.)
JUDGE GUTHRIDGE:  Mr. Davis?
MR. DAVIS:  I'll just do one quick
follow-up to Ms. Varela's comment.

DIRECT EXAMINATION
BY MR. DAVIS:

Q    Was the use of this third-party verification group, did that address any of the concerns that some handlers and perhaps even growers would have about their business being intruded upon by one of their competitors or whatever? Does this third party setup kind of address those concerns also?

A    It does. With certain confidentiality that has to be maintained once the administrative body is put in place, it is critical for the confidentiality as any one particular company, whether they're a grower or a handler's information gets published could be detrimental to the company. So it's imperative that that stay confidential.

Q    We'll touch on that specific thing in just a second.

MR. DAVIS: I have no further questions on Section .79 then, Your Honor.

JUDGE GUTHRIDGE: USDA?

MS. SCHMAEDICK: Your Honor, Melissa
Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q     Ms. Watts, when you refer to third
party, are you referring to the staff that would
be hired by the council?

A     Yes.

Q     Thank you.

MS. SCHMAEDICK: No further questions.

MR. DAVIS: Thank you, Your Honor.

Let's move on then to Section 80.

Please, Ms. Myers, would you put that
up?

DIRECT EXAMINATION

BY MR. DAVIS:

Q     Certification of Reports. And what
does this requirement address?

A     Well, what this is saying is that when
handlers report the data they are attesting to
the accuracy and the completeness of that data.
So again, you know, having that certification is
there to help ensure that the industry does
acquire accurate data.

Q Are provisions like this found in other FMOs, similar language?

A Yes.

Q Okay.

MR. DAVIS: No further questions, Your Honor.

JUDGE GUTHRIDGE: Does USDA have any questions?

MS. SCHMAEDICK: No questions.

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis?

BY MR. DAVIS:

Q Now let's go to Section 81. And as promised, you've heard just a second ago to confidential information. Take a look at this section, if you would, please. Now, in the listening tour and in talking with growers were concerns raised about the confidentiality of individual grower and handler data?

A Yes. In meetings that we had held with growers, handlers over the course of two
years we heard oftentimes concerns that were
raised about the information of individual
growers and handlers and would that information
be held confidentially and would not be
disclosed.

This section actually addresses that
concern and puts the burden on the council to
protect the individual grower and handler
information. Such information will be treated as
confidential and will not be disclosed to anyone
other than council staff and the Secretary.

It is important to note that while the
council will be made up of nine growers, six
shellers, and two at-large seats, no grower or
sheller would desire to have his specific
information shared with any members of the
council. The information suggested in the
reporting is confidential and no one grower or
sheller's information should be provided to other
growers or shellers or at-large members on the
council.

It is my understanding that the
council would put a third-party administrative
group or staff in place who would manage the FMO.
It would be important that the administrative
group, which would be independent, would be made
up of independent persons not associated with any
pecan grower or shellers, be the only part of the
council privileged to the individual grower and
sheller data provided, and they would only share
that individual information with the Secretary if
he requested it.

Q In your opinion as a business person,
a handler and a sheller, is the confidentiality
of this individual data important?

A It's highly important. Again it could
be hugely detrimental to any one particular
company should their individual data be exposed.

Q And does the assurance of
confidentiality affect in any way the accuracy of
the data that you hope to get and bring together?

A Absolutely. Absolutely. The people
providing the data are mandated to give accurate
data. But there would be pause, just human
nature pause to provide information if you
weren't confident that your information would be
held close to the vest --

Q     Thank you.
A     -- and not exposed.
Q     Thank you. In your experience, kind
of what kind of information should be considered
confidential?
A     Well, pretty much anything to do with
the buy, the sell, your operating cost.
Virtually all information regarding, you know,
the raw material acquisition all the way through
the processing and ultimate sell of the product.
Pecans, unlike most other tree nuts
grown in the United States, are again purchased
for cash from the grower at the time of receipt
of each load. Further, the sheller may not be
able to make 100 percent of the sales of the
output of that load at the time of receipt. So
the sheller takes a huge risk and burden of
acquiring the inshell, paying for it, and then
having to make sure that they can market the
entire output of the shellout, which is comprised of seven sizes of pecan halves and 21 grades and sizes of pecan pieces.

If certain data were available publicly during that time it could jeopardize the sheller's ability to market their supply profitably. This is another example of why accurate data collection is so important to the success of our industry and is a huge component of the proposed FMO.

Q Thank you so much for that information and the importance of it. You did just touch on something though that I don't think has come into this record yet. You said that there are seven sizes, you purchase seven sizes of pecan halves and 21 grades and sizes of pecan pieces. Could you elaborate on that a little bit, please?

A Well, basically, you know, the pecans grow on a tree. They come into the processing plant or to a pecan sheller in the shell. Now, what's in that shell? It's one of seven sizes of halves and can be one of 21 different grades and
sizes of pecan pieces.

So as you shell all of these inshell nuts you're producing seven sizes of pecan halves and 21 different grades and sizes of pecan pieces. So when you buy a truckload of nuts you've got to market seven sizes of pecan halves and 21 grades and sizes of pecan pieces back into commerce.

So you may not be able to sell 100 percent of that output the next day of the load you bought the day before. So it puts the sheller at risk on any unsold inventory that it's acquiring out of that.

Q Right. Well, again so just to help put a point on that, you buy a load of pecans, you don't necessarily have a buyer for that load of pecans, you've got find a buyer that wants this size of half or this grade of pieces. Is that correct?

A That's correct.

Q So you've got to get all of that. And just again as an aside, kind of where do those
size and grade standards come from? Who established those grades and sizes, and is it uniform across the entire industry?

A  Well, there is a USDA standard for shelled pecans, was developed in 1969. And it provides you guidance on how to produce a pecan half, what makes a pecan half, what makes a certain size and grade of pecan piece out there.

The industry uses those USDA standards as a general rule. But our industry has also evolved with technology, so that the separation of some of those things is even greater than the specification from 1969 outlines.

Q  I think there's been some testimony that those guidelines may have been updated in about 1986 or something like that, but they've not been updated since, at least to your knowledge since 1986, have they?

A  Right. And really I'm not sure what was upgrade at that point in time. We're still using the 1969 document.

Q  You're using the 1969. And again, if
I understand your testimony, there's technology and there have been other developments that have not yet been reflected in those grade and size standards. Is that correct?

A That's correct. And because of that the industry, you know, doesn't have continuity I guess across all seven sizes of pecan halves and 21 grades and sizes of pecan pieces. There may be some tweaks in what makes one size for one guy and what makes that same size for a different guy.

Q Okay. And again just kind of an anecdote, in Las Cruces there was a little bit of testimony, one witness said something about I'm looking for nuts that are 1's and 2's. As kind of both straddling an eastern and being a western handler, is a 1 and 2 a grade or anything, a standard which you're aware, that you know what that would mean?

A I don't think it's a published standard. It is a developed standard based on the quality of the nut in the west. You know, a
number 1 would be a certain yield and quality
where a number 2 might be a lower quality, lower
yield.

Q And although this will be gone into in
more depth with other witnesses, I think it's
already been established that one of the
aspirational goals of this FMO is for the
industry to develop some more standard uniform
sizing, grading requirements. As a handler,
would that be helpful to you?

A Yes.

Q You think that'd be a beneficial goal
of this FMO to help develop some more standard --
uniform standards?

A Yes.

Q Okay.

MR. DAVIS: I have nothing further on
that section, Your Honor.

JUDGE GUTHRIDGE: Does USDA have any
questions?

MS. SCHMAEDICK: Melissa Schmaedick,
USDA.
CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q     Ms. Watts, you just said that developing uniform standards would be helpful. But why would it be helpful? What would the effect be?

A     Well, the effect would be that as the handler community is purchasing raw material loads there would be a set standard that would be uniform against the entire industry that would help the handlers be on a more level playing field in purchasing different materials.

The standards on kernel output would be more consistent, so that we're all trying to sell the same level of quality item. It would help in hopefully developing a better quality product on a store shelf that could help us to improve the demand on a consumer level.

Q     So would having a set standard also help consumers in terms of being consistent in what they might expect from a, for example, a premium nut?
1 A Yes, absolutely.
2 Q And would that also level the playing field between handlers that are trying to sell to the same customer?
3 A Yes.
4 Q Thank you.
5 MS. SCHMAEDICK: No further questions.
6 JUDGE GUTHRIDGE: Mr. Hinman?
7 MR. HINMAN: Yeah, Don Hinman, USDA.
8 BY MR. HINMAN:
9 Q Thank you for that testimony. You just mentioned, you know, the different quality standards and that would one -- would a benefit of that be, be that you would pay more for higher quality standards, for higher quality pecans than lower and less than other quality standards?
10 A Yes, sir.
11 Q And that would benefit the overall industry?
12 A Yes, it would benefit the overall industry and it would allow the handler industry to better determine what their shelling cost or
their expenses might be in handling a lower
quality product versus a premium product. So it
would be beneficial, for sure.

Q Thank you.

MR. HINMAN: No further questions.

JUDGE GUTHRIDGE: Are there any more
USDA questions?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Your Honor, let's move on
then to Section 82, Books and Other Records.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Again if you would, just please take
a look at that section. It appears to put a
burden on handlers to retain records. Was there
any discussion about this section? What was your
intent in this section?

A Well, you know, as we discussed
earlier, part of the effort in determining the
size of a grower or a handler is dependent on
multiple year data. So obviously we need to keep
a certain amount of data in order to be able to
be able to verify that information.

But further to that we need ongoing
good historical information. As our industry
continues to evolve and we begin to get accurate
data, then we will actually be able to retain
that data and have that good historical
information moving forward that can help us to
analyze future years and determine best practices
or opportunities that may come up.

So a three-year retention period is
not excessive. Most of the handler community is
already keeping these documents for a minimum of
three years if not longer. So, you know, it's
important to have it for reconciliation purposes
and historical preservation.

Q No real concern then that this is too
burden or a new burden that is being put on the
handlers.

A No.

Q Okay.

MR. DAVIS: No further questions,
Your Honor.

JUDGE GUTHRIDGE: Are there any USDA questions?

MS. VARELA: Jen Varela, USDA.

CROSS-EXAMINATION

BY MS. VARELA:

Q   Ms. Watts, as a handler are you familiar with upcoming and still-developing Food Safety Modernization Act requirements?

A   Yes.

Q   And from what you've seen so far, do those include a good deal of recordkeeping for eligibility?

A   Yes.

Q   And as this is written, do you -- is it your opinion that this requirement will be a good complement to some of those and not have an additional burden but rather make sure that all handlers who are following this recordkeeping requirement are a step closer maybe to what might come out of FMO requirements?

A   Yes.
Q Thank you.

MS. VARELA: No further questions for me.

JUDGE GUTHRIDGE: Are there any other USDA questions?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Yes, Your Honor. Let's move ahead then. And for those following along, in Exhibit 1 there's a -- the next heading is Additional Provisions.

DIRECT EXAMINATION

BY MR. DAVIS:

Q And in general kind of what do these next sections address?

A It's really a catch-all section where we address specific issues that have been raised in industry meetings and which did not already fit into any other section. Several of them are merely administrative requirements of the Act and are here on the advice of counsel and of the USDA staff.
Q All right. So let's wade into those, and the first one is .86 with the heading of Exemption. And you'll notice that there's an (a), (b), (c), and (d) subsection of those. Why don't you again tell us what was the board's intent in coming up with this section.

A Well, through these grower and handler meetings there was some concern raised that some growers or very small handlers would handle such a small amount of nuts from growers on -- for an individual use basis basically, not in the commercial commerce. And they might as a -- want to give promotional gifts or they might want to give -- selling on roadside stands in the fall of the year.

So this section was developed to exempt such small lots from assessment. But we also wanted to make clear that even small lots cannot be distributed via mail order, which mail order to us is a business, is a big business. And that while you may choose to take your product and sell it on the internet, that is a
viable business commerce area and, therefore, those nuts needed to be assessed.

Q     So I guess put another way, the mail order, there's an exemption to the exemption. So if you're going to -- even for these small lots, a thousand inshell pounds or 500 shelled pounds, if you're going to sell them, you know, out of the back of your truck or give them to friends and neighbors, that's exempt. But if you mail order, if you're selling by mail order, even those small lots will be assessed. Is that correct?

A     Yes, that's correct.

Q     Okay. And that was primarily because -- that really was not the concern that was raised, was it, by these --

A     No.

Q     -- people you were listening to.

A     Right. It was just the very tiny little guys that just wanted to give their Uncle Sam some pecans and not have to pay an assessment, basically.
A All right.

MR. DAVIS: No further questions,

Your Honor.

JUDGE GUTHRIDGE: Does the USDA have any questions on this section?

MS. SCHMAEDICK: Melissa Schmaedick,

USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Ms. Watts, could I direct your attention to paragraph (d) of 986.86?

A D?

Q D, yes (d) as in David. I'll just read for the record this paragraph includes a statement that the council, with approval of the Secretary, may establish rules, regulations and safeguards, and require reports, certifications and other conditions necessary to ensure compliance with this part.

So could you explain how or why paragraph (d) is important in relation to paragraph (c) specifically? 
A Yes. We need a verification rule, I guess is the best way to put it, to ensure that we are not exploiting the opportunity to take pecans and sell them through a mail order environment and escape the duty or escape the assessment.

So at the end of the day we needed that verification step in case there is some question of whether or not is this really a small guy who just wants to give his family some pecans or give some promotional gifts or is this truly a business entity and the nuts need to be assessed.

Q So, in other words, it allows you the tools that you need to make sure that's not a loophole?

A Yes.

Q That mail orders are not a loophole?

A Yes.

Q And you mentioned roadside stands. Can you describe your knowledge of roadside stands, what -- who are they typically selling -- who is typically selling at a roadside stand?
A    Well, most of that comes from again
what I call the casual production, the production
that's not really orchard-grown environment type.
It's more picked up by hand. You may be in rural
Georgia somewhere and you may have access to some
trees and you've picked them, and you set
yourself up a little stand on the side of a
highway and you advertise new crop inshell pecans
or whatever and the person riding down the road
stops and buys those off of you. That's what we
call roadside stands.

Q    Now, are there some growers who
perhaps will have their product handled by a
customer handler and then they will also sell
their product at a roadside stand, quote unquote,
but it might be more of a roadside store? Does
that happen in the industry?

A    It can happen, yes, in our industry,
yes.

Q    And those roadside stores, are they
selling more than a thousand pounds inshell or
500 pounds of shelled?
A Yes.

Q So would you consider those larger entities to be more along the lines of a business?

A Yes.

Q An actual business rather than a casual moneymaking venture?

A Yes.

Q Okay. So in that event the grower who might be then selling his pecans would be considered a handler. If they have a roadside store would they be considered a handler?

A They would.

Q And so would they be assessed under the order?

A Yes.

Q Okay. Thank you.

MS. SCHMAEDICK: No further questions.

Oh, actually I do have a question. My apologies.

Q In terms of compliance, when the board was discussing this exemption was the issue of being able to accurately apply or effectuate
compliance at very small levels, was that one of
the reasons or considerations that you looked at
for allowing this exemption?

A  Yes.

Q  So would it assist in being able to
effectuate compliance within the industry?

A  Yes.

Q  Thank you.

MS. SCHMAEDICK:  No further questions.

MR. DAVIS:  Just -- oh, sorry,

Your Honor.  Go ahead.

JUDGE GUTHRIDGE:  Are there any other
USDA questions?

MR. HILL:  I do have a question.

BY MR. HILL:

Q  Ms. Watts, is there a generally
accepted definition of mail order sales that you
--

A  Not a published one that I am aware
of.

MR. DAVIS:  It's not defined in this
order but I think -- in fact that may be a good
segue.

DIRECT EXAMINATION

BY MR. DAVIS:

Q  Young Pecan, the parent company of Young Pecan company is actually a very large mail order pecan company. Isn't it perhaps the largest in the country if not the world?

A  Well, our parent is King Ranch, and they do have a mail order catalog. Pecans in that catalog are minuscule. They sell very few of them through that catalog.

Q  Oh. So you're a large mail order company but just not a large mail order pecan --

A  Pecan, yes.

Q  -- sort of thing. But I guess as the term infers, mail order as used in this section is in the more common dictionary definition or just the sale of pecans where you mail them to someone. Right?

A  Right.

Q  Whether that order comes in through the internet or through a magazine advertisement
or something like that, they're just shipped to someone.

A  Correct.

Q  And again that was not the concern that you heard from the growers or the handlers and shellers and small growers in your listening tour, they were really just talking about doing small lots for -- and local sales.

A  Correct.

Q  Okay. Thank you. All right. Let's move on to Section 87. And this we have to compliment the drafters in that they got handler, handle and handling all in one small clause here. But what was the intent of this particular section?

A  Well, this section makes it clear that a handler will not handle nuts that have been prohibited by the Secretary. This could arise if one handler had been notified that there was a problem with a lot of nuts or a group of nuts, and then he tries to transfer them to another handler because he knows that he can't do
anything with them. This provision just ensures
that if he does provide them to a second handler
that that handler is prohibited also from being
able to handle those notes.

Q This is just a way to try to make it
clear that once the Secretary has determined that
a nut should not be in commerce that no one in
the chain should handle these notes. Is that
correct?

A Correct.

Q Okay.

MR. DAVIS: I have no further
questions.

JUDGE GUTHRIDGE: Are there any USDA
questions?

MS. SCHMAEDICK: Melissa Schmaedick,

USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Ms. Watts, if, for example, there are
handling regulations in effect under the proposed
order, let's use that example of a size
regulation, could a handler put into the stream
of commerce a product that does not meet that
size regulation?

  A     If there was a size regulation and the
lot of nuts did not meet that size regulation,
then could the handler put them into commerce.
Is that the question?

  Q     Yes.

  A     They could not put them into commerce
under that prohibited regulation. I would
question back in that, okay, you have a lot of
pecans, they are good pecans, they taste good,
there's nothing wrong with them but they don't
meet a size regulation. Would there be another
regulation where those nuts could be used for
some other purpose other than the size regulation
that they did not meet the requirement of.
Because they -- the lot may have marketable
value, just not as that size.

  Q     Ms. Watts, I'd like to draw your
attention to Section 986.70 as well as 986.69.

  MS. SCHMAEDICK: 986.69, for the
record, is Authorities Regulating Handling, and
986.70 is Handling For Special Purposes.

Q If you could look at 986.69, paragraph (a)(ii), and I'll read it into the record. It says "establish different handling requirements or minimum tolerances for particular grades, sizes or qualities or any combination thereof for different varieties, for different containers for different portions of the production area, or any combination of the foregoing during any period."

Based on that language, is it your understanding that regulation may be in effect for certain markets and not for other markets?

A Yes, if they could be established, yes.

Q So in answer to your or going back to your statement about product being -- not meeting a specific size, would this allow for that product not meeting that size to go into a different market?

A Yes.

Q And looking at 986.70, Handling for
Special Purposes, I'll read the introductory paragraph. It says "regulations in effect pursuant to 986.69," which is what we just discussed, Authorities Regulating Handling, "may be modified, suspended or terminated to facilitate the handling of pecans for" and then there are three paragraphs there, "relief or charity, experimental purposes, and other purposes which may be recommended by the council and approved by the Secretary."

That language, based on that language, is it your understanding that this would create an authority to allow additional outlets for product that perhaps does not meet a regulation that is in effect?

A. Yes.

Q. Thank you. One question I have for you, sort of a theoretical question. In your experience as a handler, would it be appropriate to create an authority perhaps that is -- or, I'm sorry, not authority but let's say a quality or a size regulation that is specific to a destination
market such as China, and that requirement might be different than product going to Canada? Do you foresee ever needing that type of flexibility?

A The first thing that comes to my mind is just from a handler's point of view, even today you have customer-driven product specifications that require certain quality aspects or other parameters that you must meet in order to be able to sell that product to that customer. Sometimes that requires additional handling of the product that you've shelled, et cetera.

So I'm not sure if I understand the question exactly. Can you ask me one more time?

Q Certainly.

MR. DAVIS: And, Ms. Schmaedick, if I can ask for a clarification. I thought we were under the assumption that this proposed marketing order concerned the regulation of domestic sale of pecans. Was your hypothetical could this board formulate standards for export or -- I
didn't understand the question either, so.

MS. SCHMAEDICK: I'm not in the position to testify. But I would ask whether or not that would be something that the industry would consider to be important if there were the ability to, let's say -- I mean based on previous testimony, if the Chinese consumer prefers a large pecan, let's say, would the industry want to say, okay, well, we want to make sure that that market is really getting the best of the large pecans that are available.

And so you put in a requirement that says only large pecans can go to China. Is that something that you as a handler would be favorable of or not?

MR. DAVIS: Your Honor, if I could instruct the witness -- and I believe you can respond to that in your individual capacity. But because of the limitations on the authority of the proposed council, I would suggest that you only answer that in your individual capacity if that would be an item that would be of interest
to you and your company. Thanks.

JUDGE GUTHRIDGE: In her capacity rather than as a member of the Pecan Board.

MR. DAVIS: Board, yes, Your Honor.

THE WITNESS: Speaking on behalf of Young Pecan, I do not think that that would be something that would be beneficial to us.

BY MS. SCHMAEDICK:

Q Thank you. I also wanted to direct your attention to paragraph 2 -- I'm sorry, paragraph (c) of 986.69. I'll read it for the record.

It says "the authority to regulate as put forward in this section shall not in any way constitute authority for the council to recommend volume regulation such as reserve pools, producer allotments or handler withholding requirements, which limit the flow of product to market for the purpose of reducing market supply."

Can you explain the importance of that paragraph?

JUDGE GUTHRIDGE: I'm sorry, I missed
what section you were referring to.

MS. SCHMAEDICK: 986.69, paragraph (c).

JUDGE GUTHRIDGE: Thank you.

THE WITNESS: Our industry and the volume of pecans that grow in our industry are a reasonably small industry. We really do not have enough supply to potentially help grow our market. So by not putting any restrictions on volume controls, that eliminates the possibility that we could find ourselves in a position where we can't even supply normal demand much less try to increase demand for our nuts. So that's why we put that in there.

BY MS. SCHMAEDICK:

Q    So in reviewing your testimony on this particular paragraph as well as the statements you made before on grade and size regulation, handling regulation, handling for special purposes, is it correct to say that the intent of the proposal in terms of authority to create handling regulations, that intent is not to limit
supply to the market, rather it is to focus on making sure the best quality product is available in the market for consumers?

A Yes.

Q And, therefore, the way that these sections interact, it allows for all product to continue to flow, yet perhaps a less desirable product might be channeled into another part of the market where that quality is not a deterrent to consumer demand.

A That's correct.

Q Okay. I'm sorry, what section were you testifying to originally?

MR. DAVIS: She had just finished .87, Compliance.

MS. SCHMAEDICK: No further questions on this section. Thank you.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

MR. DAVIS: Your Honor, we've been going for about two hours. We are about to get
into what I think Ms. Watts referred to as administrative matters. I think it will go much more quickly. But perhaps this would be a good time to take perhaps a five or 10 minute break.

JUDGE GUTHRIDGE: If we could take 10 minutes -- and this part doesn't have to be on the record -- that I need to take care of something to make sure I have a place to sleep tonight. So if it takes a little longer than 10 minutes, I apologize.

MR. DAVIS: We're adjourned then.

Thank you.

(A brief recess was taken.)

JUDGE GUTHRIDGE: Come to order, please. I'm sure you'll all be relieved to know that I have a place to stay tonight.

MR. DAVIS: Wonderful.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Your Honor, we're ready to proceed. Just to make sure that we're all on the same page, we have completed Section .87 and we're now moving in to Section .88.
DIRECT EXAMINATION

BY MR. DAVIS:

Q     And this, I believe, as I said before our break, is the section you may have referred to earlier as kind of the administrative matters or some matters that are in just because of the requirements of the Act and the like. So the first, .88, Duration of Immunities, again what was the intent of putting this section in?

A     It clarifies that when the order is terminated all rights and immunities under the FMO such as those in 986.91 will end except for acts that occurred before the termination period.

Q     Is there a provision like this in other FMOs that you reviewed?

A     Yes.

Q     Okay.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Are there any USDA questions?

MR. HILL: No, Your Honor.

MS. SCHMAEDICK: No questions.
JUDGE GUTHRIDGE: Mr. Davis?

BY MR. DAVIS:

Q Moving right along then, Section .89, Separability, which your lawyers tried to correct to severability but were told that separability would be the better word in an FMO. Again what was the intent of putting this provision in?

A This is just one of the administrative requirements. It provides that if one section is found to be invalid, the remained sections remain in effect.

Q Once again found in other FMOs?

A Yes.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Any USDA questions?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis?

BY MR. DAVIS:

Q Okay. Let's move along to .90, Section .90, Derogation. Any comments on this particular section?

A It's another administrative matter.
It makes clear that nothing in this order can
supercede the rights and duties of the Secretary
of the U.S. under the Act.

Q    Okay. And this is in the Act and
found in other FMOs, I assume.

A    Yes.

Q    Okay.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Any USDA questions?

MR. HILL: No, Your Honor.

MR. DAVIS: Okay.

BY MR. DAVIS:

Q    Let's go to .91. While this
administrative, it might be a little more
substantive and important to hopefully future
council members and staff. But under the heading
of Liability, discuss this section and the
importance of it as you believe.

A    Well, this section, it's very typical
in not-for-profit or government boards. It
provides that the council and its employees and
agents cannot be personally liable for doing his
or her job, even if negligent. Such person can be, however, be liable for dishonesty, willful misconduct, or gross negligence. Without such a provision, you probably could not get a reasonable group of people to serve or be employees.

Q  Once again you found this in other FMOs?

A  Yes.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Any USDA questions?

MR. HILL: No, Your Honor.

BY MR. DAVIS:

Q  Ms. Watts, let's move to Section .92, Agents. Is this again an administrative matter required by the Act?

A  It is, yes.

Q  Any discussion or controversy about this provision?

A  Well, it just simply provides that the Secretary can appoint an agent or representative in connection to matters covered by the FMO.
Q     Okay.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Any USDA questions?

MR. HILL: No, Your Honor.

BY MR. DAVIS:

Q     Section .93, Effective Time. Again any comments on this section?

A     This section just makes clear that nothing herein becomes effective until the Secretary says so, and that what the Secretary does authorize will stay in effect until terminated as provided in 986.94.

Q     Okay. Which we'll discuss in just a second. Do you find provisions like this in other FMOs?

A     Yes.

Q     Was there any controversy or conversation about this section?

A     No.

Q     Okay.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Any USDA questions?
MR. HILL: No further questions, Judge.

BY MR. DAVIS:

Q      Next Section .94, Termination. Has subparagraphs (a) through (e), I believe, and I don't even think we can get it all up on the slide. But you have --

A      Yeah, I've got it.

Q      -- Exhibit 1 in front of you there.

A      Uh-huh.

Q      Again why don't you discuss in general what this section provides.

A      Okay. This is still an administrative portion of the Act. It sets out exactly how the FMO or parts thereof can be terminated. In general, it can be terminated at anytime by the Secretary. It can also be suspended or terminated by the Secretary if it obstructs or does not tend to effectuate the Act.

      It can be terminated at the end of a fiscal year or a referendum if a majority of growers producing more than 50 percent of the
pecan crop want it terminated. It can be
terminated every five years if two-third of the
growers participating in the referendum want it
terminated. And, of course, it will be
terminated if the Act is terminated.

Q  Do you find termination provisions
like this in other FMOs?

A  Yes.

Q  Was there any discussion or
controversy about this particular section?

A  No.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Are there any USA
questions?

MS. VARELA: Jen Varela, USDA.

CROSS-EXAMINATION

BY MS. VARELA:

Q  Just a quick question in looking over
the language here. There's a threshold here,
provided that the growers have produced more than
50 percent of the volume and -- okay, let's just
stick with that one. Sorry, I was going to give
another order that has more than one. Were there
any other thresholds considered or was this an
example that the board saw and thought was
reasonable and adopted?

A It was the one that the board saw and
--

Q And --

A -- it was reasonable.

Q And was that coming from the Act?

A Yes.

Q Okay. And in administering this
described section, who does the board feel is
responsible for carrying out these provisions?

A I'm not sure I understand the
question.

A I'm sorry. Not the board, the
council. When the board looked at this is it
your understanding in your understanding who
physically will carry out these procedures?

A The council. Right.

Q Are you sure about that? Okay.

A I'm unsure.
MR. DAVIS: No, and if you'll refer to subsection A, it's the Secretary --

THE WITNESS: Okay.

MR. DAVIS: -- which I think is --

THE WITNESS: All right. Let me see.

MR. DAVIS: -- these would be the Secretary.

THE WITNESS: Ask it a different way.

BY MS. VARELA:

Q Is it your understanding that the Department will have to physically carry out these procedures on behalf of the Department and later on on behalf of the council?

A Yes.

Q Thank you.

BY MS. CHILUKURI:

Q Ms. Watts, I'd like to draw your attention to subsection (d) of .94. If you could --

MR. DAVIS: I'm sorry, was that (d)?

MS. CHILUKURI: Yes, (d) as in David.

THE WITNESS: Uh-huh.
BY MR. DAVIS:

Q    So if you could take a moment to read that over? And do you see the reference to representative period?

A    The reference to Secretary?

Q    To representative period in subsection D. If you could tell me what that refers to?

A    I'm going to read it first. (Pause.) Okay, I've read it now. Ask me again. I'm unsure of what you're asking me.

Q    Yes. So on that definition and from -- or from that provision and from the definitions in the Federal Marketing Order, the proposed order, what is the representative period?

A    What is the representative period?

Q    Yes. Is that a defined term? How do you determine what that period is?

A    The representative period.

Q    And the reason I ask is because it is a defined term in .33, and I'm trying to determine if it's that period or, based on the
language, if it refers to something else. And I'd like your understanding of that. So if you refer to provision .33, representative period is defined.

A Okay, I'm a little lost here so I'm going to need some help. All right. Here we go. Representative period is for four -- okay. The representative -- okay. Now I'm following. Duh, that lightbulb came on. Okay. The representative period for the first council put in place, is that what we're talking about?

Q No.

MS. SCHMAEDICK: May I attempt at --

MS. CHILUKURI: Yes.

MS. SCHMAEDICK: -- rephrasing the question?

MR. DAVIS: Ms. Watts, I think Ms. Schmaedick may have a question for you.

THE WITNESS: I'm sorry.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:
Q    I'm wondering if maybe I could
rephrase the question. So in previous testimony
we heard a discussion of this term, 986.33,
Representative Period.

A    Uh-huh.

Q    And the definition is on the overhead.
I'll read it in for the record. It says,
"Representative period is the previous four
fiscal years for which a grower's annual average
production is calculated, or any other period
recommended and approved."

So that representative period, as
again we heard in previous testimony, comes into
play in terms of eligibility in identifying
growers that are captured under the proposed
program.

A    Uh-huh.

Q    So I believe the question is is it the
intent of the Board to use this same
representative period when identifying growers
who are eligible to vote in a continuance
referendum or in a termination referendum. Would
it be that same period that you're looking at to
qualify a grower to vote?

A Yes.

Q Okay.

MS. SCHMAEDICK: Is that your
question?

MS. CHILUKURI: That is my question.

BY MS. CHILUKURI:

Q But in looking at .94 does the
language, as its written does it represent that.
So it refers to who during a representative
period determined by the Secretary. So I'm
trying to see if those two definitions are
connected. Would --

MR. DAVIS: Can I follow up?

MS. CHILUKURI: -- would the
Performance Committee be amenable to a clarifying
change?

MR. DAVIS: No. Actually I think
these fit together. Ms. Watts, if you and I can
look at these together.
THE WITNESS: Uh-huh.

MR. DAVIS: Look at Section .33, Representative Period, it does start off with the four-year fiscal years, but then look at the next clause, or any other period recommended by the council and approved by the Secretary.

If you read that last clause in conjunction with paragraph .94, during a representative period determined by the Secretary, is it possible -- it could be the four-year period but it could also be another period.

THE WITNESS: Right.

MR. DAVIS: As contemplated by Section .33. Correct?

THE WITNESS: Correct.

MR. DAVIS: Is that a reasonable reading? If it needs clarifying, we're obviously wanting to -- we'll clarify it. But I'm reading them -- I think it can be read together. Mr. Hill or?

MR. HILL: What was your question to
the witness?

MR. DAVIS: Is that a fair reading of those two -- does Section .33 give you the flexibility -- give the flexibility to the Secretary to recommend another period if he or she so desired.

THE WITNESS: Yes.

MR. DAVIS: Or the Secretary could in fact adopt the four-year average.

