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

MONDAY,
JULY 27, 2015

The hearing came to order at 8:00 a.m. in
the Magnolia Room at the Hilton Garden Inn,
located at 201 Boo Drive, Tifton, Georgia, Clay
G. Guthridge, Administrative Law Judge,
presiding.

BEFORE:

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Chief Administrative Law Judge
Federal Maritime Commission
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>WITNESS</th>
<th>DIRECT</th>
<th>CROSS</th>
<th>REDIRECT</th>
<th>RECROSS</th>
</tr>
</thead>
<tbody>
<tr>
<td>LAWRENCE WILLSON</td>
<td>11</td>
<td>28</td>
<td>31</td>
<td>41</td>
</tr>
<tr>
<td>RANDY HUDSON</td>
<td>145</td>
<td>170</td>
<td>173</td>
<td>192</td>
</tr>
<tr>
<td>BILL COBB</td>
<td>296</td>
<td>296</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BARRY FULLER</td>
<td>309</td>
<td>312</td>
<td>318</td>
<td></td>
</tr>
<tr>
<td>HILTON SEGLER</td>
<td>321</td>
<td>339</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOM HARMON</td>
<td>358</td>
<td>365</td>
<td>373</td>
<td></td>
</tr>
<tr>
<td>JEB BARROW</td>
<td>376</td>
<td>394</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R.G. LAMAR</td>
<td>400</td>
<td>307</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXHIBITS</th>
<th>Marked/Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ex. 63</td>
<td>365/365</td>
</tr>
<tr>
<td>Ex. 64</td>
<td>393/393</td>
</tr>
<tr>
<td>Ex. 65</td>
<td>407/407</td>
</tr>
</tbody>
</table>
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8:00 a.m.

JUDGE GUTHRIDGE: Good morning. My name is Clay Guthridge. I'm the Chief Administrative Law Judge at the Federal Maritime Commission. I've been detailed to the Department of Agriculture to preside over this public rule making hearing.

But before we get any farther, first let me ask you to do this, if you'll take your cell phones, other such devices that make noise, and turn them off, or at least put them on silent so we're not disturbed by any calls coming in.

Could I have appearances for the USDA, please?

MR. HILL: My name is Brian Hill with the Office of the General Counsel.

MS. CHILUKURI: Rupa Chilukuri, also with the Office of the General Counsel.

JUDGE GUTHRIDGE: And appearances for the Proponent Group, please?

MR. DAVIS: Yes, Your Honor. Dwight
Davis for the Proponent Group.

MR. QUIRÓS: Paul Quirós for the Proponent Group, and I'll announce Regina Myers for the Proponent Group as well.

JUDGE GUTHRIDGE: Thank you. We're here today on a proposal to promulgate a marketing agreement covering a 15-state marketing agreement for pecans pursuant to the requirement of the Agricultural Marketing Agreement Act of 1937. This Act is codified at 7 United States Code, Section 601 to 674, and the proposal is Docket Number 15-0139AO-FB.

The proposal was published in the Federal Register on July 2, 2015 at 80 Federal Register, pages 38021 through 28032. The proposal was submitted by the American Pecan Board, the Proponent Group represented by Mr. Quirós and Mr. Davis. The production -- proposed production area extends from the Carolinas on the East Coast down to Florida and then across the United States all the way to California.

We've had hearings last week on Monday
and Tuesday, the 20th and 21st, in Las Cruces, New Mexico and then also on Wednesday morning in Las Cruces and then in Dallas on Thursday and Friday. Then it's carrying over here this week, Monday, Tuesday, Wednesday, with a possible carry over till Thursday.

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 the opportunity to do so. And that information that is gathered in the hearing will be presented to Secretary of Agriculture, who'll make the ultimate decision on whether to go forward with it.

Any interested person may testify, and the testimony may be admitted as long as it's not immaterial, irrelevant or repetitious. You also may testify by submitting a written statement under oath and that should -- that statement, if it's in writing should identify the person making the statement, including the name, address and
other contact information and occupation.