THE WITNESS: Correct.

MR. DAVIS: If he or she so desired.

THE WITNESS: Correct.

MR. HILL: If the secretary, under .33 if the Secretary does adopt the four-year period, let's say the Secretary does adopt a four-year period under Section .33, is it your reading of .94 that the Secretary must then adopt the same four-year period as a representative period to terminate provisions?

THE WITNESS: If he has accepted the four-year period under .33, then yes.

MR. HILL: So if that were deemed to
not be the reading of .94, would you be amenable to a clarifying change to make sure that that was the intent of the board?

THE WITNESS: Yes.

MR. HILL: Okay.

MR. DAVIS: We'll be glad to discuss that with you further about a clarification.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Ms. Watts, I'd like to draw your attention to 986.94, paragraph (c) and as well as paragraph (d). And I will read in the two portions of the language that I want to ask you about. So in paragraph (c) there's a section of language that says "the Secretary shall terminate if a majority of growers --" actually I'll just paraphrase because it's less complicated for the record.

This says the Secretary shall
terminate if a majority of producers or growers producing more than 50 percent of the volume of the pecans in the production area, and I want to contrast that language to paragraph (d), which references a referendum every five years that must be favored by two-thirds by number or volume of the growers voting in the referendum.

So my question is paragraph (c), is it your understanding that the 50 percent threshold required applies to all production in the production area?

A   It would be the majority of more than 50 percent of the growers that -- of the production for that year.

Q   Correct. Thank you. And that is different than the phrase in paragraph (d) that says two-thirds by number or volume of growers voting in the referendum. Can you explain your understanding of that phrase?

A   The (d) is referring to the every five year review of the FMO and a revote, basically, of do you want to continue in this or not. In
the initial voting it is two-thirds of growers or
two-thirds of the volume. Right? It's the
majority of growers or two-thirds of the volume
represented to pass.

    So I believe that (d) is referencing
it that way because that is the way the initial
order would be voted on. And this would be a
five-year review, not something that happened in
between that five-year period.

Q     And is it your understanding that that
two-thirds calculation would be two-thirds of
those participating in the vote but not
necessarily two-thirds of the entire production?

A     That's correct. You would -- if you
were a qualified voter, you have the opportunity
to vote, it would be approved based on two-thirds
volume -- or two-thirds of the people voting or
the majority of the volume.

Q     So if you have a continuance
referendum, for example, and let's say only 25
percent of eligible growers vote, would the
result then be two-thirds of that 25 percent
voting?

A   Yes.

Q   Thank you. And is it your

understanding that that is different than what is

stated in C, which would, based on reading the

proposed language, require 50 percent of the

entire production?

A   Yes.

Q   Therefore, would it be accurate to say

that a vote to terminate has a much higher

stringency threshold, a higher requirement?

A   Yes.

Q   And in your opinion, is that

reasonable?

A   Yes.

Q   Thank you.

MS. SCHMAEDICK: No further questions

for me.

MR. HILL: I'll ask one more question.

BY MR. HILL:

Q   And it goes back to what I mentioned

before, the representative period. Is it the
intent of the board that the Secretary has
complete discretion to set the representative
period under Section .94 irregardless, regardless
-- excuse me -- of what the definition of
representative period is set as in .33?

MR. DAVIS: It's what's written.

THE WITNESS: Yes, he does that
discretion.

MR. HILL: Thank you.

JUDGE GUTHRIDGE: Are there any more
USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: We have no further
questions on that section, Your Honor.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Let's move on then to Section .95, a
rather long section, Proceedings After
Termination. Do you recall any discussion or
controversy about this particular section, and
why was it included?
A     It's an administrative matter that we
were requested to put into the document by USDA,
and there was no concern or discussion about it.

Q     Basically just talks about kind of the
wrapping up of the FMO if it has -- if and when
it is terminated.

A     Terminated.

Q     Correct?

A     Yes.

MR. DAVIS: We have no further
questions about that.

JUDGE GUTHRIDGE: Are there any USDA
questions?

MR. HILL: One moment, Your Honor.

(Pause)

MS. SCHMAEDICK: Melissa Schmaedick,
USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q     Ms. Watts, could I turn your attention
to paragraph (a) of 986.95, please? I'll give
you a moment to review it. (Pause.) So is it
your understanding that if the program were to be
terminated would the council that was seated at
that time, would they have the responsibility to
stay acting in their capacity as council members
until all of the assets and the property of the
program were I guess dissolved and appropriately
handled?
   A     Yes.
   Q     And would part of that continuing
responsible include a full financial reporting
to the Secretary to demonstrate that the
dissolving of the assets of the program were
handled correctly?
   A     Yes.
   Q     Looking at paragraph (c) of that
section, I'll give you a moment to read it.
   (Pause.)   So is it your understanding that in
paragraph (c) if there are any funds left over,
you know, in the accounts of the program, how
would those funds be dealt with?
   A     They would be prorated, the monies
left over would be prorated back to the handlers.
Q And by prorated, what do you mean by prorated?

A Well, you would take the number of handlers and you would divide the monies into that. And then each handler would receive an equal amount back.

Q Would they receive an equal amount back or would they receive an amount that is reflective of the percentage of the volume that they handle?

A Yes. Each sheller would receive a prorated share of the monies returned but also based on their volume of handling, in other words how much -- how many dollars did they put into it. So then that would calculate into the return as well.

Q So it'd be like a proportionate refund then.

A Yes.

Q Thank you.

MS. SCHMAEDICK: I have no further questions. Thank you.
JUDGE GUTHRIDGE: Are there any more USDA questions?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Thank you, Your Honor.

Let's put up Section .96

DIRECT EXAMINATION

BY MR. DAVIS:

Q This one is short enough to read into the record here. "Amendments to this part may be proposed from time to time by the council or the Secretary." You see that language?

A (No audible response.)

Q What do you say to shall we say a cynic that says this gives the council or the Secretary the right to change everything that was previously approved, and so approving this FMO really doesn't amount to much?

A Well, all segments of the industry are represented on the council, and they can be voted out if they overreach. Also the whole order can be terminated by a majority that disapproves and
must be voted on every five years. This should
give everyone a voice if they disapprove. And,
finally, I believe that if substantive amendments
are made and the amendments should be put to a
vote by the growers and approved in the same
manner as the original FMO was approved.

Q Has there been precedent for that
amendment process in other FMOs?

A Yes.

Q Others have done that?

MR. DAVIS: We have nothing further on
that section.

JUDGE GUTHRIDGE: Are there any USDA
questions?

MS. SCHMAEDICK: Melissa Schmaedick,
USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Ms. Watts, just to further expand on
that concept of amending and requiring input and
a vote. For an amendment to an order, would it
also require the process of a public hearing to
allow full vetting of the proposals and their anticipated impacts, their costs, their benefits to the industry and to consumers?

A     Yes. And that is a very important aspect of any amendment.

Q     Therefore amendments which could potentially change the authorities, the scope of the authorities under an order, in your opinion those would be given high importance and considerable forethought, discussion, and deliberation prior to being implemented.

A     Yes.

Q     Thank you.

MS. SCHMAEDICK:  No further questions.

JUDGE GUTHRIDGE:  Are there any other USDA questions?

MR. HILL: No, Your Honor.

MR. DAVIS:  All right.

DIRECT EXAMINATION

BY MR. DAVIS:

Q     We're going to now talk about, I'm sure the audience will be pleased to hear, the
last three paragraphs that we're going to discuss this morning. And they are a little bit unusual compared to the others. But let's talk about them one by one.

Section .97, Counterparts. Was this section ever actually discussed or contemplated by the council as it was formulating the FMO?

A No. The USDA asked us to include this section to facilitate the FMO and comply with the law.

Q Okay. And as far as you know, it's just a requirement of the law that it be there.

A Correct.

Q Okay. In essence, summarize what it provides, if you will.

A The section discusses handlers signing agreements, and understand from conversations with USDA that the FMO is binding on handlers even if they do not sign the agreement. So basically it's just saying that you can sign the agreement of a handler, but you're still obligated if you don't sign.
Q That's your --
A Yes.
Q -- your personal understanding.
A Yes.
Q Okay.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Are there any USDA questions?

MS. SCHMAEDICK: Melissa Schmaedick.

No questions on this particular section, although I do have further question of Ms. Watts when we are finished with these three sections.

JUDGE GUTHRIDGE: All right.

MS. SCHMAEDICK: Thank you.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: And I'll have some more questions for her also, but if you'd like at that time you can -- okay.

BY MR. DAVIS:

Q Hearing no other questions, let's move on to Section .98, Additional Parties. Again is this similar to paragraph .97 in that it was just
-- it was required as part of the law and it was inserted?

A Yes.

Q Okay.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Are there any USDA questions?

(No response.)

JUDGE GUTHRIDGE: No questions. Mr. Davis?

BY MR. DAVIS:

Q And, finally, on paragraph .99, Order with Marketing Agreement. Is this similar to .97 and .98 in it was -- we were told it was a part of the law and had to be included in the proposed FMO?

A Yes.

Q Okay.

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Are there any USDA questions?

MR. HILL: No.
JUDGE GUTHRIDGE: No? Okay, Mr. Davis?

MR. DAVIS: Ms. Schmaedick, as I said I've got a few other kind of industry questions and background questions for Ms. Watts. But if you'd like to ask any other questions.

MS. SCHMAEDICK: Certainly. Go ahead. Perhaps you'll draw out some of the information I need.

MR. DAVIS: All right.

MS. SCHMAEDICK: Thank you.

BY MR. DAVIS:

Q     Do you have in front of you, Ms. Watts, do you have Exhibit 23, which is executive summary of the economic findings on the FMO reported in these proceedings by Dr. Palma?

A     Yes.

Q     Have you reviewed those documents?

A     Yes, I have.

Q     Do you agree with Dr. Palma's finding that the benefits of generic advertising would outweigh the cost that would be incurred by the
industry, handlers in particular, if this FMO were implemented?

A  Yes.

Q  From a handler's perspective, what do you believe about the balance between the benefits of the FMO and the cost of the FMO to handlers?

A  Right now our industry operates without good data and, therefore, we cannot make good business decisions from one crop year to the next. Nor are we able as an industry to get the great news about pecans, including the incredible health benefits, to the consumer.

With the FMO in place I am a believer that we will be able to gather accurate data, advertise and market our pecans to increase domestic consumer demand, and this will increase demand for pecans for both growers and from shellers.

If our industry is as successful with our proposed FMO as the almond, pistachio, and other tree nut industries have had with their
FMOs in place, the benefits to our industry as well as industry stabilization will greatly outweigh the cost incurred.

Q. Now, as a handler yourself, having participated in the shelling and handling of pecans for lo these many years, and as a representative selected by your peers to be on the American Pecan Board, what is your opinion about the council's authority through its product handling authority regarding regulation of quality-size packaging of pecans?

A. Well, of course pecans are an agricultural product, and they're grown across 15 U.S. states. The natural quality that comes from the orchards and casual production throughout these states can vary from orchard to orchard or state to state based on uncontrollable conditions such as weather. The handlers can only produce the kernel from within the shell. Handlers have no ability to improve on the quality that is received from the field and must market 100 percent of that quality to an end user whether it...
be a consumer or a food manufacturer.

However, with strong input from all shellers serving on the council and input received from all handlers by the shellers serving on the council, I believe that any standards approved by the shellers serving on the council would benefit the overall ability of our industry to market shelled pecans domestically and would ultimately benefit all segments of the industry and increase customer delight.

I have had conversations with some smaller shellers within our industry who have concerns that the council could mandate changes and processes that could be too costly for them. This is a valid concern, but again with participation of shellers serving on the council I would believe that no product handling mandate would be put in place that would be detrimental or would unduly burden any size sheller or handler.

Q Thank you. Do you think that the FMO has any other benefits to handlers or to the
industry in general and the handlers in particular?

A  Well, as I've stated a few times, I'm sure you all have gotten it, you know, the data collection is very important to the FMO.

If you just go back in history 20 years and you see that our industry has undergone many negative transitions from growers going out of business to converting orchards into subdivisions in the late '90s and early 2000s due to low returns to a multitude of pecan shellers going bankrupt due to market risk and purchasing raw material at cash prices based on crop size data that turns out to be wrong, and then seeing major kernel market price declines because the total supply is too large to food manufacturers and snack nut producers, removing pecans from their food items and nut mixes due to high kernel prices of pecans compared to other tree nuts, to see major retailers show data where sales of almonds and walnuts increase while sales of pecans decline on the grocery store baking aisle
due to the lower cost of these nuts versus pecans, which keeps shellers from being able to sell 100 percent of their output of shelled pecans, most all of these things occurring from lack of accurate data that anyone can rely on.

We have an inherent problem with predicting crop size as pecans grow across 15 U.S. states and close to 20 percent of it is grown through casual production, including natives that are not grown in orchard environments. We have a lack of trust with quantities of inshell and shelled pecans that are reported monthly to USDA and published in the monthly cold storage report.

We must have good, accurate data for any segment of the pecan industry, grower or handler, to make a good buying and selling decision. We must know how many acres of pecans are planted. We need to know how many are producing, the age of the trees, the plantings not yet producing, et cetera. All of this data will allow our industry to make more educated
decisions both for ultimate good health and
growth of all segments of our industry.

Q Ms. Watts, do you believe that
improved data, more accurate data would benefit
all parts of the industry in all regions --

A Yes.

Q -- of this proposed marketing area?

A Yes.

Q And just in final, are you in favor of
the proposed marketing order for pecans?

A I am. Our industry is changing.

While pecans are indigenous to North America,
other areas of the world such as South Africa,
Australia and Argentina, are growing pecans and
developing new orchards every year. We have new
demands for pecans from China and other foreign
countries.

We have a wonderful nut that is good
for you, and we need to get the message out to
the consumers so that we can compete with other
tree nuts marketed in the U.S. We need to build
demand for pecans so that pecan growers and
handlers can market their pecans profitably.

As we have seen through other FMOs, most particularly the almond FMO, we have watched an industry produce very accurate crop supply data year after year. We have seen that industry grow exponentially with new orchards vastly increasing total supply and at the same time growing demand for almonds at the same pace, resulting in higher prices for growers and resulting in handlers being able to remain profitable and move through ever growing supplies.

With an FMO for pecans, we could establish a unified voice, we can market pecans to stimulate domestic demand, and ultimately stimulate prices. We can work to improve packaging, quality, and other things that can increase consumer delight, and we can begin to work and market our pecans based on accurate data year after year.

Q Ms. Watts, you delayed a well-deserved vacation so you could be here with us today, and
we very much appreciate it. And so I'm not going to take up more of your time and don't know if USDA is going to take up any more of your time. But let me conclude we're about to have --

JUDGE GUTHRIDGE: It's the Department of Agriculture's fault that you cannot go on vacation.

THE WITNESS: I got it.

MR. DAVIS: Miss a vacation with your lovely grandchildren.

BY MR. DAVIS:

Q No, we're about to have, in all seriousness, we're about to have some testimony on the structure and composition of the council. So before you leave I'd like to ask you just one or two questions. You've been involved in this process literally from the birthing of it in your participation in going around and meeting with others. You probably have developed a pretty good idea of the scope of the work that would be done on this council and, to be quite honest, how much work it's going to be.
But do you believe that you have the experience and qualifications that might lend itself to being a representative of the handlers on the American Pecan Council?

A Yes. And I would be honored if my peers would vote me in to such a position.

Q If nominated you would accept, and if elected you would serve.

A Yes.

Q And serve I know. Thank you so much, Ms. Watts.

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

JUDGE GUTHRIDGE: Does USDA have any questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA. And I certainly hope that I am not delaying your vacation. And I do have some questions.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Ms. Watts, we've received testimony on
-- from other witnesses in Las Cruces, and there
were some questions that were raised. And I
wanted to draw on your experience working with
the American Pecan Board and see if you could
help us by shedding some additional light on
these questions.

The first is can I draw your attention
to Section 986.55? It's Procedure.

A     Okay.

Q     So I first want to draw your attention
to language that is found in paragraph (c)(I).
In the very end of that paragraph, I'll read it
for the record, it says "council members --" oh,
it says "the following issues shall require two-
thirds, parens, 12 members, concurring vote of
the council members and must be approved in an
in-person meeting." And then there are a list of
several types of decisions that might be made.

So in your discussions with the
American Pecan Board did you feel that it was
important that discussions and decisions made
about, for example, budges or assessments and
these other items that are listed out here, that
they be made in person?

A     Yes.

Q     And in person, this sounds kind of
silly, but that means a face-to-face meeting
where you are all physically in one place?

A     Yes.

Q     Okay. And now I want to draw your
attention to paragraph (c)(ii), which talks about
-- I'll paraphrase it for the record. It talks
about securing a commercial bank loan, and the
halfway through the paragraph there's a proviso,
and I'll read that. And it says "granted that in
the event of an emergency that warrants immediate
attention sooner than a face-to-face meeting is
possible, a vote for financing may be taken."

Does that mean that a vote for
financing may be taken through a method that is
an alternative to a face-to-face meeting?

A     Yes.

Q     And in your opinion what are those
methods? Would it be a phone or video conference
or?

A  Well, the first preference would be a video conference so that you can visually see each other. But if that is not available, then you could do it the audio phone conference.

Q  Okay. Thank you. Now I want to draw your attention to paragraph (b). And paragraph (b), I'll read this for the record, it says "the council may provide for meetings by telephone or other means of communication, and any vote cast at such a meeting shall be confirmed promptly in writing."

So my question is it appears that paragraph (b) gives you authority to meet by other means, but if you read the language in (c)(i) there's a requirement that any discussion or decisions made on the issues listed out under paragraph (c) be made in person.

So was it the intent of the board to do require a face-to-face meeting and never allow for any other type of alternative meeting with regard to these issues? Or is it simply your
priority and your first preference is a face-to-face and that you would allow for other alternatives under certain circumstances?

A Under the (c)(i) and the list of items that we are referring to where we are requiring the two-thirds, 12 member vote, the preference is a face-to-face meeting for those particular items. And if that is not doable, then of course try to do the video conference, or if we have to go via phone we have to go via phone.

But (b) is just the more general clause of the council needs to talk, they need to communicate more often than when something significant is going on. And those meetings could be held via phone versus a face-to-face meeting as needed.

Q Okay. So to clarify, the board did indeed intend to require that any decisions made regarding the issues outlined under (c)(i), that they truly must be in person.

A Yes.

Q Okay. And that --
A That's the preference except for as it's written down below, that you can do a video conference if you cannot meet face-to-face.

Q Okay. So looking at that language again, it says "actions of the council with respect to the following issues shall require a two-thirds concurring vote of the members and must be approved at an in-person meeting."

So if I'm understanding your statement correctly, perhaps this language is too restrictive and should be clarified to include the stipulation that the in-person is the priority but that paragraph (b) could be used in certain cases. Is that correct?

A Yes.

Q Okay. And would you support a clarification to that effect?

A Yes.

Q Thank you. Next I'd like to discuss -- this is a section that has not yet been addressed by any other witness, but I would like for you to turn your attention to Section 986.50
paragraph (b). And that 986.50 is Term of Office.

A     Yes.

Q     If you could take a moment and read paragraph (b)?

(Pause)

A     Okay.

Q     Okay. Do you recall the board's discussion about this topic, term of office?

A     Yes.

Q     Okay. So I'm going to read into the record the language that I want to ask you about. It says "council members and alternates may serve up to two consecutive four-year terms of office. Subject to paragraph (c) of this section, in no event shall any member or alternate serve more than eight consecutive years on the council as either a member or an alternate. However, if selected, an alternate having served up to two consecutive terms may immediately serve as a member for two consecutive terms without any interruption in service. The same is true for a
member who, after serving up to two consecutive terms, may serve as an alternate."

The next sentence says "a person having served the maximum number of terms as set forth above may not serve again as a member or alternate for at least 12 consecutive months."

So I want to be clear in my understanding of this language. Is it the intent of the board that a person may complete the full term as a member, follow that by a full term as an alternate member, and then they have to take a break?

MR. DAVIS: By full term do you mean two terms?

MS. SCHMAEDICK: Yes. I'm sorry.

BY MS. SCHMAEDICK:

Q The maximum for a member and the maximum for alternate. And then they have to take a break or can they just continue, member, alternate, member, alternate into perpetuity?

A Our industry is so small that we're trying to write into the language so that we
don't pin ourselves in a corner where we don't have anybody to nominate and appoint as a council member. So the language is there to try to allow for continuation of available members.

So to answer your question, it would not mean that they have to take a break. Likely if there's enough members or available people to appoint, then they wouldn't be constantly reappointed. But the reason that we wrote it the way we did is because we have so few people to nominate that we could find ourselves in a position where we don't have enough members.

Q Okay. Thank you. I'm going to change directions a little bit here on you, and I'm going to ask you about a term that came up in Las Cruces. The term is disappearance. Are you familiar with that term?

A Disappearance?

Q Disappearance.

A I know what the definition is but I'm not sure how it is in the context of Las Cruces.

I didn't hear it so --
Q     Okay.
A     -- I'm not sure.
Q     Is that a term that you use in your
business, disappearance?
A     Well, for me whenever I think about my
industry and I think about the word disappearance
I'm thinking about movement. In other words, for
instance, on the monthly cold storage the amount
reported last month versus the amount reported
this month, there is a disappearance of
inventory. And that's through sales,
consumption.
Q     Okay.
MR. DAVIS: Ms. Watts, that isn't the
definition of Section 12 I think that Ms.
Schmaedick was referring to.
BY MS. SCHMAEDICK:
Q     I have no further questions on that
section at this time.
A     Okay. Well, that's more at the
cleaning station. That's coming out of the field
into a cleaning plant where you remove sticks,
coals, hulls, nuts that where the hull won't come off. That would be unmerchantable pecans. So I guess that would be the weight disappearance between what comes out of the field and what's cleaned and available for market.

Q	Okay. Thank you. Next I would like for you to think back on the discussions that the board had with regard to the sheller member seats on the council. And if you want to take a look here real quickly, I'm going to be asking you some questions on 986.45, paragraph (b)(ii). And again I'll just read this for the record so that we know what we're talking about.

It states "each region shall have a sheller seat one allocated to a sheller who handles more than 12.5 million pounds of inshell pecans in the fiscal year preceding nomination, and a sheller seat two allocated to a sheller who handles less than or equal to 12.5 million pounds of inshell pecans in the fiscal year preceding nomination."

I'm wondering if you could talk about
your impression of the discussion around that 12.5 million pound threshold. How was that number identified? What was the process? Were there alternatives that were discussed? And then, in particular for you representing a large handler, does this number make sense?

A When we were in our discussions during our rules writing we talked about this a right good bit. What we want to do is to make sure that we are including small shellers in the process and not penalizing them. Because in a short crop year they may not be able to process as many pecans as they do in an on crop year.

So we did look at higher numbers as the threshold between large shellers and small shellers, and decided to lower that number in order to make sure that we are including as many small operating plants as we possibly can.

So the 12-1/2 million pounds of inshell, either yield inside -- the shell is varying across different regions of the country. So we felt that 12-1/2 pounds when you calculated
out within a yield environment would make sure
that it includes the smaller shellers, that we're
not excluding anyone that might not make that
large shell threshold.

Q    And the alternative threshold that you
considered, were they initially higher than this?
A     Yes.
Q    Okay. So then the decision to go
lower was again very purposeful.
A     Yes.
Q    Okay. Thank you.

MS. VARELA:  Jen Varela, USDA.

BY MS. VARELA:
Q    Just a very quick follow-up while
we're thinking about these sheller seats. As
somebody who's very active in the industry, do
you -- could you give me just a rough estimate of
about how many shellers you think will qualify
based on the threshold?
A     At 12-1/2 million how many would
qualify. Above it or under it?
Q    If you have a rough estimate of above
or below, that would be great. But if you could just tell us total how many you think are in the pool of potential shellers --

A     Shellers?

Q     -- to be involved, that would be helpful as well.

A     Throughout the country there's probably more than 250 shellers out there. They are of all vast shapes and sizes. The vast majority of those would be 12-1/2 million pounds or below. Some are below 12-1/2 million pounds. There would be much fewer that would be above that number consistently.

Q     Thank you very much.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q     Ms. Watts, I just have one question left, and then you can go on vacation. Let's see. I would like for you to look at 986.46(b)(v), please. 986.46 is the section called Council Nominations and Voting.
JUDGE GUTHRIDGE: I'm sorry, what was that number again?

MS. SCHMAEDICK: 986.46, which is Nominations, paragraph (b)(v). (B) is the section Successor Members, and (v) is the paragraph titled Reports to the Secretary.

BY MS. SCHMAEDICK:

Q So I just want to ask you a general question about the work of American Pecan Board and the general drafting of this entire Section, and the mind set that that board was in when this language was created.

What is your understanding of the nomination process and the establishment of council members? Are they nominated by the industry and then appointed by the Secretary? Or are they just nominated by the industry and that's who we get?

A They are nominated by the industry and appointed by the Secretary.

Q Thank you. And in that process of nominating people is there a possibility for more
than one candidate per seat? So you have the,
you know, three grower seat per region, two
sheller seats per region. Is it possible that
you could have more than one person interested in
serving in any of those positions?
A Yes.
Q And in the nomination process would a
nomination ballot be -- would that ballot include
all of the names of people interested and
qualified to serve in those positions?
A Yes.
Q And would that ballot then be sent out
to growers and shellers who are then able to cast
a vote for their preferred nominee?
A Yes. The grower seats would be voted
on by growers, the sheller seats would be voted
on by shellers.
Q And when you say voted on is it more
accurate to say that they're indicating who they
would prefer to have seated?
A Yes.
Q Is there a general understanding that
even though they might prefer that person, that
really is up to the Secretary to appoint?

A Yes. And there is a further
understanding that the Secretary may choose to
pick not the top recommended or preferred vote
getter.

Q So based on that statement that you
just gave, is it the intent of the council to
forward all of the results of the nominations to
the Secretary?

A Yes.

Q And what does all of the results mean?

A Well, the group that would be
responsible, the American Pecan Board or whatever
the party is that would be sending out the
ballots, and once that information is discerned,
collected, it could be provided to the Secretary
in summary form or it could be provided to the
Secretary in summary form with a backup to prove
the results that are provided to the Secretary
for him to make his decision.

Q So am I understanding that your
impression is that the Secretary would be provided with a list of all the candidates that were considered and the number of votes that each candidate received as well as their background information?

A     Yes.

Q     And is it your understanding that the Secretary -- and I believe you've already stated this, but again just for clarification. The Secretary then has -- what does he do with this information?

A     He reviews the information, he takes into consideration all of the information that's been provided to him from the industry, and then he makes his best assessment on who the members of the founding council should be and that he would appoint them accordingly.

Q     You said founding council. Is that, is this process the process that would also be used for all other councils?

A     Yes, the same nominating -- yes. Everything would be the same from a standpoint of
future seatings as people roll off.

MS. SCHMAEDICK: Thank you very much.

I have no further questions.

THE WITNESS: Thank you.

JUDGE GUTHRIDGE: Does USDA have any more questions?

MR. HILL: Vacation delayed.

MR. DAVIS: I'll have to end with one last question.

DIRECT EXAMINATION

BY MR. DAVIS:

Q    But again based on your experiences, is the nominating and voting procedures that are set forth in this proposed FMO identical to the best of your knowledge to all other FMOs that are in place today, at least on that process?

A    Yes.

MR. DAVIS: Thank you. Okay.

JUDGE GUTHRIDGE: USDA?

MR. HILL: Yes.

CROSS-EXAMINATION

BY MR. HILL:
I want to go back to 986.55 just briefly. I'm going to ask a couple of questions about both (c)(I) and (c)(ii) but I'm going to start with (c)(ii) and work backwards.

Okay.

And I'm most interested in the proviso. It says "that in the event of an emergency that warrants immediate attention sooner than a face-to-face meeting is possible, a vote for financing may be taken. In such event the council's first preference is a video conference and second preference is phone conference."

So the question is does this -- does your reading of this allow the council to conduct a vote by email or some other electronic means or by U.S. mail other than these two preferences that you have here? Because it's stated as a preference. So would you believe that you could also use some other means besides these if they were better, I guess, under the circumstances? Or do you intend these to be exclusive, just only
those two?

A I believe that these should be exclusive.

Q Okay. So just the video conference and just the phone conference. Okay. Going back to (c)(I), a couple of times you used the word preference when talking about the in-person meeting. So my question to you is do you believe that the proviso from (c)(ii) should also be applicable to (c)(I)?

MR. DAVIS: No.

BY MR. HILL:

Q Was it the board's intent for that to be?

A No. I believe that (c)(I)) should be an in-person meeting.

Q Okay.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Following up on Mr. Hill's question, if there's a situation where decisions need to be
made with regard to any of the issues listed under (c)(I) and an in-person meeting is simply not possible, would it be important for the council to be able to meet in any of the methods identified in paragraph (b)?

A You never say never. And there could be a -- somebody's in Timbuktu and not able to make a face-to-face, you do have to have a secondary provision on how to handle that situation. So with that, I would say yes.

Q Okay. Would it be -- in your opinion would it be helpful to use language, the language that is found in (c)(ii), which says the preference first is video conference followed by phone conference, would it be helpful to put that or similar language stating those preference under (c)(I)?

A I do think it would be better for clarity purposes, no confusion.

Q Okay. So again if a clarifying change that would again state similar language in (c)(ii) were to be included in (c)(I), you would
be comfortable with that?

A     Yes.

Q     And in your opinion was that the intent of the board?

A     Yes.

Q     Okay. Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: USDA, any more questions?

MR. HILL: No.

JUDGE GUTHRIDGE: Mr. Davis, any more questions?

MR. DAVIS: Your Honor, we have no further questions for this witness. Thank you.

JUDGE GUTHRIDGE: Does anyone in the audience have any questions for Ms. Watts?

(No response.)

JUDGE GUTHRIDGE: Seeing no volunteers, Ms. Watts, you're excused.

THE WITNESS: Thank you very much.

(Witness excused.)

MR. QUIRS: Your Honor, could we take
a five-minute break while we ask Ms. Watts to leave and replace just so -- we've been here almost an hour and a half since our last break.

Just a short one.

JUDGE GUTHRIDGE: A literal five minute.

MR. QUIR S: A literal short break, just so we can get set up.

JUDGE GUTHRIDGE: It's 11:26. At 11:31 we'll resume.

(A brief recess was taken.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIR S: Yes. Mr. Mike Adams is here with us.

Would you please state your name and spell it?

THE WITNESS: Mike Adams, M-I-K-E A-D-
A-M-S. Good morning.

MR. QUIR S: And, Mr. Adams -- And, Your Honor, do we need Mr. Adams --

JUDGE GUTHRIDGE: Excuse me.
Mr. Adams, you were put under oath in Las Cruces on Monday for this hearing, and you are still under oath.

THE WITNESS: Okay. Yes.

Whereupon,

MIKE ADAMS

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

DIRECT EXAMINATION

BY MR. QUIRS:

Q This next question probably would not require you to be under oath. But, Mr. Adams, are you --

A Let me state for the record that I'm not going on vacation. But I haven't done my Christmas shopping yet.

Q Mr. Adams, I know you're a Texan. You glad to be back in Texas?

A Yes.

Q I understand when you were in New Mexico that you met Pepe Pistachio. Is that
correct?

A     I did.

Q     And how did you feel about knowing

that Pepe Pistachio was 20 yards away from the

hearing site?

A     Well, I immediately contacted the

pecan fairy and just asked her to show up and at

least have an alternative to those that chose to

consume the lesser tree nut.

Q     Thank you. And that's why we have

these pecans here with us today?

A     Yes.

Q     Thank you very much.

A     And by the way, she's on call if you

run out.

Q     Thank you, Mr. Adams. Because we were

in another location when you first testified, I

will ask you just a few brief questions so we can

establish a basis for your testimony today.

Where do you live?

A     Henderson, Texas.

Q     And tell us briefly about your
educational background.

    A    Well, I'm going to pull out my CV, which was submitted for the record, and those of you who know me know that I'm uncomfortable talking about myself. I really am. But counsel says it's important, so.

    I received a undergraduate degree from TCU, Texas Christian University, in mathematics and education. I went on to get a Master's degree in agricultural economics at Texas A&M. I've done some graduate work in mathematics, and I've done some graduate work on a pecan orchard.

    Q    And your complete resume has already been entered in this hearing as Exhibit 7. Is that right?

    A    That's correct.

    Q    Tell us a little bit about your experience, again briefly, in the pecan industry.

    A    We got in the pecan industry 30 years ago, heard just a beautiful pristine piece of property in the Brazos River bottom of Texas. It already had an orchard planted, but honestly the
first few years we didn't understand the value. And more recently we have understood the value, we've made the committed, I mean the necessary investment.

And so we've been involved in improving that orchard and trying to bring it in its full potential, which we are in the -- we have done. And so we're drip irrigating, we're hedging, trying to manage what every other astute pecan grower, some of whom are seated in this audience, are trying to do.

Q And you're familiar with the Small Business Association guidelines for a large --

A I am, yes.

Q -- and small business? And would you be considered a large or a small pecan business?

A I'm a large grower.

Q Thank you, Mr. Adams. Would you state for us briefly your experience in the pecan experience trade organizations?

A Early '90s -- I joined the Texas Pecan Growers Association early. In the early '90s I
was asked to be in the leadership and have been
so I guess ever since. I've served as -- in the
Texas Pecan Growers Association as secretary,
vice president, and president.

And then when the Texas checkoff was
put into place in 1998 I was elected to that
statewide board, which is the commodity
commission that oversees the checkoff. I was
secretary and I currently serve as vice president
of the Texas Pecan Board.

And I'm going to read in here -- again
this is -- I've just had a -- involved in the
leadership of the pecan industry from a policy
standpoint just by choice. I've served as the --
with U.S. Pecans, an international marketing
group. I was a member and currently a member of
the Oversight Committee.

I was on the Organizing Committee of
the U.S. Pecan Council, which was the prior name
of what is now the American Pecan Board. I was
selected by the Texas section to serve as a
member of that board and was subsequently elected
president of the American Pecan Board.

I've also served or been on the National Pecan Research Summit, which was hosted by Oklahoma State University and the Noble Foundation. I was an invited participant. Dr. Rohla in the audience is involved with that. I was invited to serve at the Texas Agricultural Summit from Texas A&M University.

I've been awarded the Life Membership Award, which is a -- and I was humbled to be selected for that award by the Texas Pecan Growers Association. And more recently given the Certificate of Merit Award from the Southeastern Pecan Grower Association.

And if my wife were here she'd say I wasn't worthy of any of it.

Q Mr. Adams, you testified a moment ago that you participated in the organization of the industry effort to get a Federal Marketing Order, which is now the American Pecan Board. Would you explain your subsequent involvement from getting it started?
A  The first conversation that was the

 genesis of the what's now the effort that we're
 here began in a conversation of growers in the
 summer of 2011. From that conversation of
 growers we approached the United Pecan Shellers
 Association that fall to broach the idea of a
 single entity that would represent the entire
 industry.

 Heretofore there were two national
 organizations, one grower national organization,
 one sheller national organization, there were
 three regional pecan grower organizations, there
 were 14 state grower organizations, and there
 were two state commodity commissions. And so we
 felt like that there -- it made sense to bring
 the industry under a common umbrella because we
 had a lot of common goals.

 And that began what's brought us here
 today. It transitioned into later that fall,
 because we were favorably received by the
 shellers, to form an organizational committee of
 what was then called the U.S. Pecan Council. It
was incorporated in December of 2012, organized as a 501(c)(6).

That organizing committee actually sought nominations and selections from the constituent groups, shellers. Helen Watts mentioned that she was selected by the sheller group. Cindy Wise, who's Executive Director of the Texas group, conducted a meeting. That's where I was appointed as a grower.

So, anyway, the first American Pecan Board was seated in May of 2013. In November of 2013 we met with USDA in Washington, and the purpose of the meeting was to -- we realized that to be an effective group we had to have a sustained funding mechanism and we were looking at several options.

And so when the board went to Washington in November of 2013 just to find out from USDA what was possible, and some of the members at your table were there and they were very helpful in instructing us. And we were actually looking at five different funding
options, two of which the input from USDA, the
checkoff and the marketing order, were described
to us.

And we left there with a consensus
that the marketing order was the most favorable
one to proceed with because it was adaptable to
the commodity. It was customized. And there
were some things because of the diversity of the
industry, the 15 state production area, the
native and improved, there were just a lot of
things that made sense from a marketing order
that a checkoff, which essentially is one size
fits all, did not address.

And so we left there again with a
consensus that that was the way to go, and that
began really a listening tour. That term has
been used but that’s exactly what it was.
Because we were convinced that going forward that
it had to be an industry order. We knew from the
past efforts that where pecans have attempted a
coordinated effort they had failed.

And we felt like that some of the
reasons was that there not a -- it was not
compiled, it was not composed by the industry.
And so we were bound and determined that it was
going to be the industry growers, shellers,
buyers, accumulators would be involved in the
construction of the order.

And so we began what's now over a two-
year tour, and literally sat down with industry
groups, with individual companies, with
individuals, and we spoke at numerous
conferences. And my family accused me -- I guess
it goes back to my math background, they accuse
me of counting everything. So I've counted the
number of times I've spoken. Today makes 46, Las
Cruces made 45 that I've made since May of 2013.
All voluntary and all glad to do it.

But in all of those meetings we
learned something. And so when we came together
as a board with the able and welcome assistance
of USDA, who have been very cooperative and
instructive, we came together at the rules summit
in January of this year, we felt like that we as
a board had a good understanding of the Act, and we had hoped that we had leant good understanding to USDA of our industry.

And so we wanted to compose an order that certainly was within the jurisdiction and the provisions of the law, and we wanted to compose an order that the industry had told us would work. And so that's what the rules summit was all about.

And the document that we're considering over these three hearings is a result of that listening tour. And we hope that we've heard well. And so that's why this two-year, over two-year effort and this document is really a compilation of thousands of conversations about what the industry thinks will work.

And that's not to say that that there weren't some contentious issues. But I can name a number of instances where someone who was either an industry person -- I'm talking about grower, sheller, buyer, whatever -- was either on the fence or against us and now they're
supportive. Because they feel like that we've
listened to their concerns.

And so that's why we feel confident
going forward that this will be customized to the
pecan industry, and that's why we feel confident
that being here today is really the result of all
those voices being listened to.

Q    Mr. Adams, I don't think you mentioned
your position with the American Pecan Board or I
didn't hear it. Are you the Chair of the
American Pecan Board?

A     Well, I'm president of American Pecan
Board.

Q    President. Thank you. Have you ever
been paid any money for this work?

A     Not any money but a great group of
friends.

Q    That's right. Focusing on your
testimony that you're about to give, in
particular did you participate in the drafting of
the proposed order section of Exhibit 1 dealing
with the creation and organization of the
American Pecan Council, Sections 986.45 through .58?

A    Yes.

Q    And how did you do that?

A    Participate in the order?

Q    In developing those sections.

A    Well, going back to that and I think the listening tour, the rules summit were all a part of for my participation in the order. I worked directly with attorneys, and I publicly thank both of you. We consulted with, as I said, growers, shellers, handlers, all of those in the industry to draft these provisions.

Q    Thank you. Let's take a look at Exhibit 1. You've had a chance to receive and review that, which was already tendered in this hearing. Is that so?

A    Yes.

Q    And I know that you are very familiar with the proposed Federal Marketing Order for pecans. But to facilitate our discussion today I'm going to refer to Exhibit 1, specifically the
portions of the Federal Marketing Order Sections .48 to .58. Mr. Adams, I'll now ask you about specific definitions.

Since this has already been introduced as an exhibit, the actual definitions are already in the record. I will not ask you to read each one but will refer to each one by its number designation in Exhibit 1 and ask you a few questions about each. Then the USDA will ask you a few questions, the Judge, and perhaps the audience. Is this agreeable to you?

A Yes.

Q Okay. Please take a look at Section 986.45.

A Okay.

Q Under what authority is the council formed?

A The Act, the Marketing Agreement Act of 1937.

Q And what's the intent of the Act and the intended role of the council?

A It's the governing body, the
administrative group with the help of the
Secretary that will actually put the order into
effect and oversee it.

Q Thank you. Should an agency
consisting of growers and handlers be established
to administer the program locally and assist the
Secretary to carry out the purposes of the
program under the Act?

A Yes.

Q Take a look at the first sentence.

MR. HILL: Can I please ask the
witness to speak a little bit closer to the
microphone, just so we can hear?

THE WITNESS: I want to compliment the
sound man. From Las Cruces I couldn't hear
anything. Now I can hear everything.

So, sound man, a good job.

MR. HILL: Thank you.

THE WITNESS: Thank you, Mr. Hill.

BY MR. QUIRS:

Q Mr. Adams, the first sentence. Why 17
members and 17 alternates?
A We wanted many voices from each region. And so we talked about -- we looked at other FMOs. We found some governing bodies with over a hundred seats. We found some with seven or eight. But we didn't want so many that it'd be cumbersome, and we wanted all regions represented, we wanted the diversity of the industry represented on the council. And so we thought that the 17 members was a good fit.

Q And helpful for the three regions?
A Yes.

Q How about alternates?
A Same answer. You need people that back up the members, and they need to be knowledgeable of what's going on.

Q Did you consider alternatives to the 17 --
A Yes.

Q Okay. And why were those not adopted?
A For the very reason I described. We wanted a workable board that was large enough to represent the three regions, the diversity, and
to carry out what we'd heard over the last two
years.

Q    And do you think that this group is
small enough so that they can travel and meet
without undue expense or hardship?

A    Yes.

Q    Take a look at the second sentence.

Why nine growers, six shellers, and two at-large
seats, one for an accumulator and one for a
public person?

A    Well, there's more growers than there
are shellers. And so, quite honestly, we put
those numbers together after consulting with the
members of the board, the American Pecan Board,
which were well-represented. The -- we wanted
all parts of the industry represented. And,
quite honestly, we were writing into the order
what we'd heard back from the constituents, the
stakeholders that we'd spent a lot of time with.

Q    Have you discussed this provision at
grower and sheller meetings now?

A    Yes.
Q    And what was the general reaction to this approach with these numbers in? Not just the general discussion but the discussion of these numbers for council?

A    Well, there have been some suggestions by some shellers that they should have had equal representation. But it was unanimous by the American Pecan Board, and we had sheller representatives on that board, that this was the best way to go forward. I think that the other provision written into the order, i.e. the two-thirds majority, was a satisfaction to the sheller members. And, quite honestly, again we were responding to what we'd heard from the stakeholders.

Q    We'll get to Section 986.55, which I think you were just alluding to, especially (c)(I), in a few minutes in your testimony. But I do think that's -- was that a critical part of the balance of making the --

A    Yes.

Q    -- shellers comfortable? Thank you.
A     Yes.

Q     Did the board consider the differences between grower and handler interest with regard to the balance on the council?

A     Yes.

Q     What do you think the differences are between grower and handler interests?

A     Well, there's some differences but I think

-- one thing that I was encouraged by was the unanimity and the common interest that we had in those board meetings. And so good data, as Helen Watts has mentioned, marketing would help us all. The interest of the American Pecan Board was aligned in in choosing that number.

Q     So there's differences in their interests but there's so many commonalities that it was overcome. Is that your testimony?

A     Exactly. Exactly.

Q     Let's project into the future when the council's meeting and there are differences. How are those going to be resolved?
A There'll be resolved I think by getting good people, what I call big thinkers that have the interest of the industry at heart, and there's just a healthy exchange. And so I think that's what has proven to be effective at the American Pecan Board. We all get in one room and we kind of take our sheller and grower hat when walk in the door and we put on our pecan hat.

Q Perhaps it would help now to take a look at 986.55(c)(I). So in their differences you've got big thinkers and they're thinking. But in certain areas we've said that there --

JUDGE GUTHRIDGE: Do you mean .45(c)(I)?

MR. QUIR S: No, .55(c)(I).


BY MR. QUIR S:

Q Take a moment to take a look at that, please, Mr. Adams.

A That's a super majority issue?

Q Right.
Okay. So there'll be good people that have broad-minded thinking with regard to the industry even though they might represent regions and certain groups within regions. But tell me what you think about this section, what is it there for?

The super majority issue?

Yes, sir.

Well, when we were determining the number of seats and we actually gave deference to the number of growers and having a greater number of seats, this was a deference to the shellers that had fewer number of seats, that they would have a strong vote and that there couldn't be one controlling segment of a significant issue to be voted on. And so that's why the two-thirds majority was put into effect.

And would you say that these are some of the most important duties and authorities of -- 

I would.

-- council?
A: I would.

Q: So the establishment and changes to by-laws, appointment of or administrative issues relating to a program's manager, budget, assessments, compliance and audits, redistricting regions, would you consider that to be sort of a council bill of rights list?

A: Yes.

Q: These are very important things --

A: They are.

Q: -- that we need super majority but we need industry buy-in across all segments. Is that correct?

A: That's correct.

Q: Okay. Thank you. Let's turn back to the numbers of 17 and 17. Why just one accumulator?

A: Well, an accumulator is -- they're important to our industry. We felt like representation on the council was important. But an accumulator really is going to buy across all three regions, and so it's more of a broad-based
position, and we thought that was appropriate.

Q     Are shellers in their own way accumulators?

A     They can be, yes.

Q     So a lot of the interest of the accumulator group would already be represented amongst the shellers?

A     That's true.

Q     Why one public member?

A     I think that's in the law. But I do think that that's a positive input.

Q     Why is that positive?

A     Well, if you -- let me go back to again what we heard from the industry. A number of things were key. One key issue was that the governing, the administrative group of the order would be competent, would have a real interest in the industry. In other words, you'd have someone that would be committed to improving the industry through this order. And so I think that similar job description for a public member would be appropriate.
And so a public member coming from outside the industry looking through another set of glasses, giving another perspective, again if they were interested in what they were doing and not just put there to satisfy, you know, a provision, I think that's tremendously helpful. In fact, we had two public members on the American Pecan Board.

Q Would it also allow you to have perhaps greater diversity with regard to the council make-up?

A No question.

Q Thank you. I'd like you to turn your attention to the third sentence. On the overhead it is the top sentence on the second page that begins "the grower and sheller nominees." Take a moment just to look at that.

Mr. Adams, why do they need to be growers and shellers at the time of their nomination and for the duration of their tenure?

A They have to have a vested interest in what's going on. I mean they need to be a
stakeholder.

Q  Thank you. Take a look at the next

sentence. Mr. Adams, why are the nominees for
grower and sheller position to be selected by the
Secretary from the nominees submitted to the
council?

A  Ask your question again because I'm

not following that.

Q  Yeah.

A  I read that.

Q  Yes, sir. I'm in (m)(I), and I'm

asking you why are the nominees for grower and
sheller position to be selected by the Secretary
from nominees submitted to the council?

A  Well, we want industry buy-in. We

also want diversity. We want different

backgrounds, because I think diverse positions,

heads, et cetera, come up with a better decision.

Q  People from all backgrounds, Mr.

Adams?

A  Yes.

Q  People from all regions?
Okay. People from all regions?
Yes.
People with good reputations in the industry?
You bet.
Thank you. Why are the nominees for at-large positions selected by the council without input particularly from accumulators?
Well, as I said, there's not many pure accumulators to pull from. That pool is small. And the seated 15 members would have a good idea of who would best serve in that position. And it would allow the council to ensure that the board had demographic diversity. Again going back to the wisdom of the 15 seated members, I think their wisdom would be important in selecting that position.
Did you see this in other Federal Marketing Orders that you reviewed?
Yes.
Why does the Secretary pick the final
council and alternates, not the growers and
shellers, who just nominate?

A    Well, that's in the law. But I think
the law makes sense. You know, since we're
getting the benefit of the Act to make
assessments on the entire handler community, the
council needs to be a well-run organization. And
the oversight of the Secretary is appropriate. I
mean I believe that.

The benefit, if you will, of uniting
the industry is greater than any USDA oversight
burden. The oversight of the USDA in the
selection of the council and alternates may in
fact prove to be very helpful in the future.

Q    Discuss the regional diversity of the
Board as laid out in Section 986.45(a).

MR. QUIR S: Would you please put that
up on the screen?

BY MR. QUIR S:

Q    Let me let you take a minute to read
it, then I'll re-ask my question, Mr. Adams.

A    Okay, you can ask your question.
Discuss the regional diversity of the board as laid out in Section 986.45(a).

Well, the regional diversity goes back to the three growing regions in the U.S., and those regions were set up based on common features. There's about a -- the historical production from those three regions has been a third, third, third.

There is, as you heard in my testimony on Monday talking about the different farms from east to west. So you've got horticultural differences, you've got production differences, you've got climate differences, you've got any number of samplings that may be different from east, central and west.

And so we felt like that that was a way that the industry, the 15 states could be well-represented. And so that's why we chose to divide the regions up that way.

Thank you. Mr. Adams, if you'd turn and now look at subsection (b) of 986.45?

Did you say (d)?
Q  (B).

A  (B).

Q  Especially (b)(I) and (ii), if you would, please. Let me know when you've had a chance to read those.

A  Which one are we looking at, (b)(I)?

Q  I'm looking at (b)(I) and (ii).

A  Okay, I'm with you. Okay.

Q  Mr. Adams, were you present for Dr. Hudson's testimony on Section 986.45(b) in Las Cruces?

A  Yes.

Q  Okay. When we were discussing the size diversity of grower and sheller seats as described here, there's a provision in number one where it says we want all growers and shellers represented but we specifically protected the small growers and shellers with a reserved seat, one for growers that -- and this says "do not farm more than 175 acres and one for shellers that is less than 12-1/2 million pounds." We'll come back to them later.
Do you recall when Dr. Hudson suggested it would be clearer -- I think on the suggestion of the Judge -- that in the language of (b)(I) where it says "acreage does not exceed 175," that it would be clearer if it says "acreage is less than 176." Do you recall that?

A  Yes.

Q  And do you agree that that would be --

A  I do.

Q  -- clearer there?

A  Yeah.

Q  Okay. We'll come back to that later in the next section, but I just wanted to confirm you thought that was a good idea to make that change.

A  I do.

Q  Thank you. But you do agree with the concept of needing a small grower seat and a small sheller seat. Is that correct?

A  No question.

Q  And why is that?

A  Well, again going back to how diverse
the industry is, I think it's appropriate to have representation of large, small, regional. And so by specifying one seat small grower seat and one seat as a small sheller seat would assure again deference to a important part of the industry.

Q Thank you, Mr. Adams. And so explain how y'all came to the size qualifications for large and small growers and large and small shellers. How was that arrived at?

A There were a number of factors. We ran numbers. We also looked at the definition in the Small Business Administration of what a small and large business is. And, you know, at some point you pick a number. But most of that was done by figuring what the return was in the -- what the return was to that small grower and if in fact that kind of captured that group of growers. And that group of shellers same way.

Q So, in conclusion, to protect the small growers you think 176 is the right split between large and small growers.

A I do, yeah.
Q: Okay. So to preserve the seat for the small growers. And with the small shellers, you do believe that's between the one million pounds of inshell pecan shelled and the 12-1/2 million pounds.

A: I do, yes.

Q: Okay. Thank you. If you'll turn your attention now to subsection (c).

A: Yes.

Q: Take a look and review that, please.

A: I have.

Q: Why did you include subsection (c)?

A: Well, again, we don't have a perfect vision forward, and I think that allows for, if conditions change that allows for the Secretary to address the changing times. And so that's why that provision was added.

Q: You heard Ms. Watts and Dr. Hudson address this issue, but what do you say to a skeptic that says we vote on this system but the rules say that the council can just scrap it all and put in new representation?
A Say that again.

Q Yes, I'm in (r)(I), and I would say --

A what do you -- you've heard the testimony of Dr. Hudson and also --

Q I have.

A -- Ms. Watts, and they've addressed this issue. But what do you say to a skeptic who says we vote on this system but the rules say the council can just scrap it all and put in new representation?

MR. DAVIS: Put up .55.

(Pause)

BY MR. QUIRS:

Q Did you understand the question, Mr. Adams?

A I'm not sure I do.

Q In (c) it says "a council may recommend, subject to the approval of the Secretary, revisions to the above requirements for grower and sheller seats to accommodate changes within the industry."

I'm just asking you what was that
provision in there for?

A    Well, I liked Helen's answer better than mine. But I think that's in there --

because she gave a good answer. Again it's to allow flexibility for -- to address future problems. The super majority issue and a council that again had the best interest of the industry in mind I think is going to be an overriding factor.

But again an answer to that skeptic is that the USDA oversees the order. The Secretary has that discretion. But the order as it's set up, the council that is set up is going to have the best interest in mind, and it would be highly unlikely that the Secretary's going to come in and override the council.

Q    Thank you, Mr. Adams.

MR. QUIR S:  I have no further questions of this witness at this time.

JUDGE GUTHRIDGE:  Are there any USDA questions?

MS. VARELA:  Jen Varela, USDA.
CROSS-EXAMINATION

BY MS. VARELA:

Q Mr. Adams, I want to follow up on that same paragraph you were just talking about, and specifically responding to that idea that it might be too easy to make changes to something so important. Knowing what you've learned about the process of amending an order when it's already in place, what's your understanding of what the alternative would be if there were some changes in the industry that needed to be reflected in the order? What would that process be if the industry changed and you needed to make some changes to this makeup here?

A How would that be done?

Q How would that be done if you didn't have this provision here?

A Well, I'm not sure how it would be done. But I think there's an amendment section in the order that would allow for that.

Q And what is your understanding of the usual timeframe for putting an amendment in
place?

A I don't have one.

Q Okay. Thank you.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Mr. Adams, I kind of had the same question that Ms. Varela had, but let me approach it in a different way. So based on your statement, you said that in this proposed paragraph (c) that it would allow the council to make recommendations subject to the approval of the Secretary. Right?

Again based on your experience, is that -- based on your experience as well as the intent of the board in terms of drafting the guidelines for making such decisions, is that type of recommendation or decision something that could be done quickly and easily without any discussion?

A No.

Q So would there be a process involved?
A  Yes.

Q  Yes. But is it important for the
    future council to be able to have the authority
to make recommendations?

A  I think so, yeah.

Q  Does that provide some flexibility to
    adapt to future changes?

A  It does.

Q  So if this paragraph (c) didn't exist,
    would that council have that flexibility?

A  No.

Q  So if that flexibility wasn't there
    and something really needed to be changed in
    terms of -- USDA terminology, we refer that to a
    formal amendment. So if there was a structural
    change that needed to happen and you didn't have
    this flexibility, in order to make that change
    would a whole new process of a public hearing and
    everything that we're doing now, would that be
    required?

A  Right. And I see the reason. In
    fact, we were well-advised during the process to
put this flexibility in, and I think it makes sense. Because we don't know what the production area's going to look like, and we don't know if the production is going to change. So yes, that was done so that we wouldn't paint ourselves in a corner.

Q: All right. But having said that, that flexibility, there's still a process and a due process that needs to be followed. Correct?

A: Yes.

Q: Right. And are you confident that through that process there won't be irrelevant or inappropriate changes made without forethought?

A: I would sure hope so.

Q: Okay. Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIRÓS: Yes, just one follow-up.
BY MR. QUIRS:

Q So if in the future, just say practically, you determine that you were not getting enough small sheller seat or small grower seat nominations because small growers or small shellers had changed from 176, below 176 acres or below 12-1/2, you could make adjustments to make sure you had a diverse council. Is that correct?

A Yes.

Q All voices of the industry would be heard.

A Yes.

Q Thank you.

MR. QUIRS: No further questions on this section.

JUDGE GUTHRIDGE: Any USDA questions?

CROSS-EXAMINATION

BY MS. CHILUKURI:

Q Mr. Adams, do you have any estimates as to how many shellers fall above and below the 12.5 million pounds threshold?

A It is a rough estimate, but yes. I
made -- we actually polled the industry, and the numbers, the best numbers that we could come up with is that there were probably 250 handlers of which only 50 -- or I mean shellers of which only 50 would be above the million pounds. And of that only about 14 or 15 would be above the 12-1/2.

Q Just so I'm understanding. You said 15 to 15 are above 12.5 million?

A Uh-huh.

Q And 50 would be above one million?

A One million.

JUDGE GUTHRIDGE: Fifty in addition to the 14 to 15?

THE WITNESS: No. Again, you need to understand this was just rough. I had to come up with a number based on the polling that we did. But 50 that were above the -- 50 above the million pounds and of those 50, 14 to 15 were in that large sheller category.

BY MS. CHILUKURI:

Q And the original number of 250 refers
to the one million pound threshold in the
definition section?

A Below the -- yeah. That would be just
a very small -- I mean that could be a roadside
sheller. I mean that's just a --

Q So 250 is not necessarily the sheller
definition that --

A Right.

Q Okay. So just to clarify once again.

So 50 refers to the commercially viable shellers.

A Yes.

Q Thank you.

BY MR. HILL:

Q Can you please look at Section
986.53(d) as in David.

A What?

Q .53(d).

A Say that again, Mr. Hill.

Q 986.53 --

A Three?

Q -- (d), yes, as in David.

A .53(e).
Q D.

A Okay. Powers. To recommend to the Secretary amendments to this part, is that it?

Q Yes.

A Okay.

Q (d) says to recommend to the Secretary amendments to this part. Do you read that to give you some of the same powers, the same leeway that you stated in Section .45(c)? Would you read that -- would you interpret that the same way?

(Pause)

A .45(c)?

MR. DAVIS: I've got it up on the overhead now.

THE WITNESS: Oh.

MR. DAVIS: I finally found it.

MR. HILL: And related to 45(c), Mr. Davis, if you have it.

THE WITNESS: Yes. Yes.

MS. SCHMAEDICK: Your answer is yes, it is different?
THE WITNESS: No. No, no.

MR. DAVIS: If it's the same.

THE WITNESS: It's the same. All right. I mean in the context where the, again where the Secretary would have discretion, that's what I was answering to.

MS. SCHMAEDICK: Could I -- Melissa Schmaedick, USDA. Could I follow up Mr. Hill's question?

THE WITNESS: Yes.

BY MS. SCHMAEDICK:

Q So -- I'm trying to formulate this question, so give me a minute.

A And I'm trying to understand the difference, so.

Q Okay. So, Mr. Adams, when you were working with the American Pecan Board did you discuss the need to have flexibility in terms of making recommendations to USDA, the Secretary for consideration and the importance of having a method which was relatively short compared to this process of a formal hearing? Is it -- let
me rephrase that.

So in your work with the board were there some areas where the board felt that the future council needed flexibility to make suggestions and to have those suggestions still go through the process of a public comment but to have that public comment and then the, if supported, the effectuation of that change happen relatively quickly, let's say three months?

Was that the intent in terms of adding in language similar to the language that was described in paragraph (c) that we were just talking about, the council being able to make recommendations to the Secretary and having that flexibility?

A Let me see if I can state where I think you all are going. And then -- because I've studied some other marketing laws. Take almonds, for instance. Almonds has the -- I don't know what they call their council but they have the discretion to set an assessment rate based on prior year numbers. And they do that
relatively easily. Okay?

In other cases there are more substantive provisions that take -- they're going to have a longer range effect that need to be considered in a more deliberative manner, that take more discussion by the -- they require greater process.

So there are some issues like an assessment rate that you can describe pretty easily, and there are others that take more deliberation. And so I think that's the intent here. Now, how -- what it relates to .45 or .5(c) or .13 or .45 I don't know. But I'm telling you that's what the intent was.

There are some issues that are more long-range and take a little more vision that we would take to the Secretary or make recommendations to the Secretary. And there are others that I think that he wouldn't want us to bother him with or she wouldn't want us to bother her with.

So that's kind of where I come down.
Now, how it relates to these numbers. I'm hoping that's where you're headed, Ms. Schmaedick.

Q     Thank you for that explanation.

That's very helpful. So just to clarify then, in your opinion there is a difference between the sort of quick recommendation and not flexibility and then the more substantive weighty issues that need to have full attention and a public hearing and the full process.

A     You bet. There's two broad categories, yes.

Q     And both of those processes have importance, they just are appropriate in different contexts.

A     That's correct.

Q     Okay. So is it important for the council to be able to have that flexibility for the shorter process?

A     Yes.

Q     And is it important for the council to be able to also make recommendations that require the longer process?
So in 986.53 in your opinion does that statement give the future council the authority to make recommendations for the longer amendment process?

Yes.

Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Is there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIR S: Yes, thank you,

Your Honor.

DIRECT EXAMINATION

BY MR. QUIR S:

Please turn to Section 986.46, Council Nominations and Voting.

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIR S: Yes.

JUDGE GUTHRIDGE: Could I ask at this point it's 12:25, do you want to get into another
section now or is there any preference on
breaking for lunch at this time?

MR. QUIR S: Your Honor, there may be
wisdom on breaking for lunch. This is probably
the longest section that we will ask Mr. Adams
about. And subject to USDA's preference, it
might be better to take a break now. Because I
think it may take a while to go through this
section.

JUDGE GUTHRIDGE: All right.

Ms. Ritchy? Where'd she go?

MS. RITCHY: Hi. I'm sorry.

JUDGE GUTHRIDGE: Has anybody signed
up to --

MS. RITCHY: No.

JUDGE GUTHRIDGE: Okay. All right.


MR. QUIR S: Thank you, Your Honor.

JUDGE GUTHRIDGE: Recess until 1:30.

(Off the record at 12:26:24 p.m.)

(On the record at 1:30:41 p.m.)

JUDGE GUTHRIDGE: Back on the record.
MR. DAVIS: As we mentioned during the break, we appreciate your accommodation, the accommodation of the USDA. We would like to hold the rest of Mr. Adams's testimony for a later time in order to accommodate witnesses that have to be at other places and had only allotted a certain amount of time.

So we would like to call Ms. Cindy Wise.

JUDGE GUTHRIDGE: And I assume there's no objection from USDA.

MR. HILL: There's no objection, Your Honor.

JUDGE GUTHRIDGE: Please raise your right hand.

(The oath was administered.)

JUDGE GUTHRIDGE: Thank you.

Whereupon,

CINDY WISE

having been first duly sworn, was called as a witness herein and was examined and testified as follows:
DIRECT EXAMINATION

BY MR. DAVIS:

Q     Good morning, Ms. Wise. Would you -- you've been sworn but please state your full name and spell it for the record.


Q     Ms. Wise, let me hand you what has been introduced in this record as Exhibit 1 and Exhibit 23. We may refer to those. Exhibit 1 is the proposed marketing order for pecans. And I just ask if you had an opportunity to review that?

A     Yes.

Q     Okay. And then Exhibit 23 is the summary of the economic analysis of the proposed order by Dr. Marco Palma. And again have you had an opportunity to review that?

A     Yes.

Q     Ms. Wise, I understand that you may have a prepared statement that you would like to give to the tribunal.
A  I do.

Q  Please proceed.

A  As stated, I'm Cindy Wise. I live in Bryan, Texas. I'm currently the Executive Vice President of the Texas Pecan Growers Association and serve as editor of our industry's national publication, Pecan South Magazine.

I have been authorized by the board of the Texas Pecan Growers Association to testify on its behalf in support of a Federal Marketing Order for pecans, and I've written a letter on behalf of my organization to the Secretary of Agriculture in support of the proposed Federal Marketing Order. It was co-signed by myself and our current president Joe Massey. I'm also testifying in my individual capacity in support of the Federal Marketing Order for pecans.

Texas Pecan Growers was formed in 1921 and incorporated in 1967 --

Q  Let me interrupt you just one second, if I could. Your resume is attached to your statement?
A      Yes, it is. Sorry.

Q      And your -- the letter from the Texas

Pecan Growers Association is also attached to

your statement. Is that correct?

A      I provided that, yes.

Q      We have it.

A      Yes.

MR. DAVIS: Your Honor, the proponents
tender Exhibit 41, the statement, resume, and
letter from the Texas Pecan Growers Association.

(The document referred to

was marked for

identification as Exhibit

41.

JUDGE GUTHRIDGE: Is there any

objection from USDA?

MS. SCHMAEDICK: No objection.

JUDGE GUTHRIDGE: Any objection from

the audience?

(No response.)

JUDGE GUTHRIDGE: Hearing on

objection, Exhibit 41 is admitted into the
record.

(The document previously marked as Exhibit 41 was received in evidence.)

MR. DAVIS: Thank you.

BY MR. DAVIS:

Q Now proceed, if you would, please.

A All right. The purpose of the Texas Pecan Growers Association is to assist Texas pecan growers in growing pecans profitably through education, research, and promotion of consumption.

It has over 600 members.

Approximately 50 percent of our members are classified as small businesses under the guidelines provided by the Small Business Administration, which is less than $750,000 in annual gross revenue from pecans.

The American Pecan Board has kept our organization informed about its efforts to propose a Federal Marketing Order. We have been informed about the process and we have been given an opportunity to participate in that process.
The American Pecan Board's information has been often reproduced or reported on in Pecan South Magazine.

Q     Let me interrupt you again, and I'm sorry.