That should be submitted -- let's see, Ms. Wray is here. Is that correct? Yes. The young lady back there with her hand in the air, if you have something you want to submit, see her about it.

Ms. Wray, are you also going to be handling sign ups?

MS. WRAY: Yes.

JUDGE GUTHRIDGE: And if you want to testify, contact Ms. Wray and let her know that.

Any interested person may also ask questions of a witness who presents testimony. So at the conclusion of each witness's testimony, I'll ask if anyone in the audience has any questions, and you'll get an opportunity to do so at that time.

Ms. Brenda Thompson, Ms. Thompson is sitting to my right over here. She's the court reporter in charge of taking down everything and making sure it's accurate. If you'd just leave -- it would be very helpful to her if you
would speak into a microphone and clearly
enunciate properly. And if you're testifying, I
might -- at the conclusion of your testimony, I
would ask you to consult with her and see if she
has any problems with any spellings of names or
anything else.

So the first thing I want to
address -- and what I -- rather the
representatives of the Department of Agriculture
seated to my right over here, are not permitted
to talk with anyone about any substantive matters
in a proposal. Procedural matters they can talk
about, so -- but substantive matters they are not
permitted by the rules to talk with you. So
please don't approach them, saying, Hey, don't
you think it be a good idea to change the fiscal
year averages. They'll get a very frightened
look on their faces.

The first thing I want to address is
that on Friday there was an exhibit that was --
Exhibit 62 was submitted by the Proponent Group,
and the Department of Agriculture objected. I
sustained the objection on hearsay grounds. It was a letter that had been written but was not under oath. And I told counsel for the Proponent Group that I would look at that over the weekend though. And I've looked at the rules and I'm going to hold to that position. And as I said, that -- there's a way for you to appeal to the Secretary, and he can decide the end result.

MR. DAVIS: Your Honor, you also had suggested that we could get an affidavit from the author of that letter authenticating it, and we're going to see if we -- he's from Oklahoma, was unable to make it to the Dallas hearing because of an emergency on his farm. But we'll see if we can work something out.

JUDGE GUTHRIDGE: That'd be great.

Okay. So, Mr. Quirós and Mr. Davis, you may proceed.

MR. DAVIS: Yes. We'd like to call our first witness in this portion of the hearing, Mr. Larry Willson.

JUDGE GUTHRIDGE: Mr. Willson, if
you'd come sit up here to my left.

(Pause.)

JUDGE GUTHRIDGE: And while they're doing that, for USDA personnel, I know you'd been very good last week about announcing your names when you -- before you speak. Ms. Thompson pointed out that from where she is, she can't really who you are because you're in a line. So I'd just ask you to make sure you continue that this week so it'll help her out.

MR. HILL: Not a problem. And that's Brian Hill.

(General laughter.)

JUDGE GUTHRIDGE: Very good.

Mr. Wilson, could you raise your hand.

Whereupon,

LAWRENCE WILSON

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

JUDGE GUTHRIDGE: Okay. Proceed, Mr. Quirós.
DIRECT EXAMINATION

BY MR. QUIRS:

Q   State your name.

A   My name is Lawrence Beatty Willson; I go as Larry. And for the court reporter's benefit, my last name is spelled with two Ls.

Q   Would you spell your entire name for her?


Q   And, Mr. Willson, where do you live?

A   Albany, Georgia.

Q   Tell us a little bit about your educational background.

A   I graduated from high school in '68, went to Trinity College in Hartford, Connecticut. I graduated with a BA in economics in '72. Went back to work briefly on the farm, went to Georgia State University and got an MBA in marketing in 1976.

Q   Thank you, Mr. Willson. Would you
tell us a little bit about your family's history in the pecan business and your history in the pecan business.