A     That's okay.

Q     Tell us a little more about pecan growers magazine, how is it distributed and in what geographic areas and how is it physically distributed?

A     Right. Pecan South -- I'm holding up a copy of right here -- it's a monthly magazine, it's owned and published by the Texas Pecan Growers Association. It serves as basically the national publication for the pecan industry.

It's distributed, our current distribution is, any given month, between 4300 and 4400. The vast majority of those are pecan growers, and that includes other industry participants as well. It goes to members of most all of the pecan growers associations across the United States, from California, Arizona, New
Mexico, Oklahoma, Louisiana, Alabama, Georgia, Florida. We cover all the pecan states, and we have some international distribution as well.

Q     Would it be accurate to say that you have some recipients of the magazine in each of the 15 states that comprise --
A     Yes.
Q     -- the territory covered by this proposed FMO?
A     Yes. We're all -- we have subscribers in all of the pecan states.
Q     And is Pecan South also available on line?
A     It is.
Q     Approximately how many articles concerning, referring, relating to the proposed FMO would you say that Pecan South has run in the last two years?
A     I didn't count them up but I would estimate anywhere from six to 10 articles, more than six I believe, probably eight to 10 articles over the last two years.
Q And in particular did Pecan South provide notice to the industry about these hearings?

A We did. It’s been reported in -- since the hearings were announced it has been included in every magazine that's been published since the announcement.

Q Thank you so much. Now, returning to your statement, do you have before you Exhibit 23?

A Right.

Q Okay. Is that the economic analysis proposed, the proposed order by Dr. Marco?

A Yes.

Q Okay. Please continue then.

A All right. And I have reviewed that analysis of the proposed order by Dr. Palma. The Texas Pecan Growers Association is fully aware of the anticipated cost that will be incurred by its members if the Federal Marketing Order for pecans is implemented. And we do not believe that these costs will be unduly burdensome on our members
regardless of their size.

Further, we believe that the benefits of such an order will result in increased marketing, more accurate data of crop production, and increased domestic demand for pecans, and will greatly outweigh any burden that would be placed on our members.

The Texas Pecan Growers Association does not believe that the American Pecan Council, which will be formed as a part of the Federal Marketing Order, will in any way conflict with the goals and purposes of the Texas Pecan Growers Association. To the contrary, we believe the American Pecan Council will complement our efforts.

Finally, we understand that under the proposed Federal Marketing Order only growers with more than 30 acres or 50,000 pounds of pecans will be eligible to vote to approve or disapprove of the proposed order.

We have discussed this among the membership of the Texas Pecan Growers
Association, and we believe that this is a reasonable and fair classification. Because any grower that is smaller than this would not be a commercial entity. It's the commercial pecan growers who really move the pecan industry forward.

In conclusion, the Texas Pecan Growers Association fully supports the proposed marketing order for pecans, and I will encourage our members to vote in favor of it. And I personally endorse the proposed Federal Marketing Order for pecans, and I encourage the Secretary to implement it as soon as it is approved.

Q     If I could ask you to take a look at -- I'm putting up now what is attached to Exhibit 41, the letter from the Texas Pecan Growers Association. And if you would not mind reading that into the record, I would appreciate it.

A     Okay. I forgot to bring my, didn't my coffee. All right.

Yes. The letter that we authored to Secretary Vilsack states: "The Texas Pecan
Growers Association 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 consistent quality supply of pecans to domestic consumers at a price that supports a profitable return 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 Texas Pecan Growers Association goes on record in favor of the order and greatly appreciates your support."

Q Thank you so much, Ms. Wise. Time is short but I would like to devote just one second on -- in the winter edition of Pecan South was there a cover story, and dare I even say an inspirational cover story about a new pecan farm that had been started in Georgia called Key Springs Pecans?
There was.

And it's owned by a Mr. Quirós and a Mr. Davis?

That's correct.

Would you agree with me that Mr. Quirós was quoted extensively in that article?

He was.

And there was a picture of Mr. Quirós in that article, was there not?

Yes, there was.

Now, I'll remind you you're under oath. Did Mr. Quirós in any way influence you to come and interview him while Mr. Davis was on vacation?

It was strictly a matter of the opportunity arose.

Okay. Well, thank you very much for the article, it was very good. Thank you.

MR. DAVIS: We have no questions at this time, Your Honor.

JUDGE GUTHRIDGE: Does USDA have any questions?
MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q    Good afternoon, Ms. Wise.
A    Hello.
Q    Thank you for your testimony. So you stated that you are currently the Executive Vice President of the Texas Pecan Growers Association. Is that correct?
A    Correct.
Q    How long has this organization been around?
A    In existence?
Q    Uh-huh.
A    Since 1921. We claim to be the oldest agricultural commodity organization in the state.
Q    Fabulous. Thank you. And how long have you been with the organization?
A    Over 30 years.
Q    Thank you. So I first want to ask you about your constituents, the growers of Texas.
And you mentioned the study by Dr. Palma. Have you read that study?

A I have -- I could not give that back to you in a lot of detail but I have read it.

Q Okay. That's okay. So but in terms of your general impressions of the study, did Dr. Palma accurately capture the profile of your constituents in terms of looking at costs and sort of their general operation, the challenges and the things that impact their operations?

A Yes, I think so.

Q So based on your understanding of the study and your knowledge of your constituents, do you think that study was an accurate reflection and therefore the conclusions that were reached, do you think those are applicable?

A I do. And I think it was a fairly conservative approach, not overstated in any way by Dr. Palma.

Q Thank you. You mentioned briefly that your organization does -- well, you support Texas pecan growers in growing pecans profitably
through education, research, and promotion of consumption. Can you give me an example of some of the activities that you do other than the magazine?

A     Yes. One of our biggest projects each year is to host an annual conference and a trade show, which we just completed last week in fact. It's a large event each year. We have two full days of educational programming and a trade show that corresponds with that. We have -- we usually conclude that event each year with a field day where growers are able to see out in the field things either related to growing or processing.

Q     And you mentioned research. Do you have any current research projects?

A     We are giving funds to researchers who are doing research through Extension at Texas A&M.

Q     Thank you. And so on page 2 of your testimony you say "we believe the American Pecan Council will complement our efforts." Does that
mean that -- do you anticipate any sort of negative impact on your organization if this program were to become effectuated?

A No, I don't. Our resources, since we're only a state organization our resources are fairly limited. I anticipate that the resources that a federal order would generate would be much more significant, and they would be able to expand the scope of those activities far greater than what we do.

Q For example, in the area of research would you consider maybe cooperative pooling of resources? Would that be beneficial?

A Absolutely.

Q And is that the type of cooperation that you were --

A Yes.

Q -- anticipating?

A Yes.

Q Okay. Thank you. Based on your -- so let me just again make sure that you've read Exhibit 1, which is the proposed program. So
you're aware of the proposed council and the regions that are identified?

A Yes.

Q So in your opinion does the proposed council and the representation of growers per region and shellers per region, are you confident that that accurately or will accurately and fairly represent your area in the program?

A Yes, very confident that it does.

Q Thank you. And then, lastly, given your extensive experience with working with an association and in your reading of the proposed program, were you able to follow the certain sections that have to do with the administrative functioning of the program? I guess I'm referring to the types of responsibilities that the council and the staff would have.

A Yes.

Q Do you think that those are reasonable and necessary for a effective program?

A I believe so.

MS. SCHMAEDICK: That concludes my
questions. Thank you.

MR. HINMAN: Don Hinman, USDA.

BY MR. HINMAN:

Q Good afternoon.

A Hi.

Q You had clearly testified about representing the views of the Texas Association in regard to the promotional benefits as specified in Dr. Palma's study. So I want to ask you about two other benefits that have been the subject of testimony by the proponents.

A Okay.

Q You mentioned more accurate crop data and, you know, market data. Could you say a bit more about what you think the Association members feel about the benefits of more accurate crop and market data?

A I think our members feel much like Ms. Watts expressed this morning, that the lack of accurate data is very important -- I mean the lack of it is very apparent in our industry, and having accurate data would be of great value to
growers as well as to processors, which she represented.

But growers would benefit equally from that, would allow them to have better ideas of the prices that they should be selling their pecans for. And so it would be tremendously beneficial for growers.

Q Thank you. And one additional benefit is the one that has been discussed by the various proponent witnesses, relates to 986.69, Authorities Regulating Handling. And in that authority what would be, what could be adopted through a Federal Marketing Order would be, for example, standards for grade sizes and qualities.

Now, was that benefit also discussed by the Texas Association and did they discuss the -- was it the view of the organization that there was substantial benefit to be gained from -- if those were implemented, that those would result in substantial benefits to the industry? That would be standards for grade sizes or qualities.

A I think growers would concur that it
would be a benefit to have those standards established. It would allow proper recognition of the value of their product. It would be able to allow categories to be distinguished and values established for various categories.

Q    Thank you.

MR. HINMAN: No further questions.

BY MS. CHILUKURI:

Q    Ms. Wise, you say that 600, you have, the Texas Pecan Growers Association has 600 members?

A     Right.

Q     And approximately 50 percent of those members are small businesses. Of that 50 percent, do you know how many would meet the grower definition in the proposed order?

A     The grower definition being that was it established on acreage?

Q     Either acreage or pounds.

A     So --

MS. SCHMAEDICK: Minimum 30 acres, 50,000 pounds.
THE WITNESS: I don't know that I could tell you precisely. Because we don't require that information from our members. We do -- probably at least half of our members fall in our smallest membership -- our membership is categorized by how many trees, bearing trees that the grower has. And we don't do any type of verification process to determine whether the category they selected is accurate or not. But I do know that over half of our members fall into our smallest category of membership, which is under the 30 acres.

BY MS. CHILUKURI:

Q     And I suppose with those members have any of them that you know, have they expressed any concern about the threshold or not being able to participate?

A     We have probably had comments, one or two comments expressing concern over that, but very few.

Q     Okay. Thank you.

MS. VARELA: Jen Varela, USDA.
BY MS. VARELA:

Q       Ms. Wise, I just wanted to ask you a
couple of follow-up questions based on some of
the work you've done with Pecan South over the
last year as this process has come through.
You've been present at a number of the different
association gatherings and trade shows that the
American Pecan Board has presented at. Correct?

A      That's correct.

Q      And how would you characterize the
information exchange at those with members of the
industry? Was it kind of one-way description or
was there a lot of question and answer?

A       I observed quite a bit of interaction.
I've been present when both you and Ms.
Schmaedick have presented information and have
been available to answer questions, and have seen
the interaction and questions presented there.

I've also been present when Mike Adams
or other members of the American Pecan Board have
just presented information about this effort, and
they have been entirely, completely available to
answer questions. And questions have been posed and answered. So I think there's been a good exchange of information.

Q    And would you say that was consistent across all of the regions that they visited?
A    Yes, I would.
Q    Thank you.

MS. VARELA: There are no other questions from --

JUDGE GUTHRIDGE: Are there any other USDA questions?

MR. HILL: No, Your Honor.

MR. DAVIS: I may have just a couple of follow-ups, if I may, Your Honor.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q    Let me pick up on Dr. Hinman's question about reliable information. Does Pecan South Magazine publish from time to time estimates on the current crop or upcoming crop?
A    Yes, we do.
Q    And are there in fact more than one
estimate published from time to time?

A   Yes, there is. We have several informal ones and then we also publish the data that USDA releases.

Q   Would you say that there is consistency or inconsistency within a given year among and between those estimates?

A   I would say there's inconsistency.

Q   Is that an annual recurrent event --

A   Yes.

Q   -- that there just seems to be a great difference amount? So there really -- in your opinion, is there currently any really accurate, reliable estimates on the current crop year that's available to the industry?

A   No.

Q   Okay. And do you believe that through the workings of the council and the authority that they've been given that they could perhaps come up with much accurate estimates?

A   Yes, sir.

Q   And would that be a benefit to your
members --

A     That'd be --

Q     -- in Texas?

A     -- tremendously helpful.

Q     Okay. Let's go back to that -- I'll refer you back to your statement at the bottom of page 2 and the top of page 3 that you understand the qualifications or definitions of grower in this proposal as being 30 acres or 50,000 pounds of pecans. And if I understood your testimony, you have some significant number of members that may be less than 30 acres. Was that your testimony?

A     Yes.

Q     But you don't have any data on how many of your members would have less than 50,000 pounds of nuts during a given year, would you?

A     We do not.

Q     And again would you reiterate your statement that you still believe that those are fair, that's a fair way to determine what kind of grower would be a commercial grower as opposed to
 more just a hobby grower or a yard orchard?

   A    Yes, I do.

   Q    Thank you.

MR. DAVIS: I believe those are all

the questions I have, Your Honor.

JUDGE GUTHRIDGE: USDA have any

questions?

MS. SCHMAEDICK: Melissa Schmaedick,

USDA.

RECROSS EXAMINATION

BY MS. SCHMAEDICK:

   Q    Ms. Wise, I forgot to ask you when I

was asking about the potential impact of the

proposed marketing order on the Texas Pecan

Growers Association do you anticipate your

activities, your current activities -- do you

anticipate them changing in any way?

   A    No, I do not.

   Q    Okay. Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Any more questions

from USDA?
JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: And none from the proponent, Your Honor.

JUDGE GUTHRIDGE: Does anyone in the audience have any questions for Ms. Wise?

(No response.)

JUDGE GUTHRIDGE: Seeing none, Ms. Wise, you're excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. QUIRÓS: Your Honor, we'd like to call Dan York.

JUDGE GUTHRIDGE: While he's handling that, could you please raise your right hand?

THE WITNESS: Yes.

(The oath was administered.)

JUDGE GUTHRIDGE: Mr. Quirós?

Whereupon,

DAN YORK

having been first duly sworn, was called as a witness herein and was examined and testified as
DIRECT EXAMINATION

BY MR. QUIR S:

Q    Thank you for joining us today, Mr. York. I understand that you're from Arkansas. Is that true?

A     That's correct.

Q     Thank you. We'll get to that in just a moment. As part of the basis for the testimony you're going to give I'm going to ask you if you've received and reviewed a copy of what's been marked Exhibit 1 in these hearings, which is the notice prepared by the USDA and published in the Federal Register that contains the proposed Federal Marketing Order for pecans?

A     Yes, I have.

Q     And have you received what's been marked as Exhibit 23, which is an executive summary of the economic testimony that was given by Dr. Marco Palma in these hearings?

A     Yes, I have.

Q     Thank you. Mr. York, I understand
that you have testimony for us today that you'd
like to read that has been introduced in the
court. But if you would please go ahead and read
it, we would appreciate it.

A     All right. My name is Dan York. It
is spelled D-A-N  Y-O-R-K. I live in Little
River County, Arkansas. I am the owner of the
York Pecan Company. York Pecan Company has a
pecan farm in Foreman, Arkansas.

We have over 250 acres of pecans
currently in production, which are mostly native
and seedlings. We are also planting 30 acres of
new pecan trees that will not be in production
for another seven years, which are improved
variety pecans. In 1999 we began the shelling
segment of our pecan business.

A copy of my resume is attached. I am
a fourth generation farmer, and my roots go back
to 1887 when my great-grandfather James L.
Patterson bought land in Red River Township in
Red River County. It was my father Bill York who
introduced the family to the pecan business in
the 1950s by clearing the bottomland timber and
carefully leaving the native pecan trees
untouched.

Under the Small Business
Administration guidelines, we would be classified
as a small pecan grower and a small sheller,
grower revenue less than $750,000 and sheller
gross revenue less than $7 million, although a
few times in recent years we would have been
classified as a large sheller 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 inshell pound for
improved and 3.6 cents for native seedling versus
the average 2.5 cents and 1.5 cents per inshell
pound respectively.

As a grower, I am aware of the costs
that the proposed Federal Marketing Order may
impose on my farm, and I do not believe those
costs are unduly burdensome. I believe as a
grower that the benefits of the Federal Marketing
Order to my farm would greatly outweigh any costs associated with it.

I am aware that the proposed order may impose some direct costs on my shelling operation, such as the 1 to 3 cent per pound assessment.

I am also aware that 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 assessments to the American Pecan Council. I believe these costs are reasonable and not unduly burdensome. I believe as a sheller that the benefits of the Federal Marketing Order outweigh the costs.

In recent years I have seen wide variation in the prices we have received for our pecan crop. Some years late in the season native seedling pecan offerings would receive bids below the production costs or no bid at all. Such wide variation in pricing makes it extremely difficult to plan for my pecan growing operation and even more difficult for my industrial customers to
make long-term plans for their use of pecans.

Research and development for new pecan-containing products is adversely impacted by this price volatility. While prices for pecans go up and down dramatically from year to year, our costs of production have steadily increased.

Also the lack of accurate market information on the anticipated size of the pecan crop in any given year increases the market volatility and makes it difficult for me to negotiate a fair price for my crop or buy pecans fairly from others. The marketing policy information provided for in 986.65 with a required two-thirds vote of the council is exactly the correct way to improve this situation.

Increased price stability and more accurate market information would greatly benefit my small family pecan operation. I think my farm and the shelling business 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. We need
to have a complete discussion of this
industrywide, and the American Pecan Council
would be an excellent forum.

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, the 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 would lack the
commercial viability to make the required
investments to produce pecans.

I also understand that only shellers
who handle more than one million pounds of
inshell pecans per year will be allowed to vote
on the proposed order. I believe this is a fair
threshold. A sheller below this level would most
likely be a seasonable producer serving a small retail customer base whereas a commercial sheller above this threshold would employ a full-time labor force and have extensive capital invested, making year-round production necessary.

I also participated in the debate of where the line should be drawn on large and small shellers for the council seats for shellers in each region. I agree that the 12-1/2 million inshell pounds is an appropriate distinction between large and small or medium-size shellers.

I am currently the Vice President of the American Pecan Board, and I have been actually involved in the entire process of proposing the 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'll be glad to try to answer any questions that anyone may have.

Q Mr. York, we have a few questions.
It's in regard to your resume. If you would please turn to that and help me with that.

A  Yes, sir.

Q  Tell me what the Miller-Bowie Co-op is.

A  Miller-Bowie's a local farmers cooperative in Texarkana, Arkansas.

Q  And what does BOD mean?

A  I'm sorry, could you repeat that, please?

Q  Yes. It says, after that it says BOD. Does that signify --

A  Oh, that's board of directors.

Q  And you're on the board of directors --

A  Yes, I am.

Q  -- for that group. And tell me about the Red River Valley Association BOD, what is that?

A  The Red River Valley Association is a four state association of individuals along the Red River who work to improve and develop the Red
River Valley.

Q And does BOD also mean board of directors?

A Yes.

Q So you're in a leadership capacity in both of those organizations?

A Yes, sir.

Q And tell me about the Arkansas Red River Commission Chair, what is that?

A The Arkansas Red River Commission is a commission appointed by the governor to again promote and develop the Red River Valley, and I'm the Chairman of the commission.

Q And tell us about the last one says National Pecan Shellers Association SEC. I know that you all are in the SEC, I just didn't know what -- explain to us what that is.

A Well, thank you for throwing that in. But that's secretary.

Q And so you're the Secretary of the National Pecan Shellers Association?

A Yes, sir, that's correct.
Q    And that organization is what, what do they do?

A    The National Pecan Shellers is comprised of pecan shellers, of course, and we fund research and development projects to try to improve the awareness and improve the consumption of pecans. And we also estimate the crop size and try to do what we can to improve the information for crop size and crop acreage.

Q    Thank you, Mr. York.

MR. QUIR S: Your Honor, we tender now what has been marked Exhibit 42.

(The document referred to was marked for identification as Exhibit 42.)

JUDGE GUTHRIDGE: Any objection from USDA?

MS. CHILUKURI: No objection,

Your Honor.

JUDGE GUTHRIDGE: Is there any objection from the audience?
(No response.)

JUDGE GUTHRIDGE: No objection having been heard, Exhibit 42 is admitted into the record.

(The document previously marked as Exhibit 42 was received in evidence.)

MR. QUIR S: We have no further questions of the witness at this time.

JUDGE GUTHRIDGE: Are there any questions from USDA?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q     Good afternoon, Mr. York.

A     Good afternoon.

Q     Thank you for your testimony. I believe that you are the first witness that we've had the pleasure of speaking with who is a producer of native pecans.

A     Okay.

Q     Would you mind if I asked you about
Q: Okay. So just based on some of the information that we've had already given to us, it's my understanding that native pecans, they self-propagate and they are not always planted in very neat or intentional rows. Is that descriptive of some of your pecan acreage?

A: Yes, that's a good description. They came up naturally randomly.

Q: So you indicate that you have over 250 acres --

A: Yes.

Q: -- of pecans. Can you tell us what those acres look like?

A: Well, they -- in Little River County the definition of an acre of seedling or native pecans is 14 bearing trees. So you count the trees on the land that you own and divide it by 14, and that's how many acres you have. But they're spread over more than 250 acres.

Q: So the actual physical land is more
than 250 acres?

A  Yeah.

Q  Okay. Now, you just said 14 trees. Based on testimony that I've heard from other growers who have improved pecans, that doesn't seem like a lot of trees per acre. Is that less than what you would find per acre on an improved farm?

A  Yes, I think so.

Q  So why 14 acres?

A  Well --

Q  I mean why 14 trees? Excuse me.

A  It's hard to say exactly. That's been in, that's just been in existence for quite a while. One reason though would be your native trees are very large, often very large. And that's part of the reason. Whereas if you, you know, have your improved trees planted closely and you hedge them, well, they never really get very large.

Q  What do you mean by hedging?

A  Hedging is a practice to cut the outer
extremities of the limbs and force the crop back
in towards the main stems of the tree and let
more sunlight in to the canopy.

Q     Do you do that with native trees?
A     No.

Q     And are you familiar with a term that
we had discussed in Las Cruces, the term is FSA
pecan acre, FSA being the Farm Service Agency.
Are you familiar with that term?
A     Yes, I'm familiar with FSA. And
that's where the 14 trees per acre came from.

Q     Great. Thank you.

MR. QUIR S: Mr. York, I put that up
too, that definition, if sometime if you want to
refer to it.

THE WITNESS: Thank you.

BY MS. SCHMAEDICK:

Q     So, Mr. York, can you tell us about
the production of native trees. Is it cyclical
like the improved varieties?
A     It can be. Yes, it is. There's
certain management practices that would help that
and not let it be so extreme, but for the most part they're cyclical.

Q  Now, what is the average yield for a native tree? At least in your area.

A  In my area, actual production history that I've been able to produce is about 500 to 600 pounds per acre.

Q  So how does that compare to, let's say, the average yield of improved varieties in the central region?

A  Well-managed improved varieties would probably make more than that, and undermanaged could easily make less than that.

Q  And improved varieties of the east?

A  I would say the same for eastern region also.

Q  Okay. Thank you. So you mentioned that you -- oh, wait, before I --

MR. HILL: Just could you please move the microphone a little closer --

THE WITNESS: Yes, sir. I'm sorry.

MR. HILL: -- so we can --
THE WITNESS: Is that better? Okay.

Sorry.

BY MS. SCHMAEDICK:

Q So you mentioned a couple of things.

On page 2 of your testimony at the very, very bottom, I'll read the sentence for you. You say "some years late in the season native seedling pecan offerings would receive bids below cost of production or no bid at all."

Can you talk to us about what your cost of production is? What goes into your cost of production?

A Well, you have machinery and labor, and you have the opportunity cost on your land, fuel. And, you know, beyond that if you fertilize your pecan trees or if you spray pesticides on them or -- that would be an increased cost.

Q And are those costs of production different from what you might typically find on a improved farm?

A In my opinion the cost to produce
native pecans is lower than the cost to produce an improved pecan.

Q     What's the major difference? What causes it to be --

A     The native pecans are indigenous and they just are less susceptible to diseases and insects. And they are quite hardy and have very expansive root systems, and they can stand swings in the climate quite well. And for those reasons you have less input.

Q     You mentioned that you're a fourth generation farmer. Is that correct?

A     Yes, that's correct. Yes.

Q     So how old do you think your trees might be?

A     Oh, I think the oldest tree, I read recently someone said is around a thousand years old.

Q     No way. Seriously?

A     Yeah. Eight hundred to a thousand. And we had some trees bored in the 1976 bicentennial, and they were 300 years old.
Q  Wow. That is impressive. I am very impressed. So I'm curious, you know, in this statement at the bottom on page 2 you say you receive bids below the cost of production, yet your cost of production is lower than the cost of production on improved varieties.

A  That's correct.

Q  So why are the bids so low?

A  Well, there can be, you know, several reasons. But late in the year like on a big crop, if there's a large crop, late in the year the buyers may be low on cash would be one thing. The end users may have all the bookings that they need for the coming year, so they're not really pursuing additional bookings.

So then if you're a handler and you're low on money and no one really wants to buy the pecans, you're speculating and chances are you're not going to pursue them as strongly as you would if you had a bona fide buyer willing to buy them from you. And those factors stack up to create volatility.
Q So are there attributes of the native pecan that would cause a buyer to choose an improved variety over a native variety at the onset of the marketing year?

A Some buyers, a few buyers prefer native, some buyers, a lot of buyers prefer improved pecans. Improved pecans are going to be more reliable. And the native pecans come off later in the year.

Your improved varieties are grown further south, they come off sooner, and they're actually selected because they mature earlier, a lot of them are. So you get early into the holiday trade also with improved orchards that are early maturing.

If you have a late maturing, which often they almost are, especially up in Arkansas and Oklahoma, Missouri, north Texas, well, then you're going to be in probably November 10 to November 15 before you really get into harvest. It'll be a month behind or more from the large improved orchards further south.
Q    So if I'm understanding correctly, your production cycle is different from the improved varieties, for the most part, in the --
A    They overlap but it's a little different. It's a little later. And the rule of thumb is the later the pecan comes off it's going to have less value.
Q    I see. Thank you. So I'm just curious, how common is it to get a bid that's below the cost of production?
A    Well, a lot of factors come into play, but in the last five years we've seen some fairly low prices two of those years, quite low. I would say below production.
Q    So in your --
A    Late in the year.
Q    Late in the year. So in your testimony you mentioned some of the, some of your anticipated benefits of the program, but I'm wondering if you could talk about the benefits specific to the native industry. It appears that the native industry is struggling quite a bit of
you're getting bids below the cost of production.

How would this marketing order help you and your
fellow native producers?

A    Well, of course now natives, they
don't have the exclusive on getting a low bid.
You can get a low bid for other pecans too. But
you can also get a high bid. And if we increase
the awareness of pecans and manage our affairs to
minimize price volatility so that they'll be more
appealing to end users, by doing that then we
will raise the market.

And even your later pecans will be
desirable because pecans will be more predictable
and people will plan out further. And so the
demand then would be evened out throughout the
year better. That's my opinion.

Q     And for that reason you're -- I guess
I'm paraphrasing here, but is it that reason why
you are in favor of the marketing order and you
see it not just benefitting the improved pecan
portion of the industry but the native portion as
well? Is your --
A Yes.

Q -- if I understand what you're saying is that you're elevating all pecans regardless of native or improved.

A Exactly. And it may be that the native pecans actually gain more.

Q Thank you. Now, you mentioned that you were also part of the American Pecan Board. Is that correct?

A That's correct.

Q So were you involved in the discussions that resulted in the proposed language that is in exhibit number 1?

A Yes, I was.

Q Thank you. I wanted to ask you about your experience on the American Pecan Board, specifically again given your perspective as a native grower but also as a small sheller. And so I want you to think back to the discussions on the assessments.

A Yes.

Q And can you recall the deliberations
that were had on the different thresholds of the
assessments that were finally recommended and
sort of what some of the concerns were and how
you arrived at the thresholds? And the
thresholds that I’m referring to are in Section
986.61 in paragraph (c).

MR. QUIR S: Mr. York, I have that up
for you as well, if you would like to take a look
at it.

THE WITNESS: Okay. I do recall some
fairly heated debates regarding assessment. And
I think I kind of got the reputation of being
hard-headed, but in my opinion and what I felt
was that the assessment should be less on the
seedling pecan.

Because if you were a seedling
producer and you received, for simplicity sake,
50 cents a pound for your product and you were
assessed three cents. And on the other hand you
were an improved producer and you had early
pecans that were sought after for the export
market, and you received substantially higher
price for them and you were assessed 3 cents a pound.

Then the onerous part of the assessment was being placed on the seedling producer. So I lobbied for less assessment on seedlings.

BY MS. SCHMAEDICK:

Q     Thank you. So to recap what I think you're saying is that the proposal to come out with a tiered assessment rate, having different categories of assessments for the different categories of pecans, was that a result of wanting to have a more equitable burden,

A     Yes. Those were my thoughts.

Q     Okay.

A     And every -- that's -- yes. Yes.

Q     And why did you come up with a range I see there in paragraph (c) that says "native and seedling classified pecans shall be assessed at 1 cent to 2 cents per pound." Why did you come up with a range rather than a specific
number?

A I think the actual assessment will be something that the council, the seated council would set. We just put that range in so that in the referendum the grower base would have some idea of what the cost would be or the investment would be.

Q And is it fair to interpret that the 1 cent would be the lowest that the assessment rate would be and the 2 cents would be the highest that the assessment rate would be?

A I think that's correct.

Q Okay. So at the end of that paragraph (c) there's a sentence, and I'll read it for the record. It says "these assessment ranges shall be in effect for the initial four years of the order."

And then it is -- that sentence is followed by paragraph (d), which reads "subsequent assessment rates shall not exceed 2 percent of the aggregate of all prices in each classification across the production area based
on council data or the average of USDA-reported average price received by growers for each classification."

So can you explain to me what the American Pecan Board was thinking when they put that language in?

A    Well, the board -- we don't want this to be onerous for the growers. We want the growers to feel like this is an investment in the industry and something that's affordable. And we felt like 2 percent, anything over that was beginning to be burdensome. And so we wanted to set a range and put a ceiling on it.

Q    And so referring back to the initial four years of the order, would you consider that to sort of be a test run for the program?

A    Yes, I would.

Q    So then is paragraph (d) sort of the board's attempt to create some flexibility for the future council to operate outside of the prescribed thresholds for the native and improved assessment rates?
Well, once the council's seated and with what they have the power to address, well, then if they can muster a two-thirds majority, well. But the way I read it, the 2 percent would still be in effect.

Correct. But I guess what I'm asking is that paragraph, is the intent to allow flexibility to redefine -- for example, for native pecans you have the lower threshold of 1 cent and the higher threshold of 2 cents. If the council finds that those thresholds aren't quite right, they can reset those thresholds as long as they stay under the 2 percent.

Yes.

And so that paragraph is intended to allow for flexibility --

Yes.

-- in the future.

Yes, it is.

Thank you. My last question, I'd like for you to draw on your experience as a sheller, specifically a small sheller. Now, you mentioned
that you're part of the National Shellers Association. Is that correct?

A    Yes, that's correct.

Q    So were you part of any discussions around the -- two topics. One is the threshold for identifying what constitutes a commercially viable sheller as well as the threshold between a small sheller and a large sheller. That's sort of one area I want to ask you about. The second area is sheller representation on the council.

So were you part of discussions on those topics?

A    Yes, I was.

Q    Can you first speak to the threshold in the proposed definition of sheller, it's a threshold of one million pounds? In your opinion, is that appropriate and why, what was the discussion around that number?

A    Well, the shellers, they'll be in the handler camp. And if you're only shelling a million pounds or less, you're just not going to have the investment and the year-round aspect of
a full bona fide business. You're just going to be more seasonal. And not a hobby actually but it's not going to be a full-time concern. And it's not going to have like a labor force or large investments in capital and machinery.

Q And then with regard to the 12.5 million threshold that separates those that qualify for the small sheller seat and those that qualify for the larger sheller seat, how did you guys identify that 12.5 million?

A That bounced around quite a bit, and we -- I think we did the math in our head. But it's -- you know, we have to have -- we need two camps to represent the shelling industry on the council. And we felt like that was a good delineation just from knowing the different shellers and their operations.

Q So when you say bounced around, does that indicate that there was a very robust discussion and that --

A Yes, there was a very robust discussion.
Q     And that that 12.5 is a -- it's not just a number you sort of picked out of the air.

A     No, it was refined three, I think three times.

Q     Okay. Thank you. And my last question for you is your experience in discussions with the shellers association and representation on the future council. What were some of the concerns that you heard from shellers about representation on the council?

A     Well, some shellers wanted equal representation. That was discussed quite a lot, more earlier than later. I can say though that in recent conversations within the industry that we have strong support for the marketing order. There are questions about details, which really can't be answered at this point until we have a council seated. But the consensus is that the marketing order will be a benefit.

Q     Thank you. So would it be fair to say that perhaps in the initial discussions of the proposed program there were fairly weighty
concerns from sellers --

A Yes.

Q -- but that through the outreach and
the activities of the American Pecan Board you
all were able to come to an acceptable
representation for the sheller community?

A I think the end numbers indicate the
willingness of the shelling community to proceed
ahead with the marketing order, judging by the
compromise position.

Q Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Mr. Hinman, before
you ask some questions could I ask a couple of
questions to clarify a couple things that popped
in my mind?

You said -- when Ms. Schmaedick asked
you about number of trees per acre and it was 14
trees per acre, and I thought you said it the
Little River County definition. Is that -- is
literally the next county might have another
definition or was that the FSA definition?
THE WITNESS: Well, it's really hard
for me to answer that. I don't know the -- it's
just sort of a county -- it actually is a county
committee who are members -- citizens of the
county or on that committee. They set that rate.
But I've heard other people speak, and I think
that I've heard of other counties having
different rates.

JUDGE GUTHRIDGE: All right. And then
in your statement you say you're going to plant
30 acres of improved variety.

THE WITNESS: Yes, sir.

JUDGE GUTHRIDGE: Do you have an
estimate on the number of trees per acre that
will be there on those acres?

THE WITNESS: There will be
approximately 50.

JUDGE GUTHRIDGE: And would you expect
those trees to be harvested at about the same
time as your natives, or would they be earlier
because they're improved?

THE WITNESS: We selected a variety
that will be earlier.

JUDGE GUTHRIDGE: Okay, thank you.

THE WITNESS: Yes, sir.

MR. HINMAN: Don Hinman, USDA.

BY MR. HINMAN:

Q     Good afternoon, Mr. York. I actually
want to follow up on that question.

MR. HINMAN: And could proponent
counsel offer a calculator? -- because I want to
walk through a calculation and see if I
understand exactly again this issue of the trees
per acre.

THE WITNESS: Yes, sir.

BY MR. HINMAN:

Q     All right. So I can --

A     I use my glasses to hear you, and I'm
going to have to take them off. I apologize for
not having a hearing aid. I'll do my best.

Q     And I'll do my best to speak clearly,
and we'll get this question completed.

A     Okay.

Q     Again there are 14 -- actually Judge
Guthridge's question about the county was helpful, because now I understand that better. So I'll be more specific.

For your county 14 trees per acre is the standard for pecans. Right?

A Yes.

Q Set by the county committee of the Farm Service Agency. Right?

A That's correct.

Q So my question is this. So you have 250 acres, and I guess you would call those 250 pecan acres. Right?

A Yes, that'd be a good way to describe it.

Q All right. So 250 -- this is the calculation: 250 times 14. I come up with 3500.

A Yes, sir.

Q Is that -- in your testimony you said most of your acreage is -- most of your trees are native. But is that a rough approximation of the number of trees that you're growing?

A That's a really close number, and I
have very few improved trees on my property.

Q All right. And then a related
calculation related to the yield is if you
multiply 40 pounds times 14 trees, there's 560
pounds, which is within the 5- to 600 pound range
that you mentioned. Is that a representative
yield computation?

A Let me do the math --

Q Or not?

A Let me do the math on that.

Q Yeah, 40 times 14.

A That's 560, yes, sir.

Q So that's consistent. So that would
be one way to represent yield, typical yield on
your operation.

A It's pretty hard to define a typical
yield.

Q Okay.

A Let me paraphrase of it. We had a
terrible ice storm --

Q Okay.

A -- in the year 2000, and that changed
my entire operation. We had heavy damage. Prior
to the 2000 ice storm we had significantly more
production off the same trees than we do today.

Q  Okay. So that little complexity helps
me understand the great differences here. So
thank you for that response. In your testimony
on page 3 you were discussing the issues of price
volatility --

A  This in my testimony? Okay, yes, sir.

Yes, sir, price volatility.

Q  And you've addressed this briefly but
I wanted to get a bit of a more detailed answer.
You mentioned the problems of a price volatility
is that it makes it difficult for industrial
customers to make long-term plans.

A  Yes, sir.

Q  And you also said it impedes research
and development for new products.

A  Absolutely.

Q  Could you say a bit more about those
aspects of the market? And then perhaps you
could do that by fast forward a few years, your
order's in place, price volatility is reduced.

How do those conditions change in that new
market?

A     Oh, yeah, I love to talk about that.

The -- if you're a major food company and you're
looking -- you're going to have a new product and
you start doing research and development, you're
not going to choose the ingredient off the shelf
that can fluctuate 25 or 30 percent per year.

You're going -- you want to have a
five year plan and you want to develop your
product, get it in the market, increase the
acceptability of it, and there's no reason to
shoot yourself in the foot initially. So you're
going to pick an ingredient that's stable and
it's affordable.

And that's why I feel so strongly
about the marketing order and adding stability.
And decreasing the volatility in the price of
pecans, especially at this time when we're faced
with a lot of new plantings. I'm not the only
one planting trees, there's a lot of people
planting trees in the pecan industry. So we anticipate more production.

And so it's important that we can present ourselves as a stable commodity, a stable ingredient to increase the demand, increase the number of products that pecans are in.

Q Thank you.

A Yes.

Q One final question. You increased my understanding of a native -- you know, a sheller that engages in shelling of native pecans. It's my understanding that the native pecans are considerably smaller and considerably harder than improved. So if you could just discuss a bit the challenges of being a sheller of native pecans in that regard.

A You crack the pecans one at a time, so if it takes 130 to make a pound or, on the other hand, say 50 to make a pound, you can see how your production could be lower, so. But that's -- we -- our area is a good area for native production, and so that's -- we shell native
pecans. And we just have to dive in there and do it.

Q    Thank you.

MR. HINMAN: No further questions.

THE WITNESS: Yes, sir.

MS. VARELA: Jen Varela, USDA.

BY MS. VARELA:

Q    Mr. York, if you don't mind, I'd like to delve a little deeper into Dr. Hinman's questions. Because I also want to know some more about shelling natives specifically, and I think you're our expert on that.

So you mentioned that -- we've covered that the shells tend to be harder, and you mentioned that you're going to have to go through more of them to get to a pound. Is that also because the nuts tend to be on the smaller side?

A    Yes, they're small.

Q    So it's a combination of the hard shell and the size that helps you get to that tonnage.
Q Okay. And do you shell exclusively native or just mostly native?
A Mostly.
Q Mostly. So could you describe to me a little bit of your process in how you identify the differences when you're buying them, when you're processing them?
A Our rule of thumb is you size pecans by the cross-section of the pecan, perpendicular cross-section. So it's -- and we size them in sixteenths of an inch. So a number 8 pecan is a half inch in diameter, and a 16 is one inch in diameter. And the demarcation that we use is 12; that's our largest native pecan or what we would classify as a native pecan. And the smallest improved would be a 13. So 13, 14, 15, 16, we call those improved pecans.
Q So in your opinion and the practical sense of functioning if the order is in place, will it be difficult for you to make the distinction between how -- with the tonnage that you're handling in native versus improved?

A No, it won't be difficult. No.

Q And since it won't be a burden for you, can I -- is it reasonable to take the step further to say it won't be a big burden on the average sheller?

A I would say that's correct.

Q Okay. Thank you.

A May I add something to that?

Q Yes, please.

A We have to keep all these numbers. We already do this. You have to do it for your bank and for your -- to estimate what you're going to shell out of these pecans, because you start trying to sell them the day you buy them. We already -- that's something we do, we have to do.

So we're already doing it.

Q That's very helpful. Thank you.
MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Mr. York, you just explained to us that in your shelling operation you differentiate native and improved pecans by the size of the diameter.

A That's a rule of thumb, yes.

Q A rule of thumb. So my question is under the proposed program the difference between a native and improved pecan is whether or not the tree is grafted.

A That's true. But it also -- you have to have the 70 percent threshold --

Q I'm not --

A -- to have a straight load like -- a straight load of one variety would require that it would have to be 70 percent that variety.

Q You've now jumped into an area I don't understand. Can you explain that?

A I apologize. But by and large the pecans 13 and larger are going to be from an
improved variety or a grafted variety. It would be very unusual to see a pecan that large come from a seedling or a native pecan tree.

Q  Okay. So where does the 70 percent come in?

A  In representing what you have for sale. For instance if you had an order for a load of Wichita pecans, at least 70 percent of the load would have to be Wichita to say that, and preferably much higher but at least 70 percent.

Q  And how do you know they're Wichita as opposed to an Elliott?

A  I would know that from my experience in handling pecans. It'd be real easy for me to distinguish between a Wichita and an Elliott.

Q  So there are characteristics that are distinctly different --

A  Yes.

Q  -- between the two?

A  Yes.

Q  The reason I'm asking this is that
let's say you had a handling regulation in effect and you had an inspector that had to go to your plant. You know, what would be helpful in that situation is for that inspector to be able to have visual characteristics that indicate this is an improved variety or this is a native variety. And you've indicated you can do that by size to a certain extent --

A     Yes.

Q     -- and that there are other visual cues. But in the proposed order the distinction between the two is whether or not it's grafted, which you can't really see if you're an inspector in a plant. You don't see the tree, you just see the product of the tree.

A     That's correct.

Q     So I'm trying to understand how the definition in the order for native versus improved is going to work on a practical level in the plant when someone who maybe does not have a lifetime experience with pecans is going to have to be able to separate them out.
A  We could have visual aids for the
inspector.

Q  Correct. And perhaps some examples.

A  Yes. And he could also come into the
conference room and we could talk.

Q  All right. Thank you very much.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Are there any more
USDA questions?

MR. HILL: There are not.

MR. QUIR S: Just a couple of follow-
ups.

REDIRECT EXAMINATION

BY MR. QUIR S:

Q  Thank you, Mr. York, for all your
helpful testimony. At one point when you were
testifying about the small sheller seat and the
large sheller seat you said that there were two
camps. Did you mean a camp of large shellers and
a camp of small shellers when you said that?

A  I just meant that in a nomination
process there would be a small sheller and a
large sheller.

Q And do you believe that's fair, given the industry that you're working in as a sheller?

A I believe so.

Q And do you believe that's fair across all regions?

A I believe so.

Q Do y'all electronically sort or mechanically sort with regard to size?

A Mechanically.

Q Okay. So mechanically you could sort what is a 12 and below from a 13 and above. Is that right?

A That's correct.

Q Very hard to do?

A We do that all day every day.

Q Exactly right. So the chance of you getting mixed up between a native and seedling and improved variety is very rare, would you say?

A We write letters of employees who mix them up.

Q So you don't intend to pay improved
prices for native and seedling, do you?

A No, I don't.

Q Okay. You have every incentive to be clear, absolutely clear when you're buying those, what those are.

A Yes.

Q So it shouldn't be hard for the average handler to be able to place the right assessment based on whether it was a native, a seedling, or an improved variety. Is that correct?

A No, it shouldn't be.

Q Thank you very much for your testimony.

MR. QUIRS: No further questions of this witness at this time.

JUDGE GUTHRIDGE: Any further questions from USDA?

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Are there any questions from the audience?

(No response.)
JUDGE GUTHRIDGE: Hearing none, you are excused.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. DAVIS: Your Honor, with the Court's permission, the Proponent group calls as its next witness Ms. Lotsee Spradling.

Whereupon,

LOTSEE SPRADELING

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Good afternoon, Ms. Spradling. Thank you so much for coming in today. If you would, please state your name for the record and spell your name.

A Lotsee Spradling, L-O-T-S-E-E, S-P-R-A-D-L-I-N-G.

Q Ms. Spradling, do I understand that you have prepared a statement that you'd like to
give today?

A      Yes, sir.

Q      Also, for purposes of your
questioning, you have before you Exhibit 1 to
these proceedings, the proposed Federal Marketing
Order, and also Exhibit 23, the economic
testimony of Dr. Palma.

A      Yes, sir.

Q      Thank you. If you'd like to proceed
with your statement.

A      Yes.

My name is Lotsee Spradling. I live
near Sand Springs, Oklahoma. It's just west of
Tulsa, Oklahoma. My family is Comanche and lived
in Anadarko Indian Territory until statehood. My
parents began to assemble the Flying G Ranch in
the early '20s. The Flying G Ranch has a pecan
orchard located near the Verdigris River in
Oklahoma which we purchased in 1986. We have
just over 950 acres of pecans currently in
production. On our farm we grow 50 percent
improved variety pecans and 50 percent native
pecans. We also own a retail shop that is open
during harvest time, which runs November through
December, where we sell pecans retail as a cash
crop. I was born and reared on the Flying G
Ranch and I went to Oklahoma State University. A
copy of my resume is attached.

Under the Small Business
Administration guidelines, we are classified as a
small pecan grower which means we produce less
than $750,000 in gross pecan revenue. In recent
years I have seen a wide variation in the prices
that I have received for my pecan crop,
especially with our native seedling crop. Such
wide variation in pricing makes it extremely
difficult to plan for the future operation of the
farm. While prices go up and down on pecans
dramatically from year to year, my costs continue
to increase. Cost of fertilizer, insecticides
and equipment have all increased in recent years
regardless of the price I have received from my
crop. Some years we can barely sell our native
seedling crop.
Lack of accurate market information or any crop forecasts 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 investments on my farm. Most of the crop estimates I see are guesses and they are always wrong. Increased price stability and more accurate market information would greatly benefit my small family operation. 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 shelf space and consumer attention.

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 inshell pound for improved varieties and 3.6 cents per inshell pound for native seedlings versus the average 2.5 cents and 1.5 cents per inshell cost,
respectively.

BY MR. QUIRS: If I could just

interrupt just for a second. That summary is

Exhibit 23. Is that correct?

A      Yes, sir.

Q      All right. Thank you.

A      Overall, I am aware of the costs that

the proposed Federal Marketing Order may impose

on my farm, and I do not believe those costs are

unduly burdensome. I do believe that the

benefits of the Federal Marketing Order to my

farm will greatly outweigh any costs associated

with the Federal Marketing Order. I understand

that under the proposed order, a grower 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 in such a
small production.

I've been a member of the Oklahoma Pecan Growers Association since 1970. The American Pecan Board has kept our organization informed about its efforts to propose a Federal Marketing Order. I feel like I have been informed about the process and I have been given an opportunity to participate.

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 questions if you have any.

BY MR. DAVIS:

Q Ms. Spradling, I may preempt a couple of questions here. I'm kind of fascinated based on that last testimony. Is there a standard in your county or area for how many native pecans per acre constitute a pecan acre?

A There's really not a standard. Most of the time in the native orchards they're usually in our area -- we're in northeast
Oklahoma -- quite crowded, so there are quite a few trees per acre. The natives are randomly planted, there's no rhyme or reason, they've just come up and are producing, so there's really no standard in our area.

Q      You heard Mr. York's testimony where he said there is a county standard of about 14. Would you say on your land, on average, is it more or less than 14 trees per acre in your native?

A      More. On rare occasion, when someone is buying or selling native pecan ground, oftentimes they'll use an aerial photograph and literally count trees.

Q      And let's compare and contrast that to you also have about 50 acres of improved variety, did you say?

A      About half our orchard is improved.

Q      And about how many trees per acre would you have in your improved?

A      About 50 per acre.

Q      You also mentioned that you have a
small -- or it's presumptuous of me to say small, but a retail operation.

A      It is.

Q      And you also sat here and heard some of the testimony about an exemption for sales of less than a thousand pounds. Would you, again without disclosing any proprietary information, in general are you selling more or less than a thousand pounds of nuts.

A      Inshell, shelled or cracked?

Q      I honestly can't remember how that exemption -- inshell, let's assume it's inshell.

A      More.

Q      So you would be selling more, so you're aware that while you might have an exemption for sales of less than a thousand pounds, you, in fact, might have to be assessed on the sales at your retail store of more than a thousand pounds?

A      I fully understand that and I think it would be -- if this marketing order would go through would be just a very good thing. Yes, we
are aware of the costs associated. It's rather like the costs associated with beef checkoff. That program probably increased beef consumption by over a billion pounds of beef per year. I can see similar things happening in the pecan industry should we be able to obtain a marketing order for pecans.

Q So you don't believe that it would be unduly burdensome to have this assessment?

A I do not.

Q And you believe that the benefits would outweigh the burdens of any such assessment?

A Yes.

Q Do you believe that the proposed marketing order would help both your native crop and your improved crop?

A Yes, sir, I do.

MR. DAVIS: Your Honor, the Proponents tender Exhibit 43, which is the testimony and the curriculum vitae of Ms. Spradling.

(The document referred to
was marked for identification as Exhibit 43.)

JUDGE GUTHRIDGE: Is there any objection from USDA?

MS. CHILUKURI: No objection.

JUDGE GUTHRIDGE: Is there any objection from the audience?

(No response.)

JUDGE GUTHRIDGE: Then hearing no objection, Exhibit 43 will be admitted into the record.

(The document previously marked as Exhibit 43 was received in evidence.)

MR. DAVIS: And we have no further questions of the witness at this time.

JUDGE GUTHRIDGE: Are there any USDA questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:
Q      Thank you, Ms. Spradling, for your
testimony.

A      You're welcome.

Q      It's nice to hear from Oklahoma.

A      Thank you.

Q      So you mentioned that you are, I
believe, a member of the Oklahoma Pecan Growers
Association?

A      Yes, ma'am.

Q      Are you an officer with that
association?

A      No, ma'am.

Q      But you're just a member.

A      I'm a member. My husband is an
officer. One of us has to stay home and work.

Q      I understand. So as a member of the
association, can you describe what the
constituency is like or how many members you
have?

A      Well, we just had our annual
conference just a few weeks ago, and actually
chatter was very excited and actually a lot of
it. I have not heard anyone that was opposed in
my little circle and at the conference that would
be opposed to this. I think everyone is very
excited that this may be reality.

Q Thank you. The membership of the
association, I guess I should say growers in
Oklahoma, would you characterize them as small
businesses predominantly?

A Predominantly. We do have some larger
growers, we have some that are really basically
just a hobby farmer but they're coming there for
information, because as Texas does, we have
several speakers that offer new information, but
mostly we're all small growers.

Q And what types of activities does the
Oklahoma Pecan Growers Association do?

A Well, they bring in the speakers.
Some of them are professors from some of the land
grant universities that are doing pecan research,
they bring in nutritionists, they bring in
extension, they're out in the field seeing what's
being planted, kind of giving you new techniques.
Sometimes there are companies that sell pesticides and fertilizers that will give you a new wrinkle or a new pesticide coming out that's gained approval. We always do an orchard tour and those are always really interesting because you always want to see how the next person does it, and nearly everyone that owns an orchard also has a cleaning plant of various sizes so we always want to see what kind of equipment they're running. And then, of course, they have the equipment display, and then at the orchard tour several of the companies will bring the equipment out and you can actually see it run.

So it's just kind of a few days short course, real short but very informative, on all different aspects of raising pecans, harvesting pecans, shelling pecans, cracking pecans.

Q Thank you. So I know you're not an officer with the association but I'm wondering in your opinion as a member of the association do you see the proposed marketing order in any way conflicting or overstepping the Oklahoma Pecan
Growers Association?

A    Oh, absolutely not. If anything, it would benefit our organization. Our members would actually reap the benefit from it and we'd probably actually gain some more members.

Q    And is there any form of assessment currently collected in Oklahoma?

A    No, ma'am.

Q    So then the association runs on membership dues?

A    Yes, ma'am.

Q    So I am particularly intrigued by your statement that you have 950 acres yet under the SBA definition you're a small grower.

A    I am.

Q    So the 950 acres that you mentioned, those are actual physical acres.

A    Yes, ma'am.

Q    And so for the native portion of it, you don't really know how many trees you have but you think the density is more than 14?

A    Yes, ma'am, on our orchard. That is
not true everywhere.

Q      And in Oklahoma would you say that your yield experience is different from Mr. York's in terms of yield per tree or per acre?

A      There are so many variables. It's going to depend on the age of the tree, you're going to have a seedling that's in production this big, one that I can't reach my arm around three times, say a four-inch diameter tree up to a four-foot diameter tree. I understand the question but the answer is very difficult because the younger trees, the smaller trees, they may produce, if they're all young they may only produce 50-100 pounds of pecans per acre, but then you get up to the bigger trees and it goes up dramatically, so I don't know how to exactly answer your question. And especially when you're doing an improved planting they're nearly all the same age. Now, you may lose a tree or two and you'll fill in the gap the next year, but they're nearly all the same age.

So in a native planting and the trees
are of the 20-year-old variety, you're probably
go ing to have 500 pounds to the acre or better as
long as you've cared for them well, but in a
native setting you're going to have young ones
and gigantic ones. It's really hard to answer
that. But as a general rule, the natives do not
yield pounds per acre as much as the improved
varieties.

Q    Thank you. So you just mentioned a
four-foot in diameter tree. It seems to me that
might be a pretty old tree.

A    It's probably a very old tree, and in
actuality, when they get up that big, we normally
take them out.

Q    Really?

A    Because they get to a point where they
require more nutrients than they're producing
pecans as far as dollars and cents. So they're
sucking up more dollars than they're dropping
down at harvest time when they get to be a
certain size, so we will take those out and then
plant new trees and we try to put those in an M-
line so that at some point in the future they'll be much easier to care for, to harvest, to maybe get water to. Most native orchards are not irrigated, many improved orchards are irrigated, and the irrigation really helps your bottom line if you're able to do that.

Q Thank you.

A Yes, ma'am.

Q And you mentioned that your family, or your parents began to assemble your ranch in the 1920s.

A Yes, ma'am.

Q And was that in the same area? You referenced her that your family is Comanche, they lived in the Anadarko Indian Territory.

A Yes. My parents were born and reared in Anadarko and it was Indian Territory when they were born. They were almost 50 when they had me. I'm kind of an oddball generation, my parents are like everybody else's grandparents. But anyway, and then when the Depression was starting they moved to the Sand Springs area for my dad to go
to work and my mom's family had always raised
cattle so they put the ranch together to have a
place to bring the cattle to, and so there were
native pecans on the ranch so they started taking
care of them. There's a creek that runs through
and we butt up against the Arkansas River. And
the trees were native and oddly spaced, but we
just kept taking care of them and cleaning around
them and improving them over the years. And then
when I married, my husband really liked working
with the pecan trees, so in '86 we bought an
orchard, which really increased our pecan
production.

Q Thank you. So as Mr. Davis has
already discussed with you, you mentioned that
you have a store where you sell your pecans.

A Yes, ma'am.

Q And the level at which you're selling
classifies you as a handler.

A Yes, ma'am.

Q So I again just wanted to clarify and
make sure that you do fully understand that and
that in that capacity you would be subject not
only to assessments but if there were regulation
in effect, that would also apply to you.

A      Yes, ma'am. Probably can't get any
more strict than the Tulsa County Health
Department.

Q      I believe that is all the questions I
have for the moment. Thank you.

A      Thank you.

MS. VARELA: Jen Varela, USDA.

BY MS. VARELA:

Q      I have a couple more little follow-
ups, specifically about your store. Some of it's
just curiosity, and we also just want to get an
idea of how this will practically be in place.

Are you selling only pecans that you
and your husband produced or are you also buying
from other growers?

A      Okay. I only sell pecans that we have
produced in the store. I do, however, bring in
from a distributor walnuts and almonds and some
trail mixes, and I buy peanuts from southern
Oklahoma, so that -- because we do some gift boxes and baskets, so that my customers have a variety of things to choose to make up a gift or just to take home for personal use or cooking.

But the pecans we sell in our shop are only ours. Many years ago we had a weather disaster, which we're the biggest gamblers in the world when you're in farming, many years ago, and we really did not have enough paper-shells for our shop, and we thought we were looking really good and bought some and we just were not happy with the quality.

We made a decision at that time if that ever happened again, we would just tell our customers we're sorry we don't have enough, because we want to be in charge of quality control in our shop and we only want to sell top-rate pecans, and we know we've cleaned them thoroughly, we've taken care of the orchard the entire year, and so we know we have a high quality product. The pecans are ours exclusively.
Q And for the record, can you define a little further what you mean by paper-shells?
A Improved varieties.
Q Thank you very much.
A You're welcome.
Q And in dealing with different varieties and different sizes, can you describe to us a little how you think potential grade and size regulations would apply to your business? Are you already sorting by grade and size when you're packaging to sell in your shop?
A Yes. Only the A grade goes through into the shop. We do in our cleaning system pull off a B grade that sometimes the shellers will buy. Those are processed and chopped; they're just a little bit lighter pecans.
And we do size. Anything 12 to 16th of an inch and lower is a native. We harvest our improved varieties by section so we know whether we're pulling in a Pawnee or a Kanza or one of the other varieties that we have.
Of course, you can tell by looking, if
you know what to look for, which variety you're
harvesting or sizing or cleaning or cracking or
processing that day. But yes, ma'am, we do clean
very stringently and then they always go across
an inspection table where we hand sort and look
before they're bagged.

Q      And we've heard a few people testify
that there aren't -- the standards that exist
right now maybe aren't necessarily relevant or
helpful to the industry. Do you see the
potential for some of these regulations under the
order as being beneficial for your business in
particular? Is it something that would help your
business?

A      I think that it would be beneficial to
everyone to have a uniformity, especially that
your consumer could count on. And also, it would
just make packaging and handling and the whole
gamut of things that we deal with, if we had
uniformity in everything, I think it would be a
real benefit to everyone involved.

Q      And I'm intrigued by the fact that you
purchase other types of nuts to sell. Do you see that uniformity in those other industries? Is that of why there's still a demand for those?

A Yes. When I contact the broker I'm given in several of the different nuts different qualities. Some of them have X amount of pieces and halves combination, so you're given a choice, and of course, there's a price difference, which that's fine. But yes, we see kind of a standard that they have kind of come up with for their nut and you're given the choice of how much you want to pay and what that nut is going to kind of look like and the quality and the grade.

Q And in your experience, at least over the last few years, are people buying a lot of those nuts?

A Yes.

Q Thank you very much. Those are all the questions I have.

A Thank you.

BY MS. CHILUKURI:

Q Ms. Spradling, during your testimony
you referred to shelling and cracking.

A    Yes, ma'am.

Q    Can you give me just more descriptions

on what those are so I can clarify for my own

education.

A    Cracking is we take the whole nut and

you can do it by hand. Of course, probably

everybody here, we all have pecan crackers and

they'll crack the pecan, they go in one at a

time, they're cracked, they're on a chain belt

with a little pocket, they're cracked end to end,

and that blows the shell away from the nutmeat.

And if we don't have to process them further,

then we can charge less for that product per

pound, and basically the consumer then picks them

out. A lot of my customers like to do that. A

lot of my customers are my age or older and so

they like to sit around and do that.

Shelled, of course, is absolutely no

shell, it's a nutmeat or a piece, we sell pieces

and halves. And I don't shell onsite but there

is a small sheller about an hour and a half from
me, and so I take my pecans up and he shells them
for me and then I bring them back and sell them
in the store, but we sell a lot cracked. We have
a few customers that have their own shop but they
don't have their own trees, so we will sell whole
pecans to them. The majority of our crop, we're
kind of at the mercy of whatever the shellers are
offering the day we have a semi load go out, and
if they're going to buy them. We have seen in
the past very difficult sometimes especially at
the end of pecan harvest to move our native
seedling crop. They're just not as popular, of
course, as the improved varieties.

Q    Do you work at all with accumulators?
A    Yes. Usually they'll send -- the end
buyer will send an accumulator to your area and
they'll look at your pecans. They'll grade them
which means they weigh out a pound of pecans and
they crack them and we keep every morsel and
piece, we pick out the nutmeats, you weigh the
nutmeats, you weigh the shell that's left, and
that's your grade, your yield. Typically 42 to
45 percent on natives, Stewart is around 48-50, some of the other improved varieties a little more than that, and they buy on grade and yield. And so when we have at least a semi load accumulated in our warehouse or maybe two, those accumulators will go around and they'll offer you X amount of dollars for your crop based on your yield, and then they will send a truck and you load them up and off they go.

Q And that reference to grade that you just made, what are the standards associated with that, or are there standards associated with that?

A No standards, it's just the percent nutmeat yield per pound of whole nut.

Q And last question. You mentioned that with your retail shop you would be a handler and that you understand that you would be assessed?

A Yes, ma'am.

Q Can you tell me a little bit more about other responsibilities that you may have or other obligations that you may have under the
proposed order?

A I don't know if I understand. I know that we're a grower so we'll have the assessment, and then as a handler we will as well. I'm not clear on what your question is.

Q Well, as a handler, as an operator of a retail shop you said you would not be exempt because of the amount that you're producing, so I'm just wondering in terms of having reviewed other provisions of the order, are there any other provisions that you'd have to abide by in terms of reports or record keeping or anything else that you know of.

A Well, not that I know of per se, but we always keep records of everything that's gone through the shop, whether it's whole, cracked or shelled, so we already keep our own records for our own use. So I mean, it's not like it would be anything extra beyond what we already do that I'm aware of.

Q And I think you said something earlier about your status as a grower. Is it your
understanding that you would or would not be
assessed under this order?

A  Initially I think we will be.

MS. CHILUKURI: Thank you for your
testimony.

JUDGE GUTHRIDGE: Are there any more
USDA questions?

MS. SCHMAEDICK: Yes. Melissa
Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q  Ms. Spradling, I have a few more
questions, and I appreciate your patience. Your
testimony has been very, very informative, and so
I have a few more follow-up questions for you.

First of all, to follow up on Ms.
Chilukuri's question, when you read through the
proposed order, which is Exhibit 1, did you read
it with the eyes of a grower or with the eyes of
a handler?

A  Mostly a grower.

Q  But now that it's been clarified that
given the level at which you're selling you would
be a handler, if you were to reread that, would you be perhaps more aware of some of the sections that would apply to you as a handler?

A I don't think so. It's pretty straightforward, I think, and we're just -- I don't know to answer you exactly.

Q Well, for example, if you were to reread the proposed program at this point and if there were a section talking about, let's say, handler reporting requirements and now that you understand that you might be subject to those, would you maybe pay more attention to those and develop an understanding of those specific requirements?

A Well, yes, ma'am, but like I said, we keep all those records, and there will be a fee involved, obviously. So the record keeping, we do that anyway.

Q Great. So in your opinion then, the burdens that might be placed on you as a handler, you do not see them as burdens, rather as something that you're already doing?
A      Pretty much we're doing all that
anyway, and it shouldn't really be much different
than what we're doing now.
Q      Thank you. And do you have a copy of
Exhibit 1 in front of you?
A      Yes, ma'am.
Q      Just a moment, I'm getting myself
organized. If you could turn your attention to
986.61, the title of the section is Assessments,
and your counsel will be putting it on the
overhead. So Ms. Spradling, if I could just turn
your attention to that very first sentence in
paragraph (a), and I'll read it for the record
here: "Each handler who first handles inshell
pecans shall pay assessments to the Council."
So based on this sentence, who pays
the assessment?
A      Well, it's all a catch 22, you see,
because if I'm in my little shop, what I run
through there I am first handling the pecans, but
even as a grower when you're marketing your
pecans that will probably reflect a little price
difference in the beginning because of the
assessment to the person that picks them up. So
all in all, we're all going to pay for the
marketing order.

Q Thank you. I appreciate your
statement. So what I want to clarify maybe, if
I'm understanding you correctly, is are you
saying that you understand that the handler pays
the assessment but as a grower you might feel
that assessment burden as a reflection in the
price that you receive from the handler?

A It's kind of all that, I think that
will probably be true. The deal is none of us in
the pecan industry are particularly concerned
with that small fee because the benefits are
going to far outweigh that cost. Pecans are
probably one of the healthiest things in the
world you can eat but very few people know that.
If all the marketing order did was gain enough
money to advertise the health benefits of pecans,
I think we would see increased usage and consumer
stability. I think they would use pecans more
instead of just like a seasonal Christmas-type
ting. I think it would be more incorporated
into their diets year round if they understood
the benefits. So I don't know if I've answered
your question, but we're all pretty excited that
we hope this goes through.

Q Thank you. That was very helpful. I
have one other question for you. So in your
testimony -- and this is more for my education
and understanding production.

A You may be asking the wrong person,
but I'll try.

Q No. I have confidence in you. So in
your statement, I want to go back to the
discussion of the Anadarko Indian Territory. I'm
not familiar with that area.

A Anadarko is southwestern Oklahoma near
Lawton, south and a little bit west of Oklahoma
City, but my parents were born before statehood
so on their documents it lists Anadarko Indian
Territory and then, of course, it's Anadarko,
Oklahoma after that. I still have my mother's
original allotment, the patent is still on it, and it's near Anadarko. Oklahoma is one of the few states that does allotments, most states do reservations for their tribal members.