A Yes, sir. My grandfather Willson bought the farm in Albany, Georgia in 1926 when the pecan trees were five years old. He and his family lived in Atlanta, but he grew up alternately in Atlanta and Albany on the farm during the Depression. His father had died in 1928 and my grandmother, his mother, continued to live in Atlanta, but also had kept the farm going and they lived in one of the farmhouses on the farm.

After he went to Emory University and Harvard, he swore to his mother that he would never come back to the farm. He had had enough of that during the Depression. He got an MBA at Harvard, then served in the South Pacific in World War II. When they moved back to Atlanta, my father was working for an accounting firm. In 1947 he married my mother. And he worked four years with -- I said accounting; it was a
consulting firm.

In 1950 my grandmother had contracted to sell the farm in Albany -- and it's about 1800 acres -- for $90,000, which you all do the math. It was about 50 bucks an acre back then. The financing fell through so my father I think had had enough after four years of sitting behind a desk and told my grandmother not to sell the farm, he would move back to Albany and run it for her.

And so early in '51 he moved to Albany with his wife and two young boys. I was one of those, I was three months old, my brother was 20 months old, and later they added another son and a daughter. And he farmed the farm for his mother for -- all the way until her death in the '70s.

Back in the '30s and '40s when pecan trees had been planted in Albany, they really weren't economically viable, so they did a lot of other things. They sharecropped, they -- you know, I'm sure that the sharecroppers wondered
what these trees were doing in the way of their mules trying to plow.

But anyway, the pecans were not -- as I said, not a great source of income that they now can be, and people found other ways to enhance their income. My father ran cattle and had cattle on the farm right up until when I came back in '78. This is the farming operation today we call Willson Farming Company.

While he and my mother were still in Atlanta, she was a Wellesley Alumni, and the Atlanta Wellesley Alumni Association knew that her husband had a pecan farm in south Georgia, and they were interested in purchasing pecans to sell as a fundraiser.

And my parents thinking that if Wellesley wanted pecans, maybe others would also. So in 1948 while still in Atlanta, they started a small mail order business selling pecans only. And this is a business that we now call Sunnyland Farms.

That part of the business, after my
father and mother moved to Albany, grew very slowly. My father used to say you could grow a mail order business if you have one or two things, either a lot of time or a lot of money. And they didn't have lots of money. So I can remember in the '50s and '60s stuffing catalogues to mail out in our family room at home.

While I was at college, the mail order business in 1968-69 had gotten big enough where it was -- it wasn't making a real return, but it was taking up a lot of time. It was at that point that they decided that they would either get all the way in or get out. And they made the decision to go ahead and get in fully in the business. They hired professional help, they expanded mailings, and started growing the business more rapidly.

It was about this same time that he, my father, got into the shelling business. As the mail order business grew, it became increasingly hard to find good enough quality pecan meats. There was one sheller in central
Georgia, Ross Smith Pecans, that turned out the most beautiful halves. And my father every year would try to buy as much of Dr. Ross's production that he could.

But in order to maintain quality for our catalogue, he decided to get into the shelling business. And one summer, I guess I was home from college and I was working on the farm, I can remember getting in the open van, big van truck, and going down to Quincy, Florida with two of the guy that worked for my father, where we -- where he had bought a small shelling operation from a lady that wanted to get out of the business. It had a few champion crackers and shellers and picking tables and a few other items.

From that point the business grew and became viable and successful for my parents. We now have our own candy kitchen and toasting room in addition to the shelling plant.

Just a brief description. Sunnyland Farms is a mail order business selling pecans and
other nuts, candies, cakes, toasted nuts and
dried fruits and other specialty items. We also
sell pecan kernels to the wholesale market. We
send out thousands of catalogues and flyers a
year, as well as maintaining a website,
sunnylandfarms.com. We're also involved in
various aspects of social media.

My personal involvement in Sunnyland
Farms/Willson Farming Company came in 1978 when I
moved back at age 27. Most of my experience has
been on the farming side of the business. When I
came back it was late September, early fall, and
that's when pecans are harvested. So the first
thing my father did was send me down to the
cleaning plant, which is where the nuts come in
from the field to separate out sticks, rocks,
leaves and other trash from the pecans.