Q I see. So the Anadarko Indian Territory is now part of the State of Oklahoma.

A Yes, ma'am.

Q And that's what you refer to when you say until statehood.

A Yes, ma'am.

Q Okay. But you're not currently producing in the Anadarko region of Oklahoma.

A No, ma'am.

Q To your knowledge, are there pecan trees that are producing in that region?

A Yes, ma'am. The Volks have a pecan orchard there, I know them personally, but there are other orchards there, not as many as are up in my area just because it's a little more dry and a little more arid, but yes, ma'am, there are pecans in Anadarko as well.

MS. SCHMAEDICK: Thank you. No
further questions.

JUDGE GUTHRIDGE: Any more questions from USDA?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis.

MR. DAVIS: Your Honor, if I could follow up on just a few things.

DIRECT EXAMINATION

BY MR. DAVIS:

Q First of all, I admit both of these are maybe my note-taking error here, but Ms. Schmaedick asked you if you had an idea of approximately how many members there were in the Oklahoma Pecan Growers Association. Do you have a ballpark figure on that?

A I don't know. Maybe like 250, I think, but don't quote me.

Q Just a ballpark. But you may have a better idea. You said you just recently attended a meeting. Approximately how many people were there, how many members were there?

A We had about 120, I think. Now,
Q: And you said that there was a great deal of excitement about the FMO?
A: Yes.
Q: And you heard no opposition?
A: I did not. I'm sure with everything there probably may be some, but in all the conversations that I participated in and heard and was involved in, no, everyone was really hopeful.
Q: Thank you. The other error that I may have made, when you came in today to meet with us, you delivered to us your tribal ID card. Did you intend for us to include that?
A: I just gave it to you so you would have it for reference.
Q: Would you mind if we introduce that along with the other?
A: I don't care, that's fine.
be Ms. Spradling's tribal ID card.

(The document referred to was marked for identification as Exhibit 44.)

MS. SCHMAEDICK: Your Honor, if I may quickly interrupt. This is Melissa Schmaedick from USDA. My concern is does that copy of the ID have any personal information?

MR. DAVIS: She very thoughtfully blanked out her Social Security number on it.

MS. SCHMAEDICK: My concern is USDA is posting exhibits on the internet, and I did not want to expose Ms. Spradling.

BY MR. DAVIS:

Q With that proviso.

A You're the expert. I don't think there's anything on there that would be a problem, but whatever you all think.

Q Let's not introduce it then. We'll say for the record you handed me a copy of it.

A I did.
MS. SCHMAEDICK: We believe you about your heritage. Thank you very much.

THE WITNESS: You're very welcome.

BY MR. DAVIS:

Q I have two quick things to follow up on and we'll get you out of here, Ms. Spradling. How many miles did you travel to come to this hearing, by the way?

A I don't know.

Q From near Tulsa?

A I'm near Tulsa. It's about a four-hour drive.

Q Well, thank you again so much for coming down.

You said that you take some of your product to a sheller and then take it back from them to sell or whatever.

A Yes, sir.

Q There's been use of a term in this record called custom shelling. Have you heard that phrase before, are you familiar with that?

A Yes, sir. That's basically what we're
doing.

Q  And in that transaction title to that product does not change, you get them to shell, get them the fee for it and get the product back.

A  I pay them a fee to shell my pecans.

Q  And your understanding under the order that would not be assessed.

A  True. Hopefully I read it right, but yes.

Q  Okay. Thank you. And then finally, you said something, you said when you do sell to a sheller, now this is a proprietary transfer, you sell to the sheller.

A  It would be the accumulator comes by and offers you a price for your pecans.

Q  And I think, if I took it down correctly, you said, I just have to take what they offer. Was that your testimony?

A  That's pretty much it.

Q  Would better crop information and a better idea of the prices that are going for your products help you make a more informed decision
as to whether you would sell or not?

A   Yes, sir, and it would eliminate the myth that oftentimes goes around: there's going to be a huge crop and the shellers have 20 million pounds in cold storage so they're offering X amount of dollars per pound. When you get toward the end of season, oftentimes those statistics disappear, change dramatically, so the shellers are thinking we have this huge crop when we don't, so they're going to offer based on what they have in cold storage, then they think somebody else has a lot. It's a very complicated process but if we had accurate information, everybody could make a better -- we could make better decisions in our end of it and the purchasers of our crops could also make better decisions.

Q    Would improved data like that helping you make more informed decisions have a meaningful impact on your small business?

A    Oh, yes.

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

JUDGE GUTHRIDGE: Any more USDA questions?

RE CROSS EXAMINATION

BY MS. VARELA:

Q      We appreciate you being here so I hope you don't mind just one more question. Earlier when we were asking about your retail business and we were asking about volume, you offered a few different categories there. I believe you were asked if it was shelled, inshell or cracks. Can you describe what you mean by cracks when you use that term?

A      Yes, ma'am. The shell has been cracked from end to end so the shell pops away from the nutmeat and pretty much those are very easy to pick out. Occasionally it will break them and you'll have some pieces; usually they come out in halves. But when you buy five pounds of, say, natives cracked, depending on the year and the quality, you're going to pick out, say, two pounds or so of meats and you'll do the work
yourself, so we charge less for those than we do for the shelled but we charge a little more for those than we do for the whole pecan because we have actually gone to the process of cracking it and running it through the machinery and someone has had to do that physically so we've paid some labor.

Q      Okay. So it's been cracked on purpose, it's not an accidental coming through the system.

A      No, ma'am. Anything that's cracked on accident goes out.

Q      Thank you very much for that clarification.

A      Yes, ma'am.

MS. VARELA: No further questions from me.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MR. DAVIS: I think we may have to have one more clarification of a clarification.

FURTHER REDIRECT EXAMINATION
BY MR. DAVIS:

Q      I think we may have to have one more

clarification of a clarification.

A      I have confused everybody. I'm sorry.

Q      You have not, but there has been
discussion, and it's in the order that if a
pecan, if the outer shell has been inadvertently
perforated in some way during the harvesting
process or something like that, those are
referred to in the industry as cracks also,
aren't they?

A      They're called cracks, S, and I'm
telling you cracked, E-D, cracked on purpose,
cracks are out in the field, which is why they go
over the table and I stand there all day long and
roll them around, and if there's anything like
that, it's tossed.

Q      So again, in the industry there would
not be any confusion about a crack, something
inadvertently cracked, being a substandard or
inferior product which may be discarded, may be
used in oil or something like that, or some feed
or something, but that is distinguished from an intentionally cracked pecan which you sell in your shop and otherwise. Right?

A      All true. No one in the industry would be confused by the two different terms; if you're not familiar with pecans you may be.

MR. DAVIS: Anybody else want to follow up? But I think it's clarified in my mind, and for the record, more importantly.

JUDGE GUTHRIDGE: USDA, the ball is back in your court.

MS. CHILUKURI: Thank you so much for bearing with us on this.

THE WITNESS: You're welcome.

JUDGE GUTHRIDGE: Actually, I have a couple of questions I want to clarify in my own mind, if I could, and they deal with 986.86, the exemptions, and Mr. Davis asked you about your store and a number of the Department of Agriculture questioners asked about the store and the fact that you sell more than a thousand inshell pounds during a fiscal year. I infer
from the fact that there is an exemption that there are some folks who do the same thing who sell less than a thousand pounds in a year. Is that correct?

THE WITNESS: Yes, sir, that's true.

JUDGE GUTHRIDGE: And my question is do you read this where it says that they become a handler if they handle quantities more than a thousand inshell pounds during any fiscal year, that if somebody who is generally less than a thousand pounds per fiscal year in a particular year goes above that to, say, 1,100 pounds for one fiscal year, are they going to be assessed on the 1,100 pounds or just the 100 pounds for that year?

THE WITNESS: Honestly, I'm not sure. I really don't know. It's not clear to me. I mean, in black and white if they do 1,100 pounds in that year, in my opinion they would pay in the assessment and then if they drop back down the next year I'm assuming they would not, but I'm not 100 percent on that.
JUDGE GUTHRIDGE: Thank you.

Any further questions from USDA or Mr. Davis?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

FURTHER RECROSS EXAMINATION

BY MS. SCHMAEDICK:

Q Ms. Spradling, if you could look at paragraph (d) of that section, 986.86. It's on the overhead and I'll read it into the record. It says: "The Council, with the approval of the Secretary, may establish such rules, regulations and safeguards and require such reports, certifications and other conditions as are necessary to ensure compliance with this part."

Would a fair summary of that paragraph be that if the program were implemented that the Council would have the authority to create some clearer guidelines on how to address a situation such as a person who does 1,100 one year and a thousand another year?

A Yes, ma'am. In my opinion, (d) does
give them that discretion and probably should because you know it's going to happen. To me that gives them the discretion to decide how to handle that situation. But like I said, black and white, if they go over one year, then that year they would be assessed, I assume. But yes, that does give them the discretion, and I'm glad that's there because I'm sure it's going to happen.

MS. SCHMAEDICK: Thank you. This time no further questions.

MR. DAVIS: And no further questions from the Proponents.

JUDGE GUTHRIDGE: And no further questions. Are there any questions from the audience?

(No response.)

JUDGE GUTHRIDGE: Ms. Spradling, you're excused.

THE WITNESS: Thank you.

(Whereupon, the witness was excused.)

MR. QUIRS: Your Honor, before we
call our next witness, Dr. Larry Stein, perhaps a five-minute break would be in order.

JUDGE GUTHRIDGE: All right. We'll recess, it's 3:47 till 3:55.

(Whereupon, a brief recess was taken.)

JUDGE GUTHRIDGE: Back on the record, please.

Mr. Quirós.

MR. QUIRÓS: Dr. Stein, have you been sworn by the Judge?

JUDGE GUTHRIDGE: Not yet.

MR. QUIRÓS: We're ready, Your Honor.

JUDGE GUTHRIDGE: He is your next witness?

MR. DAVIS: Yes, Your Honor.

Whereupon,

LARRY A. STEIN having been first duly sworn, was called as a witness herein and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUIRÓS:
Dr. Stein, please state your name.

Larry Stein.

Would you please spell it slowly into the record?

L-A-R-R-Y, S-T-E-I-N.

And where do you live?

I live in Castroville, Texas.

Thank you. And what is your involvement in the pecan industry?

I work for Texas A&M AgriLife Extension Service.

MR. QUIRS: Your Honor, I have introduced what would be Exhibit 44, which is a CV of Dr. Larry Stein.

(The document referred to was marked for identification as Exhibit 44.)

Dr. Larry Stein, this is your CV?

Yes, sir.

And tell us a little bit briefly about your education and your background?

I went to school at Texas A&M and I
have a BS, MS and a PhD from Texas A&M.

Q And how long have you focused on the pecan industry?

A I did my PhD research on pecans and so I got my PhD in 1985, so three years before that, and then I went to work for Texas AgriLife -- well, it used to be Texas Agricultural Extension Service in 1985, and so I've been working on pecans every since about 1985.

MR. QUIRS: Thank you, Dr. Stein. I understand you're going to help us this morning understand a little bit more about native and seedlings, and we appreciate you coming here and taking time to do that.

Your Honor, at this time we would also like to introduce Exhibit Number 45, which is Dr. Stein's presentation.

(The document referred to was marked for identification as Exhibit 45.)

BY MR. QUIRS:

Q Dr. Stein, please describe each one of these pages as we turn them and let us know when
we should turn pages.

A      All right. I'm going to tell you a little bit about native pecans and I'm going to speak primarily from Texas on trees and things, but we will talk about the native pecan belt as well. Those are massive native pecan trees, typically they inhabit the rivers and streams and they sit on some 20-plus feet of soil so they are on very good sites.

Next slide, please. And the ideal native pecans -- there's been a lot of talk about native pecans today, and I'm happy to see that -- the ideal native pecan would be about 50 per pound, but they would shell out in perfect halves. I mean, that's the key, you want them to shell out in halves and so that's what we're after, that would be the ideal one.

Next picture, please. When you look at this picture here, that is the native range of the pecan, and when I research native pecans, what I'm talking about is these are the ones that the Good Lord planted, these are native trees and
that's how they're named. And so you see they go
up into the states where you see the dark there.
That is the native pecan range. We differentiate
those from seedling pecans, and seedling pecan,
you know one of the parents, one of the parents
is known on a seedling pecan and so there's a
total difference between natives and seedling
pecans and I wanted to make that distinction.

Next picture. Now, when you look at
native pecans, there's a lot of good attributes
associated with native pecans. There was some
discussion today about numbers of trees per acre
and the number was 14 that was used. In Texas we
don't really use a number, what we use is canopy
size. We mean here is one pecan tree, one native
pecan tree there, you can't read the number but
it's 984 pounds. We figure a good average yield
on native pecans is anywhere from 5- to 800
pounds per acre, so if you have these massive
trees at times, you don't need that many trees
per acre. So here is a slide from the 1950s
where these gentlemen were working with pecans,
and so you can see that they can be quite
productive.

Natives are located on some of the
best soils in the whole world, like I told you
before, they're already established, and they
will respond to management. You can take care of
native pecans and they will respond. The
challenge has always been they will produce but
the big challenge has been the price per pound
doesn't offset the costs that you have per acre,
and so that has always limited native guys on
what they could afford to put into these pecans.

Next picture. Now, there are a lot of
challenges, there's downsides to native pecans.
Obviously, they're on the rivers and streams, and
when it floods and we've had several situations
where the crop is on the ground ready to be
harvested, flood, goes down the river. So you
have up and down production as well. That's been
mentioned today. The Indians were the first ones
to come up with that. They would visit the river
bottoms every other year because the pecans were
alternate there. But the big thing, the big downside to native pecans has always been the low price.

Now, when you look at the challenges that you have with native pecans, you have all these trees per acre out there and the problem comes in that these trees are so crowded that the only production is on the top of the tree. And so when you look at these native pecan bottoms, you have some trees that are very valuable, you have a nice strong trunk there, whereas, on the next picture you have a very weak tree and this tree here is not going to be near as productive as that other tree. The top on this has been blown out and it may have had a lightning strike, it has heart rot, and so that tree is not going to make any pounds is what's going to happen.

So the big challenge on native pecans is we need to thin out these trees -- next picture -- so that we have -- go to the next one after that one -- you have all these trees and you see there are so many trees that you don't
have sunlight hitting the full canopy of the
trees. Go on to the next one, please. Yes, here
is the one that I wanted. Ideally when you go
out into these bottoms at high noon you would
like to have half sun and half shade. That means
all the limbs are getting a full gamut of
sunlight and that way the trees will be most
productive.

And so when you have these native
groves you don't thin them today and you're done,
it's an ongoing process. You start today, you
take some out, you get them light and then as
these trees grow you're going to have to continue
to take trees out. And so the lady a while ago
she made the comment, well, they get too big to
manage. And that's true. Some of these trees
get so large you can't get the spray to the top,
you also can't shake the trees. And there's been
some reference about the times and harvest, I
mean, that's basically related to these native
trees, they're so big you can't shake a native
tree until the leaves come off, and so why the
production cycle is pushed back. The nuts are typically mature at the same time, you just can't get them off the tree.

As you thin these trees out, a lot of them are going to be bean poles, and so they're not going to be very productive, but as you thin them out and you get more light into these groves, they will fill out and the limbs will become more productive. So we recommend that you thin these things

Next picture. As far as the management program on these things, we think you need to get them thinned out. When you start this process it's not a one-year deal, it takes pecan trees sometimes five years to respond so you need to start the process and you need to continue it. And a big part of managing native pecans is fertility. They need to make annual shoot growth every year and so a big part of making that happen is fertilizer. In Texas typically we will see a pretty good native crop about every three to five years regardless of
what happens, and so if you can step up your management program, you can decrease the downsides of production.

So we typically recommend that native growers put some on a bud break and then if you have a crop come back and put on. That's typically our recommendation per year, about 60 units of actual nitrogen per acre per year is typically what we recommend. Also, when you do this, when you get these trees to grow fast with ground fertilizer, nitrogen, the trees may not take up enough zinc and so you may have to apply zinc as well to native pecan trees. That's a picture of zinc rosette on native pecans and so you may have to spray.

Next picture. And so obviously you would have equipment, these air blast sprayers where you would come in and you would actually be spraying the zinc onto the pecan trees. We recommend at least two zinc applications on native pecans, and typically one of those will correspond with a very important insecticide
spray that we would typically put out on pecans.

Native pecans have the same pest complex as improved pecans, and so the challenge is that you need to be controlling these. Weevils can be a big problem and there's actually parts of our state and other states that don't have weevils, and so getting a weevil out of a shelled pecan is very, very hard to do, and so we're hopeful that maybe some day in the future you could have a premium pay for pecans coming from non-weevil areas.

Wildlife is the other big thing. I said up and down, you have alternate bearing, you have low price, but then wildlife is a tremendous drain on native pecans because you have the squirrels, the racoons, the turkey, the deer, the Blue Jays, the crows, and so in a short crop year they always get their share and so that's always a challenge for these native guys.

One of the things that you will find, though, and the take-home lesson from this particular picture right here is that's data of
analysis of a native pecan bottom over a nine-year period, and the main line that I wanted you
to focus on there was yield in pounds per acre.
And notice we start with 700, 725, 900, 1,065,
and so all this is data to show that under a
management program you can make these things
produce pecans on a regular basis. This data is
about 35 years old and so the price there is low
but you also see how the price does fluctuate
from year to year and that has always been a
challenge.

And then my last picture is a picture
of a massive native tree and it's my opinion,
it's our opinion in Texas that natives have a
vast potential and the biggest challenge that we
have to overcome typically is the low price.

MR. QUIRS: Thank you, Dr. Stein. I
have some follow-up questions, but before I do,
technically I'd like to go ahead and tender
Exhibits 44 and 45, Your Honor.

JUDGE GUTHRIDGE: With regard to
Exhibit 44, any objection from USDA?
MS. SCHMAEDICK: No objection.

JUDGE GUTHRIDGE: Any objection from the audience?

(No response.)

JUDGE GUTHRIDGE: 44 is admitted.

(The document previously marked as Exhibit 44 was received in evidence.)

JUDGE GUTHRIDGE: Addressing 45, any objection from USDA?

MS. SCHMAEDICK: No, Your Honor.

JUDGE GUTHRIDGE: Any objection from the audience?

(No response.)

JUDGE GUTHRIDGE: 45 is admitted.

(The document previously marked as Exhibit 45 was received in evidence.)

MR. QUIRS: Thank you.

BY MR. QUIRS:

Q Dr. Stein, you have received and read what has been marked as Exhibit 1 -- you have it in front of you, I see -- which is a copy of the notice prepared by USDA which was published in
the Federal Register. Is that true?

A Yes, sir.

Q And you know that as part of a proposed commercial Federal Marketing Order for pecans, we treat native and seedlings together and we treat them differently from improved varieties based on cultural differences, but more importantly, based on the commercial differences between native seedling nuts and nuts from improved varieties. Is that true?

A Yes, sir.

Q And so you're trained as a scientist, a botanist, and so when you make a distinction between native and seedlings, you're making a scientific distinction. Is that true?

A Yes.

Q And that scientific distinction, for instance, the native you say we don't know kind of how it got there, it could have been a crow dropped that seed and it sprouted in the ground. Is that true?

A Right, but I mean, that nut would be
coming from a native tree where we don't know any parentage.

Q: We have no idea where it comes from.
A: Right. Now, if a crow drops a Success pecan, then we have a Success seedling, so we call that a seedling as opposed to a native.

Q: So if I have a crop of Successes and I decide that I want some nuts and go poke a hole in the ground and drop a nut in, if it happens to germinate and sprout and survive those early years, that will be a seedling.
A: That will be a seedling, that is right.

Q: So that's the biology. Right?
A: Right.

Q: Now, a seedling, what's the chance that that seedling, if we don't know how it's pollinated or otherwise, what's the chance that that Success seedling will be a Success?
A: Zero.

Q: One in a million?
A: Not even that. It will not be a
Success, it will be a seedling of Success.

Q Okay, perfect. So if I have a field of Desirables -- and those get as much money as anything in the east. Is that correct?

A Right.

Q And I take every one of those seeds and I plant them, I'm not going to get a field of Desirables, I'm going to get a field of seedlings.

A You're going to get a field of seedlings. Correct.

JUDGE GUTHRIDGE: Mr. Quirós, are Success and Desirable, are those --

MR. QUIRÓS: Improved varieties.

JUDGE GUTHRIDGE: Those are specific varieties. They also have sort of ambiguity: you've had a successful tree of some sort.

MR. QUIRÓS: Yes, they do have funny names. They're actually listed under pecan as part of the improved varieties, but it's a good point. Their industry usage is common but otherwise it is confusing. I'm not sure why we
choose names that sound like something else but
the pecan industry does.

BY MR. QUIR S:

Q I need your help here. On a
commercial sense, as a grower and then a handler
and a consumer, how are natives and seedlings
similar? We've talked about how they were
dissimilar for the science, but how are they
similar from a commercial standpoint, from a
grower-handler-consumer?

A Well, they're similar in the respect
in the way they shell out. I mean, not all
seedlings shell that great, not all natives shell
that great.

Q How about size?

A Typically seedlings are much larger
than natives.

Q And they're both smaller than
improved?

A No. You can have seedlings that are
the same size as improved.

Q Did you hear Mr. York's testimony that
natives and seedlings tend to be 12 and below and
improved 13 and above? He's a sheller. Do you
think that's reasonable?
A I think so.
Q It's just that natives would be
smaller than seedlings inside a small range.
A That is correct.
Q Okay. Thank you. And how are native
and seedlings dissimilar from improved varieties
from a commercial standpoint, from the standpoint
of a grower, a handler and a consumer?
A How are they dissimilar?
Q Yes. How are native and seedlings on
the one hand and improved varieties different
from each other on a consumer standpoint?
A Well, typically improved varieties are
going to shell out at a higher percent than your
natives and seedlings.
Q They're bigger?
A Typically improved are bigger.
Q They get more money in the market?
A Usually that's right.
Q And seedlings get less?
A Usually that's right.

MR. QUIRS: Okay. Thank you.

JUDGE GUTHRIDGE: Is the term shell out, it's not defined, that's not one of our defined terms. What do you mean by shell out?

THE WITNESS: Shell out is when you crack the pecan and you get the percent shell and the percent nutmeat, and the higher the shell out, higher percent kernel, the better.

JUDGE GUTHRIDGE: Thank you.

BY MR. QUIRS:

Q Dr. Stein, have you received a copy of the Executive Summary of the Economic Analysis of the Implementation of a Federal Marketing Order for Pecans that was prepared by Dr. Marco Palma which has been marked Exhibit 23 to these hearings?

A Yes, sir.

Q And in that he discusses the issue of promotion. Do you believe promotion works in agricultural products?
Indeed I do.

And any evidence that you're aware of that suggests otherwise?

No, sir.

With a crop that has never been promoted broadly and well through generic promotion, do you think it can especially have an impact?

I think it can.

Specifically, Dr. Marco finds that based on other tree nuts, walnuts and almonds, that if you spent the midpoint of the assessment of 2-1/2 cents on improved, that you would get 6.3 cents in benefit or increased price, and then on -- just to refresh your memory -- and then on native and seedling a penny and a half is a midpoint and get 3.6 cents. Do you agree that that's likely or reasonable?

I think so.

Good. I provided you a section of Exhibit 19 which is the full report in which he discusses certain specific research that has been
done in the past with regard to consumer
preference for native and seedlings where he
projects with some promotion you might be able to
get an increase of up to 13 cents per pound if
it's marketed correctly because of the idea that
the natives or seedlings are more natural than
maybe the improved. Are you familiar with that?

A      Yes, sir.

Q      Do you think that that's reasonable?

A      I think that is reasonable.

Q      In Exhibit 6 in these hearings, the
USDA put forth some information that showed that
the average price for native and seedlings last
year was 88 cents per pound. So 13 cents per
pound plus may 3.6 cents a pound, that would be a
fairly significant increase, would it not, for
native and seedling?

A      Yes, sir.

Q      So if the Council was able to get
promotion money and focus some of that promotion
money on native and seedlings, it could have as
much as 13 plus 3.6 cents on 88, somewhere
between 15 and 20 percent improvement, fairly
dramatic impact, potentially, on the native and
seedlings.

A Absolutely.

Q Okay. Thank you. Have you had an
opportunity to hear presentations by the American
Pecan Board over the last several years?

A I have.

Q Have you stayed up wit the
developments of the American Pecan Board?

A Oh, I wouldn't say 100 percent but I'm
aware of what's going on.

Q Do you read Pecan South Magazine?

A Yes, sir.

Q Have you read those articles?

A Yes, sir.

Q Do you know Mike Adams?

A Very well.

Q Do you know any of the members of the
American Pecan Board?

A Oh, I know a few but not everybody.

Q And do you meet them regularly at
association meetings, et cetera?

A A lot of them were at our meeting last week. Sure.

Q And you feel like you've had an opportunity, if you needed to, to ask them any questions with regard to the proposed marketing order?

A Absolutely.

MR. QUIRS: Good. Thank you.

Appreciate you coming in and giving us an education on native and seedling pecans, Dr. Stein, and for all your energies on behalf of the Texas pecan growers.

We don't have any further questions of this witness at this time.

JUDGE GUTHRIDGE: Does USDA have any questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Dr. Stein, thank you for your
testimony. Actually I just have one question for you. Are there different varieties of native trees, or are they just sort of all lumped into one category called native?

A      Every native tree is different, every native pecan is different, there are no two the same, so they're all different.

Q      Okay. Thank you. I will have to think about that for a little bit.

A      The only way that you can have two of them the same is if you take one and graft it onto another tree, and then you have two that are the same. But all native pecan trees growing on their own root system are distinctly different from each other. It's just like everybody in this room, all genetics.

Q      So when you say about the difference between a native and a seedling, a seedling you know at least one parent, that's the context.

A      That's right.

Q      Okay. I may have some other questions but I'm going to stop for now. Thank you.
Okay.

JUDGE GUTHRIDGE: Are there more questions from USDA?

MR. QUIR S: I've got a question in the meantime, if they don't.

JUDGE GUTHRIDGE: All right.

DIRECT EXAMINATION (RESUMED)

BY MR. QUIR S:

Q Dr. Stein, I know I should have asked you about this sooner. Mike Adams, who is actually a pretty good lawyer, came up to me and told me I'd forgotten a question. Appreciate that, Mike.

If you'd please turn to the Authority 986.68 which is the Authority for Research and Promotion Activities. This is one of the main authorities that's available for the Council. I'll let you take a minute to look at it there. It would be on page 38030 and it's of Exhibit 1 and it would be at the bottom left-hand corner beginning. If you'll take a minute just to read it. Just let me know when you've had a chance to
read it, Dr. Stein.

A       Okay.

Q       Dr. Stein, do you think it would be helpful if there was additional research funds available to do pecan research? I know Texas is well funded, but overall do you think that would be helpful?

A       Who told you Texas was well funded?

Absolutely it would help.

MR. QUIRS: Okay. Great. Well, as you know, one of the main issues for us is research and promotion, and I failed to ask. Thank you very much for your answer. Pass it back to USDA.

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

MS. VARELA: I'll give it a try. Jen Varela, USDA.

CROSS-EXAMINATION (RESUMED)

BY MS. VARELA:

Q       Dr. Stein, could I direct you to
Section 986.28 under Definitions, the definition of pecans.

Q      Okay.

A      Have you had a chance to look it over?

A      Okay. I'll read it.

Q      In your opinion, being somebody who is very familiar with all the different types of varieties, does this definition seem sufficient to cover all of the pecans that are commercially produced in the United States or at least in the production area that we've defined?

A      I think so, yes.

Q      And looking specifically at the list in paragraph 2 there that lists some of the most popular improved varieties, is that pretty comprehensive in terms of what you see being grown most often?

A      Yes, it is.

Q      Those cover the major ones.

A      Right.

Q      Is there any -- to your knowledge, is there ongoing research developing new varieties
that have the potential to be as popular as some
of these?

A Absolutely. We have a USGA pecan
breeding station and they're continually working
to create new pecans and they have some that
they're testing hoping to release.

Q Are any of those varieties cross-bred
with anything other than another type of pecan?

A No. Pecan, you have to cross pecan
with pecan.

Q So even if it wasn't necessarily on
this list yet, a tree that's now being developed
would still probably fall under this genus?

A I would say that's right. I have to
amend my statement. You know, certain hickories
can cross and pecan is a hickory, so you can have
some of these exotic hickory crosses.

Q And I think we heard some testimony
about hicans, and is that an example of when you
would have a hickory cross?

A Well, pecan is a hickory and then
there's other types of hickories, like there's
shag bark, shell bark, and so pecan in its native habitat with other hickories could theoretically cross, and so you would have a different type of nut out there.

Q There again, to your knowledge, the way this is defined covers everything that's being produced commercially?

A I think so, yes.

Q Thank you very much.

A You're welcome.

JUDGE GUTHRIDGE: Any more questions from USDA?

BY MS. CHILUKURI:

Q Yes. Dr. Stein, I had a question for you about the production are that's proposed in the marketing order as I'm comparing it against the math in your presentation. So I see it seems like there are native pecans outside the proposed production area. Is that correct?

A I would say that's probably right.

Q And do you know why those areas were excluded from the proposed production area?
A Have you got the proposed production areas?

Q Yes. So that's set out in number 986.30.

A So I'm not sure I understand your question.

Q So I was just asking in terms of your presentation, the map. If I'm understanding the map correctly, I see, for instance, that Illinois and Indiana and there's other areas would have native production.

A Right.

Q I don't know whether or not they have improved pecans.

A It's limited. Their production would be limited because of how far north they are.

Q Okay.

A I mean, you can have pecan trees grow far north but they won't fruit because you don't have enough growing degree days. I mean, it's not hot enough, basically.

MS. CHILUKURI: Okay. Thank you very
much.

BY MR. HINMAN:

Q     Don Hinman, USDA.

A     Yes, sir.

Q     Dr. Stein, you drew a contrast between Mr. York said something about the standard of 14 trees per acre and then you used, I believe, the term canopy size.

A     Right.

Q     Could you explain how that applies?

A     Well, if you had five big trees and they covered an acre or were sitting on an acre, what I'm saying is you could have less than 14 trees, it doesn't necessarily have to be 14, it could be based on canopy size. And then you would use shade and sun, you want sun all around the trees. So what I'm saying is you could take a massive native pecan tree, have total sun all the way around it, and it may produce 800 pounds. So theoretically you could have one tree per acre and you would come up with our average yields.

The biggest problem we have with
native pecans is there's too many trees per acre, and it's expensive to take them out, it costs money to saw them down, haul them off, burn them up, and so people don't thin them. So all I'm saying is you could thin these trees and they will become more productive, but you can only afford to do that if the price is more consistent.

Q Thank you. Because of this large variation in production that the Farm Service Agency often is involved in determining acres or pecan acres for native trees in particular, does this canopy size measurement standard apply in some of the Farm Service Agency designations of trees per acre or yields and things of that nature?

A I'm not sure what those numbers are. I mean, we recommend different spacings but it's all based on whether you're going to hedge them or you're going to let them become big trees, so as the trees grow you're actually going to have less trees per acre, so it's a changing area
Q Thank you. And then shifting gears, on one of the slides named Management Program, you used the phrase -- you used this sentence: Natives crop every three to five years regardless. Can you explain a bit more about what is meant by that statement?

A All right. It turns out that there's a lot of people that don't understand why you get a big crop followed by nothing, it's alternate bearing, and we think fertilizer has a lot to do with that and management. But it turns out that we have a lot of native trees that aren't managed and about every three to five years they have a crop, and basically we think what happens is they don't have anything, don't have anything, finally store up reserves and then they have a crop. And in the year that they crop all the other trees have a crop so the insects are dispersed so insect pressure is less as well, and so you end up with a crop even though your management program is very minuscule.
Q Does the term masting apply to this phenomenon?
A M-A-S-T?
Q M-A-S-T-I-N-G, masting. I think it was equated to alternate bearing in some previous testimony.
A I've never used masting as a term in pecans.

MR. HINMAN: Okay. Thank you. No further questions.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:
Q Dr. Stein, we had a question earlier about the native production map that showed -- well, hold on a second. Can we have that map back up there, please? Exhibit Number 45, page 2. So does this map show where native pecan trees grow?
A That is correct. The dark areas are
where native pecans are found.

Q  But from your second statement about

the trees that are found up further north perhaps

not bearing fruit, so this map characterizes

where the trees grow but not necessarily where

the commercial production is.

A    That's correct.

Q    Okay. And so if you can turn your

attention to Exhibit 1 and if you can find

Section 986.30, Production Area. Now, if you

look at that list of states, Alabama, Arkansas,

Arizona, California, Florida, Georgia, Kansas,

Louisiana, Mississippi, Missouri, North Carolina,

New Mexico, Oklahoma, South Carolina and Texas,

and you compare that list to your map of where

native trees grow, in your opinion and based on

your expertise, does this list capture the states

that have the conditions that are amenable to

producing native pecans at a commercial level?

A    Yes, I think so.

Q    Thank you. And is there a state

that's missing from this list that is on your map
of where the native trees are growing? Is there anything missing from that list in terms of producing at a commercial capacity?

A To my knowledge, no.

MS. SCHMAEDICK: Thank you. No further questions from me.

JUDGE GUTHRIDGE: Any more questions from USDA?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós.

REDIRECT EXAMINATION

BY MR. QUIR S:

Q Just an informative question. You mentioned that there was a USGA breeding station. From start to finish with a new cultivar, an improved cultivar that's being developed because of characteristics that are important to the industry, how long does that take?

A Loaded question. Anywhere from 20 to 40.

Q Twenty to 40 years?

A Yes, sir.
Q  So the USGA breeding station might be
2 at work on some new cultivars but it might be a
3 generation or two before those are brought out.
4 A  Absolutely.
5 Q  And from the time they're brought out
6 until they're commercially accepted by growers
7 and by handlers and you can prove them up in the
8 field circumstances, how much longer does that
9 take?
10 A  Well, that pretty much took all that
11 into consideration.
12 Q  So you feel like between 20 and 40
13 years is a good time before you could probably
14 get new cultivars in the field?
15 A  Right.
16 MR. QUIR S:  Thank you very much. I
17 think we have no further questions. Again, we
18 appreciate your testimony, Dr. Stein.
19 JUDGE GUTHRIDGE:  USDA, any further
20 questions?
21 MS. SCHMAEDICK:  No further questions.
22 Thank you for your testimony.
JUDGE GUTHRIDGE: Are there any questions from the audience?

(No response.)

JUDGE GUTHRIDGE: Hearing none, Dr. Stein, you may be excused.

(Whereupon, the witness was excused.)

MR. DAVIS: Your Honor, the Proponents will next call Mr. Kinley Sorrells.

Whereupon,

KINLEY SORRELLS

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Good afternoon, Mr. Sorrells. Thank you again so much for coming in today. Would you state your full name and spell it for the record?

A Kinley Sorrells, K-I-N-L-E-Y, S-O-R-R-E-L-L-S.

Q Do I understand that you have a prepared statement you'd like to give today?
A      Yes, sir.

Q      You also have in front of you Exhibit 1 and Exhibit 23. There may be a question about those.

Before we gets started with your statement, and I believe it is included in your statement, in addition to pecans you also grow some other crops. Is that correct?

A      Yes, sir.

Q      And you tell me you're right in the middle of your watermelon harvest right now. Is that correct?

A      That's correct.

Q      All right. So we'll try to get you out of here and back to work as soon as we can.

Again, thank you.

If you have your statement in front of you, why don't you go ahead and deliver that for the Court.

A      All right. As I said, I'm Kinley Sorrells. I live five miles east of Comanche, Texas. I am the owner of Sorrells Farms which is
also located in Comanche, Texas.

Since 1977 Sorrells Farms has been a major producer of pecans, watermelons, cantaloupes, tomatoes, jalapenos and peaches to the wholesale markets. We own over 1,400 acres of pecans. Currently they're in production. We produce an average of 1.3 to 2.5 million pounds of pecans each year. We've also planted 50 acres of new trees that will be in production in the next four to seven years. On our farm we grow 85 percent which will be the improved variety pecans and 15 percent will be native. Under the Small Business Administration definitions we would be considered a large business, more than $750,000 in annual gross revenue.

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 inshell versus an average 2.5 cents per inshell cost. Overall, I am aware of the costs that the Federal Marketing Order may impose on my farm and I do not believe
that these costs will be unduly burdensome.

Further, I believe that the benefits of the Federal Marketing Order on my farm will greatly outweigh any costs associated with it.

Q      If I could interrupt you just for a second. That summary of the economic analysis is Exhibit 23 that you have in front of you there?

A      Yes, sir.

Q      Thank you.

A      In recent years I've seen a wide variation in the prices that I've received for 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, the cost of my production has steadily increased.

The cost of fertilizer, insecticides and equipment has all increased in recent years regardless of the price I receive for my crop.

Further, 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 investments on my farm. 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 protocol 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 30 acres of pecans or more than 50,000 pounds of average production per year over the past 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 costs inherent in such a small production.

I am currently a member of the Texas
Pecan Growers Association and a past board member of the Texas Pecan Board, serving 12 years. The American Pecan Board has kept me informed about its efforts to propose a Federal Marketing Order. 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.

In conclusion, I fully support the proposed Federal Marketing Order for pecans and would encourage the Secretary to implement the order as proposed by the American Pecan Board. I'd be glad to answer any questions that anyone might have.

MR. DAVIS: Thank you so much, Mr. Sorrells.

Your Honor, the Proponent group would tender Exhibit 46, which is the statement of Mr. Sorrells.

(The document referred to was marked for identification as Exhibit
JUDGE GUTHRIDGE: Is there any objection from USDA?

MS. SCHMAEDICK: No objection.

JUDGE GUTHRIDGE: Any objection from the audience?

(No response.)

JUDGE GUTHRIDGE: No objection, and Exhibit 46 is admitted into the record.

(The document previously marked as Exhibit 46 was received in evidence.)

BY MR. DAVIS:

Q Mr. Sorrells, let me just ask one or two questions because you've got this mixture of improved and native pecans. I've noticed you here in the audience, you've heard some of this testimony today. Perhaps give us your point of view on how you calculate your pecan acreage for your native pecans.

A Well, as a rule of thumb we use 14 trees per acre. It has a lot to do with what Dr. Stein said, the size of trees in my part of the
country are large and many times there will be
less than 14 per acre, but in our county the FSA
uses 14 trees.

Q And do you know of any county
differences in your surrounding counties? I know
in Texas counties can be pretty big.

A No, sir, I don't know of any that do
it any differently.

MR. DAVIS: I don't think I have any
further questions at this time, Your Honor.

JUDGE GUTHRIDGE: Does USDA have any
questions?

MS. VARELA: Jen Varela, USDA.

CROSS-EXAMINATION

BY MS. VARELA:

Q Thank you so much for being here
today, Mr. Sorrells. Certainly very busy right
now so we appreciate your time and your
perspective here.

I want to ask you a few quick
questions about your time on the Texas Pecan
Board. We've had a little bit of testimony
already from people who serve on some other
organizations that do a few of the activities
that we might see something similar happening in
the American Pecan Council if it comes into
place. Can you tell me a little bit about the
type of activities that the Texas Pecan Board
does right now?

A      Well, I've been off of it for a few
years, but I was at the start of it. When it
began, I was one of the first members of it, and
of course, the main thing we're doing is we're
promoting pecans. We do an ad and also a bake
show. The ad is in the Texas Co-op Power
magazine, and it's pretty expensive to do but it
seems to be worthwhile. All of this is about
money. It takes money to promote our product.
We feel like we have the best -- there's no doubt
we have the Cadillac. The pecan is the Cadillac
and the promotion of it, it's just getting it
before people. The bake contest has been
something that's been real catchy, people like
that and they like the little bit of money that
we give them for being involved in that. Those
are a couple of things that come to mind that we
do.

Q And how are those activities funded?
A They're funded by a half cent a pound
assessment.

Q And is that collected at the state
level?
A Yes.

Q Is it voluntary or mandatory?
A Well, both. That's not a very good
answer. It's mandatory but you have the ability
to ask for a refund if you so desire.

Q Thank you. And do you anticipate that
the Texas Pecan Board's activities would in any
way be hindered by having a nationwide promotion
program under the American Pecan Council?
A Well, I believe that if the American
Pecan Board goes into place that Texas will
not -- in my mind they'll dispense, it will only
be one assessment. Now, I may be wrong, I
haven't discussed this with anyone, but that
would be what I would think would happen.

Q      In your opinion do you see a role for

having generic promotion of the product on the

nationwide level and the existence of a maybe

more locally grown state promotion program? Is

it possible that those could complement each

other?

A      Sure. I think any generic promotion

that you do, it benefits all. Naturally, being a

Texan and growing Texas pecans, I feel like my

pecans are better, that's just the way we are.

I'll get a little argument from around the room

and probably and all, but they're wrong ane I'm

right so it's okay. I think whether it's done

locally, statewide or nationwide, I guess the

biggest deal is when you promote your product

everybody benefits. If you do it nationwide, if

I'm correct, only Texas and Georgia have a

marketing order where they're assessing the

grower to promote their product, so if everybody

else gets in on the action, well, it would

certainly be of benefit.
MS. VARELA: Thank you very much.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q Good afternoon, Mr. Sorrells. Thank you for your testimony. I want to continue asking some questions about your involvement with the Texas Pecan Growers Association as well as the Texas Pecan Board.

So just for clarification, what is the relationship between the Texas Pecan Board and the Texas Pecan Commission?

A Well, the Texas Pecan Growers Board is just a group of growers that they just promote -- well, they really don't promote, they're just a group that oversees our state conferences and all, but Texas Pecan Board is a totally -- there may be some of the same people on each board but the assessment board is strictly for paid promotion and advertisement. Their duties are different than the ones that serve on the Texas Pecan Growers Board.
JUDGE GUTHRIDGE: Ms. Schmaedick, did you ask about a Texas Pecan Commission?

MS. SCHMAEDICK: Yes.

BY MS. SCHMAEDICK:

Q I'm sorry. Maybe I'm not clear on this question, but if you turn to page 3 of your testimony you say I am currently a member of the Texas Pecan Growers Association.

A Right.

Q And a past board member of the Texas Pecan Board. And then you just mentioned a Texas Pecan Growers Board.

A Well, the Texas Pecan Growers Association is the same.

Q As the board?

A Well, they have a board. The Texas Pecan Growers have a board, and the Texas Pecan Board, they have a board of directors.

Q Okay. So there's a growers association that has a board.

A Yes.

Q And then there's the Texas Pecan
That's correct. Two different organizations.

Do they do different things?

Yes.

Can you just explain that real quickly for me so I can get it straight in my mind?

The Texas Pecan Growers Association is a board, they promote pecans but they get it not from grower assessment. The Texas Pecan Board uses the money that comes from the growers assessment.

And is that assessment the assessment that's authorized under the state commission?

Yes.

So currently when the Texas Pecan Board which collects and uses assessments collected at the state level, that money is spent on activities that are specific to Texas. Is that correct?

Correct.

So if the Federal Marketing Order came
into existence and promotion activities were taken on and generic promotion occurred at a national level, in your opinion would it be important to continue to promote Texas pecans?

A Oh, you caught me there. It would be hard to not promote Texas pecans.

Q Okay. Thank you. So there could be a continued reason to keep that Texas Pecan Board.

A That's possible, yes.

Q And given that the Federal Marketing Order is focused on generic promotion nationally, would they be duplicating what the Texas Pecan Board does in terms of advertising Texas pecans?

A In many ways they would be duplicated. Any time you're promoting pecans, generic or as a specific state, you're helping the pecan industry. I probably ought to back up a little bit. In my mind, and I'm not for sure, if this passes, the American Pecan Board passes, the Texas Pecan Board would go away. Now, that hasn't been discussed, I don't know for sure, but
in my mind that's what I believe would happen. Otherwise, we're going to be assessed in Texas two times, and that probably won't work.

Q  Okay. Thank you for that. I want to talk about you as a member of the Texas Pecan Growers Association. You're a member, grower member. Is that correct?

A  Yes.

Q  How familiar are you with the other members in that association?

A  Well, pretty familiar. We're not that big a group, and I don't see many of them but once a year, but I communicate with them many times throughout the year. And there's a lot of growers and I'm in the central part of the state and a lot of pecans are grown there, so fairly familiar with many of them.

Q  To your knowledge, are there many producers that have less than 30 acres or produce less than 50,000 pounds?

A  There are some. The ones that I'm most acquainted with produce more.
Q: So in your discussions with your fellow members, have you heard of any concerns that are coming specifically from those producers that are less than 30 acres large and produce less than 50,000 pounds?

A: No, I have not.

Q: But would you say that they're aware of the marketing order proposal?

A: I think so. Most all of them will be receiving the Pecan South and they've had ample opportunity because it's been in there multiple times, and I would think that they're probably aware of it.

Q: Thank you. And you have a copy of Exhibit 1 in front of you. Is that correct?

A: Yes.

Q: Have you had time to read Exhibit 1?

A: Yes.

Q: Do you feel fairly comfortable with its content?

A: Yes.

Q: So I want to ask for your opinion as
a business owner, a large business owner. Based on your understanding of Exhibit 1, do you feel that what I will refer to as the administrative structure, so it's the language that pertains to how the business should function, have you taken time to read those sections?

A I've read all of it but I haven't totally concentrated on just that part.

Q Based on your reading of Exhibit 1, is there anything that strikes you as not being a good business practice?

A No.

Q So are you confident in the program that's being proposed in terms of its ability to run and function effectively?

A I would have to say yes. I think any business on the startup there has to be some adjustments and some things that you might want to change, and I think from my reading, that's in here if something was to come up that needed adjustment or change it could happen, and so from that point of view I feel comfortable with it.
Q And so taking your last statement, you understand that there's a proposal and you also understand that there's flexibility to make adjustments and you're okay with that flexibility being there?

A Yes.

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

JUDGE GUTHRIDGE: Any more questions from the USDA?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q If I could just go back and touch one or two topics. I think you mentioned in passing that there are only two states that have their own promotional program right now, that's Texas and Georgia. Georgia, I believe, is the Georgia Pecan Commodity Commission. Does that roughly sound right?

A I believe so.
Q And having read Exhibit 1, you understand that there's certainly nothing in that proposed marketing order that would require either of those states to stop that promotion. Is that correct?
A No. That's correct.
Q And of course, that would be left up to the decision of those commissions as to whether they would commit. Right?
A Yes.
Q Let me ask you hypothetically, if the State of Georgia were to continue putting out the good word that Georgia pecans are in fact the superior pecan, do you think Texas might also continue?
A We'd have to definitely get the truth out.
MR. DAVIS: All right. Thank you very much. I have nothing else.
JUDGE GUTHRIDGE: USDA, any more questions?
MR. HILL: I didn't quite hear the
answer. I believe he asked there's nothing
that -- it would be left up to the commissions or
the states whether they would disband or remain
in business. Did you answer that question?

MR. DAVIS: He said yes.

THE WITNESS: I said yes. And then I
had to add my Texas comment.

(General laughter.)

JUDGE GUTHRIDGE: Any more USDA
questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis, anything
else?

MR. DAVIS: Nothing further, Your
Honor. Thank you so much.

JUDGE GUTHRIDGE: Are there any
questions from the audience?

(No response.)

JUDGE GUTHRIDGE: Hearing none, Mr.
Sorrells, you may be excused.

(Whereupon, the witness was excused.)

MR. QUIR S: Your Honor, I'd like to
recall Mike Adams at this time to continue the earlier testimony.

JUDGE GUTHRIDGE: Mr. Adams, I remind you you're still under oath for this testimony.

THE WITNESS: I understand.

Whereupon,

MIKE ADAMS

having been previously duly sworn, was recalled as a witness herein and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. QUIRS:

Q      Mr. Adams, first of all, thank you for letting me interrupt your earlier testimony so that we could get witnesses that had scheduling issues.

A      And I appreciate you doing that. I thank Your Honor for allowing that.

Q      And we appreciate the Judge and the USDA accommodating that.

Now I'd like to turn your attention to Exhibit 1, Section 986.46, Council Nominations
and Voting. This is, I think, the longest section and there are a lot of values that are expressed here, and so we're going to take our time to go through this, Mr. Adams, if we can.

A  Okay.

Q  Mr. Adams, did you look at other Federal Marketing Orders before you began drafting this?

A  We did.

Q  And did you study those Federal Marketing Orders?

A  We did.

Q  And do you feel like this is a similar form to what you've seen in other Federal Marketing Orders?

A  Yes, to the extent that it's within the Act, although it's adapted to our industry.

Q  So the whole concept of voting for nominees that are then selected by the secretary is not something you've seen in other businesses you've been in, have you?

A  No.
Q So this is a bit unique to Federal Marketing Orders. Is that correct?
A That's correct, yes.
Q And so you were sensitive to some of those issues and concepts in order to comply with the Act. Is that correct?
A That's correct.
Q Thank you. Let's start sort of at the beginning. What give the industry the authority to conduct a nomination vote?
A The Act.
Q And how will nomination outreach be conducted to ensure that all parties affected by the order are notified and have had an opportunity to participate in the nominations?
A How will they be contacted?
Q Yes. How will the nomination outreach be conducted?
A Well, it's my understanding that's going to be a responsibility of the USDA in addition to the Proponent group.
Q How about trade magazines?
A  Yes. Any way that -- well, we've
mentioned Pecan South, Georgia Pecan, there are
various state newsletters, there's any number of
ways that growers can -- that lists can be built
of growers.

Q  And does the industry anticipate
holding nomination meetings?

A  I can't answer that, I'm not sure.

Q  It's allowed but I'm not sure that that's been
proposed.

Q  Why would that be practical or
impractical in your mind?

A  Well, it would be when growers or
constituent groups would be together.

Q  Would you hold one across the entire
production area?

A  No.

Q  So to the extent that we have grower
meetings, should those grower meetings be held in
a region as opposed to the entire production
area?

A  Correct. Yes.
Q Should a handler meeting or meetings also be held for the entire production area?

A No. Again, they should be regional to reflect the industry.

Q So the idea is you have a large production area over 15 states, and so the idea of nomination hearings is less practical than it might be if you were in four counties in California.

A Correct.

Q Okay. Thank you. Let's go to the very first sentence. Please take a moment to read that and then I'd like to ask you some questions about it. Why is that included?

A After input from the industry, the board felt like these procedures were fair. We want to retain flexibility, as we discussed earlier, in case there are problems along the way.

Q Thank you. Take a look at the next sentence. Explain why you added that sentence?

A Well, to make clear that the nominees
first meet the industry and the geographic diversity as set forth in 986.45 and .45 before they're nominated.

Q      Thank you. Let's move on now then to the first sentence -- well, the entire section of Exhibit 1, Section 986.46(a). Describe why the board recommends this procedure to nominate the initial council?

A      First, there's no council at the beginning so we need someone to organize the nomination, so we selected the Secretary because he or she will be fair and his or her staff has had experience in this. Second, we're adopting by reference the nominating process set forth in 986.46(b) through the approved nomination forms. And third, we wanted to give as much flexibility as possible to the Secretary to run a fair and open process so we provided many options such as the meetings and mailings and so forth, whatever is convenient to get the word out.

Q      Thank you. You used the term, you quoted the term "approved nomination forms."
That's approved by whom?

A The Secretary and I'm assuming the Secretary's staff.

Q That's right. Have these forms been developed?

A Yes, in conjunction with USDA and we have developed some forms, and I think we probably need to introduce them.

MR. QUIRÓS: Thank you. Your Honor, I'd like to take a moment to just introduce some forms. We've given these earlier to the USDA but we have multiple copies now.

(Pause to mark exhibits.)

JUDGE GUTHRIDGE: Mr. Quirós, before you start, is it your intention to finish Mr. Adams tonight, or should we be sort of thinking that there might be a place where we would recess and continue at a later time?

MR. QUIRÓS: Your Honor, I think that's a great question. We have Mr. Adams with us the entire time. I felt like it was a very important section and maybe some people had
traveled to hear this particular section, I
understood perhaps from USDA, so I wanted to make
sure that we finished this section this evening
as a courtesy. If people want to stop, we're
willing to stop. I'm not sure we'll be able to
get through all of Mr. Adams's testimony in a
reasonable hour, but I thought we would make a
good faith try. I was not aware of any public
persons that wanted to identify so I thought we
could use the last hour or so of the say to try
to move through this. If it becomes ungainly or
takes up too much time, I'll be glad to do what
Your Honor wishes to do and so will our client.

JUDGE GUTHRIDGE: By this section you
mean 986.46.

MR. QUIR S: That's right, Your Honor.
If we move quickly through that, perhaps we could
get another several, but I think that's an
appropriate place at the end of this to ask
ourselves whether or not we should continue this
evening.

MS. SCHMAEDICK: And Your Honor,
Melissa Schmaedick, USDA. Just for the record, all of the USDA people who are here today will be here tomorrow and most of us will be here on Saturday. Thank you.

MR. QUIR S: Your Honor, then maybe I should ask the question of the USDA if they have a preference to continue or not, as a courtesy.

JUDGE GUTHRIDGE: While they're caucusing, your witnesses tomorrow, you have eleven on the list for tomorrow. Do you have any prediction on the amount of time for each of those?

MR. QUIR S: No, Your Honor. It's exactly why we were a little bit, I would say, pushing to go ahead and get Mr. Adams. We do have a fairly full schedule. If you ask me how much the base testimony of each one of them would take, I would say normally about 20 minutes. It's the questions that add additional time.

JUDGE GUTHRIDGE: I think I've heard that in the past.

MR. QUIR S: Yes, sir. And it's
appropriate, it's important. Each one of them brings new testimony, it's appropriate for everybody to ask questions. So I don't know how long it will take. This is a jigsaw puzzle and we are going to cover every section amongst board members of the American Pecan Board. Just to give you a preview, after Mr. Adams has testimony, we'll hear from two other board members in Tifton with regard to important sections, Sections 60 through 65 and then 67 through 70, and then we will have a complete -- we will have touched all the sections. Again, it's a jigsaw puzzle and we're trying to fit it together.

JUDGE GUTHRIDGE: I understand.

MR. QUIRS: Unfortunately, if we don't finish Mr. Adams today or tomorrow, I cannot tell you whether there's wisdom in staying on Saturday morning and finishing Mr. Adams before we go to Tifton. We'll have plenty to do in Tifton and we will have two sections, as well as about 19 other, 20 other witnesses to take in
Tifton. Again, this is your court and we'll do what you think is best. Glad to hear, though, from USDA on what they think is best.

MR. HILL: I think it's our position that we'd like to recess for the evening, and we have Saturday, we can try Saturday, and if not, we'll resume there.

JUDGE GUTHRIDGE: My expectation was to stay here Saturday also. My flight, my reservation is on Sunday to get to Atlanta, I had no plans on going home. So it sounds like that's what you folks from Washington, anyway, what your plans were.

MS. SCHMAEDICK: Melissa Schmaedick, USDA. My concern is that based on my experience and the level of importance in this section and the extensive nature of this section, it is the largest section and probably the most complicated, that I am very doubtful that we would finish in less than an hour. My guess is that it will probably be another minimum two hours, maybe three.
JUDGE GUTHRIDGE: Just on Section .46?

MS. SCHMAEDICK: Yes, Your Honor. It covers almost a page and a half of the Federal Register.

JUDGE GUTHRIDGE: I saw just less than four columns. Well, I think one of the concerns that Mr. Quirós said a few minutes ago was that someone may have come here just to hear that section or discussion of that section, and let me ask that. Is there anyone in the audience who came for the sole purpose of hearing the discussion of 986.46 who would expect to hear that tonight? Is there anyone who came here just for that section and expects to hear it tonight?

(No response.)

JUDGE GUTHRIDGE: I don't see any response.

MR. QUIR S: Your Honor, I have a new piece of information I didn't realize, and that is that Mr. Adams will not be here Saturday, and so I wish to give the USDA a chance to think about that. When these things are over we go and
prepare witnesses for the next day so the day is
not over for us and I know it's not over for the
USDA, but I didn't realize Mr. Adams was not
going to be available on Saturday, so I'd like
them to have a chance to rethink that issue.

MS. SCHMAEDICK: Your Honor, I have a
question. Does Counsel anticipate that any of
their witnesses will be available on Saturday?

MR. QUIR S: Sorry, Ms. Meyers is not
in here. She's been really handling most of the
scheduling issues with our witnesses.

JUDGE GUTHRIDGE: Is she outside?

MR. QUIR S: We'll step outside and
see.

MR. DAVIS: We'll check with her but
we do know all those witnesses have been told to
be here tomorrow and at this late hour I've heard
some people driving four and five hours to get
here.

MR. QUIR S: We do have three days in
Tifton and we could work longer in Tifton if we
had to. Again, we do have two witnesses that
will have substantive testimony on the proposed Federal Marketing Order in Tifton. You'll hear from Dr. Hudson again with regard to the authorities, and you'll hear from Larry Wilson, a member of the American Pecan Board with regard to the budget issues and assessments and some of those inter-handler transfers, some of those significant issues.

(Whereupon, a brief recess was taken.)

JUDGE GUTHRIDGE: It's now 5:43.

We've been off the record for about 40 minutes discussing procedural matters. Mike Adams had been called to continue his testimony, and instead of taking that, we're going to take witnesses that were previously scheduled for tomorrow on July 24, starting with Dr. Rohla, in an attempt to be able to take Mr. Adams's testimony in one straight stretch, beginning Friday, perhaps continuing over on Monday in Georgia.

Whereupon,

CHARLES ROHLA
having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE GUTHRIDGE: Mr. Quirós.

MR. QUIRÓS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. QUIRÓS:

Q Dr. Rohla, have you had an opportunity to receive and review what has been marked Exhibit 1 in these hearings, the notice from the United States Department of Agriculture that was published in the Federal Register that contains the proposed Federal Marketing Order for pecans?

A Yes.

Q And have you received what has been marked in this hearing Exhibit 23 which was the Executive Summary of the Economic Analysis of the Implementation of the Federal Marketing Order for Pecans, prepared by Dr. Marco Palma?

A Yes, sir.

Q Thank you. And I understand that you have prepared testimony for us that you would...
like to deliver. Is that correct?

A      Yes, sir.

Q      If you would please proceed.

A      Okay. My name is Dr. Charles Rohla.

It is spelled C-H-A-R-L-E-S, R-O-H-L-A. I live in Roff, Oklahoma. I am testifying in my individual capacity in support of the Federal Marketing Order for pecans. I am a fourth generation agriculture producer who owns a diversified agriculture operation and works with pecan growers throughout Oklahoma and Texas. I received my PhD in crop production and hold a position as an assistant professor and manager for the Center for Pecans and Specialty Ag at the Samuel Roberts Noble Foundation which is the largest independent nonprofit institution conducting agriculture and plant science research in the United States. I am the past president and current board member for the Oklahoma Pecan Growers Association, and I am the Oklahoma state representative for the U.S. Pecan Growers Council. A copy of my current CV is attached.
I have received and reviewed the proposed Federal Marketing Order for pecans, as published in the Federal Register. In my opinion, the benefits of the proposed Federal Marketing Order for pecans are several.

First, with the 15 states growing pecans being unified and working together to address pecan industry issues, it would be very powerful. Second, when safety issues arise, and they will, the pecan industry will be able to speak as one united voice. And third, we really need to unify and commit to generic promotion. It works and we will need to move forward to market pecans. Finally, we need to cooperate to fund research, especially research that increases the demand for pecans in the domestic U.S. market.

I further believe that the issues related to the separate regional representation and treatment of improved cultivars and native seedlings have been properly addressed. I'm aware the Federal Marketing Order is for a
domestic program, while the goals of and the
future work of the American Pecan Board and the
U.S. Pecan Growers Council differs, they are
complementary. While the U.S. Pecan Growers
Council is focused internationally, the American
Pecan Board is focused domestically, both are
focused on improving pecan prices by opening
markets and enabling the selling of more U.S.
pecans.

I've received the economic analysis
summary provided by Dr. Palma and in the
projected average price increase for promotions
of 6.3 cents per inshell pound versus the average
2-1/2 cents per inshell pound cost. Overall, I
am aware of the cost that is proposed by the
Federal Marketing Order may impose. At least in
the context of my farm, I do not believe that
these costs are unduly burdensome. Further, I
believe that the benefits of the Federal
Marketing Order for my farm would outweigh any
costs associated with it.

Finally, acknowledgment and
understanding that under the Federal Marketing
Order only growers of more than 30 acres or
50,000 pounds of pecans and accumulators with
more than one million pounds of pecans will be
eligible to vote to approve or disapprove the
proposed order, I believe that this is a
reasonable and fair classification because any
grower or accumulator that is smaller than this
would not likely be a sustainable commercial
table.

I'd be glad to answer any questions.

BY MR. QUIR S:

Q      Thank you, Dr. Rohla. I know that
you're giving this only in you individual
capacity, but what is the Samuel Roberts Noble
Foundation and what do you do?

A      The Samuel Roberts Noble Foundation
was founded by Lloyd Noble in 1945 to assist
farmers and ranchers to stay on the farm. We are
the largest institute doing plant and agriculture
research in the United States. We're made up of
three divisions: a plant division that does
research on the basic cell level of plants, a
forage division that does improving mainly
grasses or forage crops, and then an agriculture
division that does basic research, applied
research on a farm level, and also a consulting
firm.

Q      Thank you. And what do you do there?
A      I am the manager for the Center for
Pecans and Speciality Ag, a new effort that we've
just established this past year, and I've been a
consultant and a researcher.

Q      And what does that Center for Pecan
Ag, what do you do there?
A      Again, it's new, but we're trying to
fill the void of other institutes, mainly land
grant universities that have lost funding to
assist growers in the different states, and so
we'll promote pecan research, give basic
information on best management practices that
will assist producers to be more successful and
profitable with their operations.

Q      And how long have you been a pecan
scientist?

A      Nine years.

Q      Thank you. In your opportunity to review Exhibit 1 there's some authorities there with regard to research and promotion. Most people focus on the promotion piece, but just elaborate a little bit about the research and sort of the benefits of having the proposed American Pecan Council have funds to do research. Would that be helpful to the industry?

A      It would be extremely helpful. The funding sources for research with pecans, really you have one source, the USDA specialty crop grants, and having a unified entity through the American Pecan Board that could support and offer money for matching for that would be essential for future projects. Right now with all the states, there's mainly four states that do a lot of research on pecans but they're scattered across the nation, and so unless we can all do the same type of work together, it's been very difficult to get funding for research.
JUDGE GUTHRIDGE: Mr. Quirós, I assume you're referring to 986.68?

MR. QUIRÓS: .68, yes, sir. Thank you, Your Honor.

BY MR. QUIRÓS:

Q You think that would be helpful across all regions?

A Definitely will be.

MR. QUIRÓS: Your Honor, I'll now tender what has been marked Exhibit 54 into the record.

JUDGE GUTHRIDGE: Is there any objection from USDA?

MS. CHILUKURI: No objection.

JUDGE GUTHRIDGE: Any objection from the audience?

(No response.)

JUDGE GUTHRIDGE: Exhibit 54 is admitted into the record.

(The document referred to was marked for identification as Exhibit 54)
and received in evidence.)

JUDGE GUTHRIDGE: And let me note for the record at this point that Exhibits 47 through 53 have been marked but have not yet been submitted for admission. That will occur later. (The documents referred to were marked for identification as Exhibits 47 through 53.)

JUDGE GUTHRIDGE: Mr. Quirós.

MR. QUIRÓS: I have no further questions of this witness at this time.

JUDGE GUTHRIDGE: Any questions from USDA?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Thank you, Dr. Rohla, for your testimony. Thanks for joining us today. I'm just curious, in your testimony you mentioned that you're a fourth generation producer and you
own a diversified agriculture operation, and you
work with pecan producers. Are you yourself a
pecan producer?
A I am. My orchard is young so I'm not
in production yet, but I am a hopeful producer in
the future.
Q Okay. And so if you don't mind me
asking, how many acres of pecans do you have?
A Total between natives and planted
trees, right now I'm at about 15 acres.
Q Fifteen?
A Fifteen.
Q One five?
A Yes, ma'am.
Q So is it your understanding that under
the proposed definition for grower you would not
qualify as a grower?
A Yes, ma'am.
Q And how do you feel about that?
A I actually was one of them that kind
of pushed for those numbers because of my
dealings with the growers within Oklahoma. I
think it's a fair basis for that. Especially in Oklahoma we have so many large ranches that just happen to have pecan trees located on their ranches but they're not pecan producers, and so my feeling was that those people that aren't actively managing pecans probably didn't have an actual need or a say and they're not interested in the promotion of pecans. They don't manage them, they actually have a custom harvester come in and harvest the pecans, so they're totally hands off, and so I think it's a reasonable suggestion for that.

Q      Thank you. That's very helpful. So to summarize your experience as a member of Oklahoma Pecan Growers Association and based on your familiarity with producers in Oklahoma, you feel that the 30 acres and 50,000 pounds is appropriate?

A      Yes, ma'am.

Q      And in your opinion it does not disenfranchise growers below that threshold?

A      Not a commercial grower, no.
Q Thank you. I looked at your resume that is attached and I see that for the Noble Foundation it indicates that you do best management practices, that you develop best management practices. Can you talk about what that means?

A We do research to look at mainly nutrient management, irrigation management, pest management, all those that would assist the producer in being more successful and more profitable. We evaluate those techniques, look at what's currently being done and then what's really being addressed or questioned by the growers and then we evaluate those to assist the growers with their production.

Q Thank you. And you also mentioned food safety. What is your experience in having to address food safety concerns?

A Well, with the recent food safety regulations being proposed, we actually started a research study with Oklahoma State University to look at the grazed orchards versus non-grazed and
the potential contaminants with 
E. coli and salmonella. And we've done a little 
twist on the previous studies where they just 
looked at grazing animals, we actually worked 
with a wildlife discipline so we actually looked 
at wildlife potential contaminants too. And so 
what we've seen from that initial study, we've 
actually had four years of that study and we've 
got two more years that's just currently been 
funded to actually address where the contaminants 
are coming from, but we've seen that wildlife 
actually has a bigger potential as a contaminant 
for E. coli or salmonella than grazing livestock 
does.

Q      And that potential for contamination, 
you're looking at that in the orchard?

A      Yes, ma'am.

Q      Prior to harvest?

A      Yes, because the regulations was to 
remove cattle 180 days before harvest, so in 
Oklahoma, Oklahoma is about 85 percent native 
production and almost 90 percent of that acreage
is grazed under and very seldom do growers remove
cattle from those acres. And so to assist our
growers in Oklahoma we've conducted a study
because if it was regulated it would actually
pretty much kill the industry within Oklahoma
because of the native production.

Q      Thank you. So do your best management
practices also or could they also at some point
include what we refer to as good handling
practices, good growing practices?

A      Yes, ma'am. We work with Oklahoma
State University. They have a specialist that is
devoted to that area and we do a lot of
educational events where we'll bring in an expert
like him and teach growers best management
practices. And we actually follow -- Georgia has
already developed a lot of that and so we utilize
what they've developed for Oklahoma and North
Texas.

Q      Thank you. And so based on the
research that either you have conducted or that
you are aware of, is there then a significant or
a potential for contamination such as salmonella or E. coli in pecans?

A There is a potential, we've seen it in the orchard. There's no way to keep wildlife out, and we've tested feral hogs, squirrels, crows, birds, even dogs, cats, raccoons. All of them are potential carriers and most of them that we tested, over 50 percent of the animals we tested, tested positive for either E. coli or salmonella or both, so the potential is there.

Luckily we haven't had a confirmed case of E. coli or salmonella coming out of the orchard itself. There is some research that shows that pecans, some of the chemical in pecan itself might kill E. coli and salmonella, but that research is still pretty lacking and we will continue to look at that.

But the threat is there, and that's one benefit of this marketing order is that if there ever was a case, then this unified voice instead of 15 voices from 15 different states making a comment about concern, it would be one
unified voice making that comment.

Q      Thank you. To your knowledge, is there a kill step in the handling process?

A      At the sheller level there is a kill process, and from what I understand, it's one of the most -- it's at a higher level than is actually required by some of the other crops, and so that is taken into consideration and so we think we've got it covered at that level. The area that's of concern to most of us in the scientific world is what's been referred to this morning as mom and pop stores or the roadside stores or stands where they're not processing them or sterilizing the pecans and selling directly to consumers. That's probably our biggest threat for the future for those concerns.

Q      Thank you. And in your opinion, could the proposed program offer a tool or a potential vehicle for creating standardized good agricultural practices and good handling practices throughout the pecan industry?

A      Yes, ma'am, definitely could be that
source that would unify all across the pecan belt.

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

MS. VARELA: Jen Varela, USDA.

BY MS. VARELA:

Q Thanks so much for staying late with us, Dr. Rohla.

A No problem.

Q We appreciate your perspective. You mentioned the specialty crop block grants program which is slightly familiar to us because it's a sister division to us. Could you describe a little what those grants are used for and what the process is of applying for them?

A Okay. There's actually two different programs, one through the USDA where you can apply for a specialty crop directly from Washington, or there's a specialty crop block funding -- block program through the individual states. So there's actually two ways a researcher could get money through that program.
One of the challenges with a big grant through Washington, it could be a sizable grant but over the past nine years that I've been involved with it, it's very difficult for an individual researcher to get that, they want a multi-state, multi-disciplinary research project, and so that makes it a little bit more difficult. The other real big hurdle is it's 100 percent matching, where most of the grants are usually 20 or 25 percent matching, and so that's been a challenge. I know the last four grants that I've been a part of were not funded because of lack of industry matching, dollar matching. We received one grant proposal, I think we only had about $10- to $20,000 of actual cash from grower associations and it was about a $3 million grant and that was not enough to satisfy the selection committee. So if this passed and there was money there to back up some of the research proposals, it would definitely help with future research projects.

Q So given that information, is it your
opinion that the authorities that have been presented in this order for promotion and research might be opportunities to create projects that could qualify for some of those grants?

A It would be a huge opportunity for us in the research rolls.

Q And similarly, you mentioned that there's a void in research that in part the Noble Foundation is trying to fill because of projects that have fallen out of land grant universities. Could you give just a couple of examples of some of those projects that were useful and maybe don't exist anymore?

Q Well, I'll give you a great example. Whenever I started in pecans, working on pecans about 15 years ago, Texas A&M had almost -- I think there was over 12 scientists and I believe there was at least four of them devoted to pecan production. Right now in the U.S. there are 13 scientists that's devoted to pecan production research: four of those only have a partial
appointment for pecans and it's a very small part of what they're doing, two of them are retiring next year, one will probably not be replaced, and then there's another two that will retire within the next five years most likely, so that really leaves five to six of us left. And right now, one of those that are retiring did get a position with Oklahoma State University that's going to replace that. So that's one of the things the Noble Foundation has seen in that lack of scientists going back into the field, and so we are actually trying to devote a program to fill that void.

Q And do you have a couple of examples of research that those people have been producing that benefits growers on a practical level?

A Nutrient management would be one that has been done by several of the scientists that have left or retired. Another one that you heard earlier about alternate bearing from Dr. Stein. That is one of the biggest problems in pecan production and trying to figure out what causes
that and how do we mitigate the pressures of alternate bearing on our production chain. It would have a huge impact in the industry if we could figure that out.

Q And I have one quick clarification to ask for from you. On page 3 of your testimony, the last page there, you were describing some of the thresholds that have been put in the definitions, and in previous testimony from some of our other witnesses they have referenced a threshold for shellers with more than one million pounds and here I see accumulators. Was that just a misstatement there?

A Yes, ma'am, it was an error. Sorry.

MS. VARELA: I will make the correction. Thank you. That's all I have.

JUDGE GUTHRIDGE: Any more questions from USDA? Mr. Hinman

BY MR. HINMAN?

Q Good evening, Dr. Rohla. Don Hinman, USDA. You've given very thorough testimony about your views of the benefits of research and you're
very involved in that, and on the views of the value of promotion. I want to ask about two other benefits that have been cited frequently by other witnesses of the proposed marketing order, and one of those is more accurate and detailed market information. Could you comment on your views, since you have such extensive contacts across the industry, your views on that benefit?

A      It would be a great benefit to the industry to have better reports. With the growers I work with, especially in the native fields or the native areas, there's a lot of growers that will call me right before harvest and ask me what the price of pecans are going to be, and if I tell them it's going to be, say, less than a dollar, they will not even harvest and they'll let them go. And so if we had better records of what the crop estimates could be so we could kind of look at what the prices should be, we could actually increase our production -- it's estimated in Oklahoma we could probably increase our production at least 30 percent, maybe up to
50 percent by just managing pecans that are
already manageable but just aren't managed right
now. And a lot of that has to do with the
market, and so it's a year-to-year deal with a
lot of the producers because they are livestock
producers, they're not pecan growers, and so
having those records that should help with the
prices and figuring out where the prices are
going to be. That would be a huge bump for our
industry within Oklahoma.

Q    Thank you. That is a very helpful
additional perspective. I appreciate that. And
then the additional question is that under 986.69
it can be established handling requirements that
could result in standards for grades, sizes and
qualities. This is 986.69 on page 38030. The
possibility of a future marketing order having
standards of grades and size and qualities.
Could you comment on the potential benefits you
see with having such authority?

A    You know, I'm not for sure exactly
when those standards were developed but I know
it's been several years, and with all the international exports we've had to go back and address some of those issues, and so having a unified, up-to-date regulation on size standards would be very beneficial so whenever one person talks about a grade one jumbo mammoth half, everybody in the industry would know exactly what's being talked about. Either here in the U.S. or somewhere in foreign lands it would all be identical, and so that would be a big benefit for promotions and for the growers that are growing them.

MR. HINMAN: Thank you. No further questions.

JUDGE GUTHRIDGE: Any more questions from USDA?

(No response.)

MR. QUIRS: Yes, Your Honor. I just want to confirm I did tender that document. It has been tendered, has it not?

JUDGE GUTHRIDGE: 54? Yes, it's been admitted.
MR. QUIRS: Thank you.

REDIRECT EXAMINATION

BY MR. QUIRS:

Q Dr. Rohla, if there was an outbreak of E. coli in pecans, how would the industry address it now?

A Right now it would probably determine -- it would depend on where the outbreak occurred so if it occurred in Georgia, the Georgia grower group would probably handle that, but the scary thing is if it occurred, every station or news person would pick that and might ask somebody within another grower state that might not be familiar with the correct things to say to alleviate problems. And so that could be a big problem for the industry because there wouldn't be one unified voice to speak on behalf of the growers.

Q As an agricultural scientist, have you ever studied or observed other outbreaks, recalls, et cetera of agricultural products, cantaloupes or other things?
Cantaloupes, peanuts, all those I've been aware of, and that was one thing that we've been worried about within the industry. So as far as you know, there's no entity that would speak for the whole industry. No, sir, not right now. No entity is prepared for any emergency with regard to this commodity? The only ones would probably be Cindy Wise or Janice Dees with one of the magazines would be one of the main point people because of their publicity with their magazines. How coordinated over all 15 states in the production area is pecan research? You said that there was some diminished resources, but how coordinated do you think it is over all 15 states? I would say over the last nine years we've got a lot better at it. There's four young scientists that I'm part of that we are trying to do projects together, but most of that funding comes from individual states so each one of us
are focused on areas that the growers within
those states are interested in, and if you look
at the difference between growing techniques in
New Mexico or Texas versus Georgia and then
Oklahoma with the natives, it's very diverse
management skills and so it's been a little
difficult for us to agree on some projects but
there are overall projects, like the alternate
bearing or increased flowering of pecans, that we
are all trying to address.

Q Across all regions?

A Yes, sir.

Q Would it be helpful if there was one
group that kept track of all pecan research over
the entire production area?

A Yes, sir.

Q Do you know anything about the
Ambrosia Beetle that attacks pecans?

A A little bit. I haven't had to deal
with them yet so I've just kept up with them in
literature.

MR. QUIRS: They are killing
approximately 100 trees on our farm that are
assigned to my partner and he's very interested
in Ambrosia Beetles, so perhaps we can speak
about that in the hall. Thank you.

We have no further questions of Dr. Rohla.

JUDGE GUTHRIDGE: USDA have any more
questions?

(No response.)

JUDGE GUTHRIDGE: Does anyone in the
audience have a question?

(No response.)

JUDGE GUTHRIDGE: Then Dr. Rohla,
you're excused.

(Whereupon, the witness was excused.)

MR. DAVIS: Your Honor, the Proponents
are ready to call their next witness.

JUDGE GUTHRIDGE: All right.

MR. DAVIS: We call Scott Landgraf.

Whereupon,

SCOTT LANDGRAF

having been first duly sworn, was called as a
witness herein and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q      Good evening, Mr. Landgraf.
A      Good evening to you.
Q      Thank you so much for jumping in here at the end of the day. I very much appreciate your being here. Would you please state your name and spell it for the record?
Q      And do you have beside you there on the stand Exhibit 1 and Exhibit 23?
A      I do.
Q      Exhibit 1 being the proposed FMO and Exhibit 23 being the executive summary of Dr. Palma's economic analysis.
A      I do.
Q      Have you had an opportunity to review those?
A      Yes, I have.
Q Just keep those handy. I understand
you have a prepared statement you'd like to give.

A I do.

Q Why don't you go ahead with that if
you're ready.

A I live in Madill, Oklahoma. I am the
owner of Landgraf Farms and retired as a pecan
specialist from the Noble Foundation after 30
years of service. I have attached a copy of my
resume.

Landgraf Farms is a pecan farm located
in Madill, Oklahoma. IN 1976 I planted my first
pecan trees. I have over 260 acres of irrigated
pecans currently in production. Last year we
produced approximately 120,000 pounds of pecans.

Q Could I interrupt you just for a
second there? I could do this at the end, but
we've heard a lot of testimony about improved
varieties and the expected production per acre,
and that just strikes me as rather low for 260
acres and 120,000 pounds. Is there anything in
particular that caused that last year?
A There's two factors that should be considered in that number. First of all is that about half of that 260 acres is below 12 years of age so I'm rather young in the process but they are making nuts. The other factor is we had an extremely hard freeze, and I just feel very blessed to have had any pecans at all.

Q I'm sorry for the interruption. Go ahead. Thank you.

A On my farm we grow improved varieties of pecans and custom manage mostly native pecans. In 2000 we built a new retail shop with a cleaning and processing facility in the same building.

I am a second generation pecan farmer.

In 1965 my father began grafting small pecan trees in south central Oklahoma. By the early 1970s he was harvesting enough to begin marketing them which my mother marketed out of our garage. Landgraf Farms would be considered a small pecan grower and a small sheller under the Small Business Administration definition, less than
$750,000 grower and $7 million sheller annual

gross revenue.

I have received the economic analysis

summary prepared by Dr. Marco Palma.

Specifically, he projected an average price

increase from promotion of 6.3 cents per inshell

pound versus the average of 2.5 cents per inshell

pound cost. Overall, I am aware of the costs the

proposed 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 the Federal Marketing Order to my farm will

greatly outweigh any cost associated with it.

Also, I am aware that the proposed

order may impose some direct costs on my

operation as a sheller, such as the 1 to 3 cents

per pound assessment. I am aware that there may

be some indirect costs, such as the obligation to

keep records of the amount of product I handle

and the calculation and remittance of assessments
to the American Pecan Council. I believe these

costs are reasonable and not unduly burdensome.
Overall, the benefits of the Federal Marketing Order outweigh the costs.

In recent years I have seen wide variations in the prices I have received for 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 has steadily increased. The cost of fertilizer, insecticides and equipment have all increased in recent years regardless of the price I receive for my crop.

The lack of accurate market information on the anticipated size of 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 investments in my farm. Increased price stability and more accurate market information would greatly benefit my small family operation. I think my farm and the industry would also benefit in the future from grade, size, quality, packaging and 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 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 costs inherent in such a small production.

I also understand that only shellers that handle more than one million pounds of inshell pecans per year will be eligible to nominate and to be elected to the sheller seats on the Council. I believe this is a fair threshold. First, I am not aware of any sheller in my area which handles less than one million inshell pounds per year that is in the commercial shelling business. Further, if there is such a
sheller, I do not believe it would be commercially viable because such a small operation could not invest in the required equipment and turn a profit on such a small production.

I am a member of the American Pecan Board and I am the grower-sheller member for the central region. I have been actively involved in the American Pecan Board's discussions to secure a Federal Marketing Order and I have been given the opportunity to participate in the board's meetings.

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 Exhibit 55 which is a statement by Mr. Landgraf and his curriculum vitae.

JUDGE GUTHRIDGE: Is there any objection from the USDA?
MR. HILL: The USDA does not have any objections, however, there is some personally identifiable information on the resume and we would make a note that we're going to redact that, and to the extent that it appears on any other resumes on previous exhibits, we're going to do that as well.

JUDGE GUTHRIDGE: Could you define what you mean by personally identifiable information?

MR. HILL: Well, he has his birth date here which clearly we cannot have on the website.

MR. DAVIS: We concur to that and if you would make those revisions before you post them on the website, that would be greatly appreciated.

JUDGE GUTHRIDGE: Any objection from the audience for admission of Exhibit 55?

(No response.)

JUDGE GUTHRIDGE: Hearing no objection, 55 is admitted to the record.

(The document referred to was marked
for identification as Exhibit 55 and
was received in evidence.)

BY MR. DAVIS:

Q Just one quick follow-up. I noted
that you say you have a retail operation. You've
sat in the audience today, you've heard some of
our discussions about exemptions for small retail
sales of less than 1,000 inshell pounds. Do you
exceed that 1,000 pounds annually?

A Yes.

Q So you are well aware then that if
this proposal were to go through, then you would
be assessed on those particular retail sales that
you make?

A Yes.

Q And even with that proviso, you still
believe that the benefits of the proposed
marketing order would outweigh any burdens that
you would incur?

A Absolutely.

MR. DAVIS: No further questions at
this time.
JUDGE GUTHRIDGE: Any questions from USDA?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q  Good evening, Mr. Landgraf.
A  Good evening to you.

Q  Thank you for your testimony. I believe you state that you are a member of the American Pecan Board.

A  That is correct.

Q  And in that capacity did you participate in the discussions that were had relating to the proposed language?

A  I was.

Q  Would you be comfortable answering some questions to further explain certain sections?

A  I would be happy to.

Q  Thank you. The first question I have for you kind of draws from your experience, your
scientific background. There is a section in the proposed order, Section 986.58 that's entitled Reapportionment and Redistricting. And Mr. Landgraf, if you could take a moment to read that over, I'd like to ask you some questions.

MR. HINMAN: Don Hinman, USDA. I'd just make a comment. I did already speak with the people next door about the noise level and it is a party going on and I'm not sure exactly what we can do about it.

JUDGE GUTHRIDGE: Are we invited?

MR. HINMAN: They actually did say yes, we're invited.

JUDGE GUTHRIDGE: Talk fast, Mr. Landgraf.

THE WITNESS: Sounds great.

(General laughter.)

BY MS. SCHMAEDICK:

Q Okay. So my question for you is based on your knowledge of the production area and how things maybe have evolved in the production area over time, with regard to this proposed section,
Reapportionment and Redistricting, in your opinion, is this an important authority to have in terms of flexibility?

A Yes. The industry is continuing to evolve, it's not going to stay the same. Lightning strikes take out native trees, just things happen, water shifts, the water laws will cause pecan trees to follow that water in some direction. And so this is a dynamic thing that there has to be the flexibility to realign this and this verbiage had to be in this FMO.

Q And do you have an example of how the production area has shifted over time?

A In the early part of my professional career, the southeast U.S. was where the pecans were grown, or at least that's where the production was headed, and I saw plantings occur in the southwest U.S. and it appears that that production is continuing to shift to the southwest, and so because of the dynamics there must be some kind of provision to make the board seats fit the production, the voice has to fit.
where the production is at.

Q Thank you. And that actually leads me into my next question. When you and the American Pecan Board were drafting the distribution of regions and seats among regions, was it intentional to capture sort of an even distribution per region?

A There was quite a discussion about that and we took poundage and tried to equalize poundage of production over time to get these lines the way that we drew them in this proposed order.

Q And so currently, based on previous testimony, the three regions represent roughly one-third of the production, one-third of the total U.S. production.

A Roughly, yes.

Q And therefore, representation in each region is roughly one-third of the proposed Council

A That's the way that it's set up with the 17 members the way that it's proposed.
Q So if, for example, production were to dramatically increase in the western region, then in your opinion would it be appropriate to either increase representation on the board or readjust the regional boundaries?

A I guess the way this is written up, it would be in the hands of the Council to decide that.

Q Yes.

A But it would be my opinion that it should shift to be weighted heavier towards that region or at least the lines moved that way.

Q And in your opinion would that be a fairly significant decision?

A I think it is just the correct decision.

Q Is it a decision that would definitely require some analysis and deliberation?

A Well, I think there would have to be a lot of data collection first and then there would have to be a presentation and I fully expect that it would require the Secretary to be
involved in that process.

Q   And the elements that are listed in
this section, so starting with shifts in acreage,
importance of new production, equitable
relationship, changes in industry structure, are
those the types of things that should be included
in the analysis to decide whether or not to make
a change?

A   Yes. I think you would have to take
all of that into consideration. It shouldn't be
just production but it should be the
demographics, numbers of people in that area that
are growing pecans, just look at the big picture
of it all.

Q   Thank you. Were you also present
during the discussion of assessments?

A   Yes.

Q   Can you describe your impression of
those discussions and how the different tiers of
assessments were formulated and whether in your
opinion the tiers, as well as the thresholds
within each tier are appropriate? And I'll refer
your attention to Section 986.61, Assessments, in particular paragraph (c).

A     Okay.

Q     So given your experience as a producer and as a handler in the central region, are these classifications and the assessments assigned to those classifications appropriate?

A     I think so. I think that it's very much appropriate that we have a differentiation between native pecans and improved varieties. I know on my farm native pecans in the last five years probably averaged 60 cents, maybe, a pound, and through my retail store my improved varieties have been selling for $3 and $4 a pound. And so with the differentiation between those prices, I don't know that there's really enough gap between the natives and the improved varieties. I know in the wholesale world these numbers we approved are right or as close as we can come up with. And again, I think it's appropriate that the Council has the right to set those exact prices and that they're given the flexibility to decide
that those numbers should actually be.

Q  And you just said set prices. Did you mean assessment rates?

A  Yes, assessment rates. I'm sorry.

Q  Thank you. So based on your statement, are you concerned that the 1 to 2 cent range might be too much of a burden for native pecans?

A  It's my perspective that it might hurt the first year or two but I think the effect is going to be what Dr. Palma has said, the investment will provide returns. And so from my perspective, I'm willing to invest and I expect to see returns. I'm convinced that we're going to see good returns for it, and in talking to the native growers in my area, they share that view and they're ready to invest, and basically they say this is our only hope.

Q  Thank you. So in your discussions about the proposed program, both within the American Pecan Board but also out in the industry, was there any concern about the
potential or the perceived potential for volume
regulation?

A I've heard some concern about
regulating acres or those kinds of regulations,
yes.

Q Was there a concern that producers
might not be able to sell all of their product
that you're aware of?

A I think their concern was not so much
about selling their product, they still want
there to be an economic -- you know, a marketing
environment there that there is opportunity to
develop markets and to put product into those
markets. So they want free enterprise still in
the system, they don't want it just, what do you
say, just cut and dried. I mean, there needs to
be some dynamics but we need to get the message
out. We've got to have some money somehow to get
the message out, and this is the tool with which
to do that.

Q And by getting the message out, do you
mean promotion?
If you turn your attention to 986.94, paragraph (d), and I'll quickly read the first sentence here for you so you know what we're talking about. So the first sentence of 986.94(d) says: "The Secretary shall conduct a referendum within every five-year period beginning from the implementation of this part to ascertain whether continuance of the provisions of this part applicable to pecans is favored by two-thirds by number or volume of growers voting."

So in previous testimony we've seen that referred to as a continuance referendum. In your opinion, is this an important element to have in the program?

I do. I like the idea of being able to go back and revisit. To me it's a check and balance, and I think it's very important.

And to your knowledge, did this particular element in the proposal help build some confidence among folks who might have had
some concerns about the program that if they
didn't like it they could maybe get rid of it?

A When I first read that in the
proposal, I was like: Do we really need that?
And then I had those conversations that you just
mentioned of people saying: Wow, if we don't
like this, we can get rid of it. And so their
confidence really built up in the discussion that
I was able to have with them with that included
in this product.

Q Thank you. And do you have any other
experiences that you want to share with us
regarding the development of the proposal and
particular elements that stand out as being
especially relevant to the industry, other than
the ones we've spoken about?

A Well, I think that this is very
critical to our industry right now, and I think
that in Oklahoma and I think it goes on into
Kansas and Missouri, maybe even northern
Arkansas, could even creep over into Texas, but
they're feeling like this is what we're waiting
on. I mean, in the native world they're saying this is our hope and we really need to see this put in place so that we'll have some way to market our product. And I know the discussions that I'm having with fellow growers and people that are calling me about harvesting their pecans, I'm having a little bit of difficulty saying: Sure, I would love to harvest your pecans because I could sell them 50 cents a pound and it costs me 60 cents to do it. And I can't do that. And a lot of people are saying I think we're just going to leave them lay because we don't have the infrastructure with which to get them into the market, as such, or the demand is not out there. And so we really need this program as an industry, or the native industry, and I think the improved industry needs it too but the native industry really needs it.

Q       We did hear testimony from another witness that stated that basically the success of the proposed marketing order would help that individual decide whether or not to keep their
ranch. Is that a similar sentiment that you've seen?

A  I don't know that I've heard any discussions about keeping their ranch but about buying equipment, about maybe buying additional property, especially giving credit to the pecan trees that might be on the adjacent ranch. And I know a lot of native pecan trees that have actually been pushed out in order to plant other crops because of what's been going on the last few years, and I think that if this order comes into place that it could very well save a lot of pecan trees' lives.

Q  Thank you. And in your discussions have you had any interactions with the folks from Kansas, producers in Kansas?

A  Some, to a limited amount.

Q  And would you say that your statements also reflect those folks?

A  I would have to say you could probably find some opposition, but the guys that are really into the business, yes, they reflect what
I just said.

Q Thank you. My last question for you, I'm going to touch on food safety and I know our previous witness spoke quite a bit at length about good agricultural practices and good handling practices and the work that the Noble Foundation is currently doing, and I see by your resume and by your statement that you are a retired scientist from the Noble Foundation.

A Correct.

Q So do you have any further experience or statements with regard to the issue of food safety and the pecan industry and sort of the eventuality, if it exists, to be able to address food safety?

A Well, food safety for myself, my family, for our operation is utmost importance, and we sell pecans that we grew ourselves so we know where they came from, what they've been associated with, and so we've got control of that. When you start venturing out and not knowing where something came from there is
concern. I just don't know what the answers to all those problems are. I just know it exists and I really don't have a lot of answers for it; it's a concern.

Q Thank you. No further questions.

Thank you for your testimony

A Thank you.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis.

MR. DAVIS: Just a couple of quick things to follow up on.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q Let me go back to something that you said and make sure we're comparing apples and oranges here. You said in your retail shop you're selling improved pecans for about $3 to $4 a pound at retail. Is that correct?

A Correct.

Q And then you said 60 cents per pound
for natives. That's a wholesale price. Correct?

A      Correct.

Q      Okay. So if we're going to compare

wholesale to wholesale, obviously those improved

prices would be lower. Correct?

A      The improved prices, we usually don't

send out best quality out to wholesale, but

wholesale a lot of times would be a dollar,
dollar and a quarter.

Q      All right. And then, again to

reiterate for the record, you are on the board of

the American Pecan Board. Correct?

A      Correct.

Q      And that board voted unanimously to

propose this proposed marketing order. Correct?

A      They did.

Q      And you still agree with that?

A      I do agree.

Q      Thank you. And including the level of

assessments and the flexibility that's in it?

A      I agree with the assessments.

Q      Thank you. Again, just to clarify --
and Mr. Quirós, get this ready, Section .68(c) --
you say in you conversations that you had with
other growers and things, there was some concerns
expressed about this new board or this new
council putting any kind of restrictions on
supply or limits on acreage and things to that
effect. Is that right?

A      Yes, some concerns about having the
authority to have us push out some of our trees
and stuff. And they had that perception about
orders, marketing orders.

Q      If you would take a look at Exhibit 1
that you have before you -- and I think my
nimble-fingered assistant is going to put that up
on the overhead any minute -- and look at Section
.68(c), and Section .68, as you can see from the
Exhibit 1 there, is the authorities and the
powers that the -- do you have that section (c)
in front of you?

JUDGE GUTHRIDGE:  I'm sorry. Which
section?

MR. DAVIS:  Section 968.68(c)
JUDGE GUTHRIDGE: I don't have a .68(c).

MR. DAVIS: Maybe that's why we're having trouble finding it.

MR. QUIR S: It's .69(c).

MR. DAVIS: I'm sorry. My eyes are growing weary. Section .69(c), and .69, the heading of that is Authorities, is it not, Mr. Quirós?

MR. QUIR S: Yes, and .69 is authorities regulating handling.

BY MR. DAVIS:

Q If you have subsection (c) there before you, you understand that to be basically that the authority to regulate, as put forward in this subsection, shall not in any way constitute authority for the Council to recommend volume regulations such as reserve pool, producer allotments or handler withholding requirements which limit the flow of the product to the market for the purpose of reducing market supply. Do you see that?
Q: Do you feel that in drafting the FMO the board was conscious of the concerns you heard and sections like this address that concern?

A: I do, yes.

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

JUDGE GUTHRIDGE: More questions from USDA?

(No response.)

JUDGE GUTHRIDGE: I have a question, if I could ask. Ms. Schmaedick questioned you about Section 986.58, Reapportionment and Redistricting.

THE WITNESS: Yes.

JUDGE GUTHRIDGE: In your answer you talked about things like shifts in water and such things as that as part of your answer which triggered a thought in me.

We've all read in the last number of years about climate change, and I've read reports of plants' growing range moving northward.
THE WITNESS: Yes.

JUDGE GUTHRIDGE: And I look at a map here that was in one of the exhibits, 45, I note that Tennessee touches six of the states that are in the production area. Would Section .58 give the Council the authority to increase the size of the production area to include other places where pecan production may begin?

THE WITNESS: The way I understand it, there is provision in this order to do most anything with the appropriations. It might require that it has to be in the referendum that it's re-voted on, but it can be, and if it's necessary, I think it should be. There should be that leniency or that ability to reappropriate areas.

JUDGE GUTHRIDGE: Thank you.

Mr. Davis, anything else?

BY MR. DAVIS:

Q MR. Landgraf, is your understanding that if such a shift in the production area were to be made, would that be the type of decision
that would require what we've referred to here as
the super majority of the board to make under
Section .55(c)(1)(vi)?

A  Yes.

MR. DAVIS: Thank you. No further
questions.

JUDGE GUTHRIDGE: Any more questions
from USDA?

MS. SCHMAEDICK: Melissa Schmaedick,
USDA.

Mr. Quirós, could you put that slide
back up on the screen? I apologize. I was
speaking to the redistricting .58. Mr. Quirós,
you can put up the other one that you had, that's
fine too.

RECROSS EXAMINATION

BY MS. SCHMAEDICK:

Q  Mr. Landgraf, if you could look at
that first introductory paragraph of 986.58, and
I'll read it in for the record. It says: "The
Council may recommend, subject to the approval of
the Secretary, reestablishment of regions,
reapportionment of members among regions, and revise the groups eligible for representation."

What I want to focus on is reestablishment of regions. In your opinion, is reestablishment of regions the same as redefining the production area?

A Well, I think production is one factor maybe, but to me it's bigger than maybe just production. I think production should drive it. That's my opinion. It's up to the Council to decide that.

Q Right. So let me try to restate my question. So in your discussions with the American Pecan Board, you identified a production area. Is that correct?

A Correct.

Q And the current production area, as it is set forth in the proposal, is 15 states.

A Right.

Q And then you took that production area and you divided it up into regions.

A Right.
Q. So if you look at the authority to reestablish regions, am I correct in saying that reestablishing regions means shifting the boundaries within the production area?

A. I think so. I think that it would be either broadening or moving maybe those lines a little bit, but I visualize that there will still be the same alignment on the board as far as numbers of Council members.

Q. Yes. Thank you, and you did state that earlier. But I wanted to clearly differentiate between the authority to reapportion regions which here the Council may recommend that subject to approval of the Secretary, as opposed to the redefinition of the production area which is a different action. Is that your understanding?

A. Right.

MS. SCHMAEDICK: Thank you. No further questions.

MR. DAVIS: We have nothing further, Your Honor.
JUDGE GUTHRIDGE: Nothing further?

Does anyone in the audience have a question for Mr. Landgraf?

(No response.)

JUDGE GUTHRIDGE: Hearing nothing, you may be excused.

(Whereupon, the witness was excused.)

MR. DAVIS: Exhibit 55 was tendered?

That's right, we had the discussion about his birth date. Thank you, Your Honor.

JUDGE GUTHRIDGE: Is there anything else tonight? We'll recess until eight o'clock in the morning.

(Whereupon, at 7:00 p.m., the hearing was recessed, to resume at 8:00 a.m. Friday, July 24, 2015.)
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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: 07-23-2015

Place: Richardson, Texas

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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