In the early years I did about
everything on the farm including running sweepers
and harvesters. We hired a company in 1979 to
put out our first 250 acres of irrigation. After
that we figured we could do it ourselves, so we
bought a trencher and I supervised the rest of our irrigation installations over the next seven years.

Now all of our orchards, except a small orchard right across from our main plant, is irrigated in either silent set, which is sprinklers or drip or microjet. And in the late '80s and early '90s we started a program of cutting out weaker varieties and replanting mostly with the varieties, Desirable and Stuart, and our orchard now consists primarily of three varieties, Desirable, Stuart and Schley.

While both my parents were still alive, I was -- I also had the responsibility of running the shelling plant in addition to procuring all the raw materials for that plant. My father died in 2004 and my mother retired last year at age 90. She's still alive and not active.

Although I'm officially, according to corporate books, VP and CFO of Sunnyland Farms, for all intents and purposes I'm now President
and CEO of both companies. Willson Farming Company consists of approximately 1775-80 acres of which 320 are planted in improved pecans. The original orchard had about 980 acres of trees planted on a 46-2/3 space, which gives you 20 trees to an acre, so it was around 19,000 trees originally. We have added the additional acreage since I moved back, planted mostly in the Desirable variety.

Willson Farming Company would be, under the FSA guidelines, a large grower. And Sunnyland Farms would be considered a small handler.

Q  Mr. Willson, I may have misunderstood. I thought you said that you had 320 planted acres in pecans. Is that 1300?

A  I'm sorry, 1320, if I said 320.

Q  And they're all in improved varieties?

A  They are.

Q  Okay. Mr. Willson, you're clearly a grower and a sheller, but under the proposed Federal Marketing Order for pecans, if you
thought about how you might vote, would you vote as a grower or as a sheller?

A     As a grower, sir.

Q     Thank you. Tell us about your participation in various trade organizations up until this time.

A     Okay. I have been a member of the Georgia Pecan Grower Association and the South -- and still am a member, and the Southeastern Pecan Growers Association since moving back to Albany in '78. I have served on both Boards and am a past officer and past president of both Boards.

Sunnyland Farms was not a member of the National Pecan Shellers Association till about 25 years ago, but since becoming a member, I have served on that Board several times and I'm currently on that Board and have held all the officer positions, including president in that association as well. And I'm a member of the American Pecan Board as well.

Q     Well, let's stay with that. Tell us a little bit more about your participation in the
American Pecan Board and the work that you did to prepare the proposed Federal Marketing Order for pecans.

Personally, I have always thought that the industry, the pecan industry needed to work together to get great things accomplished. To that end, I was active in getting the pecan program, similar to the FMO we're now trying to establish, of the early '90s implemented, and I served on its Board until it was voted out.

So when this movement to get an FMO for pecans was started, I was eager to help. I attended many preparatory meetings and grower and sheller conferences where the idea was presented. With positive feedback, it was decided to form the American Pecan Board to pursue an FMO, and when asked to serve as an eastern representative, I accepted.

My involvement -- now this is my recollection, I didn't write all this down and I relied on some others to help fill in the blanks, but my involvement began back in 2011 when the
idea of an FMO was just that, an idea, and one
that not a lot of people wanted to say out loud.

But there was definitely a movement to
get all aspects of the pecan industry working
towards a unified goal of increasing demand in
light of the coming increase in supply. It was
only later when the American Pecan Board was up
and running, that we realized the only effective
way to raise funds was through an FMO.

The following is a summary, although
probably incomplete, of various meetings over the
years I attended as either a proponent of or a
member of the American Pecan Board, or its first-
year race in the US Pecan Council. We began by
listening to growers, shellers, and handlers at
whatever meetings we could go to.

In February 2012 at a meeting of the
Southeastern Pecan Growers Association was one of
the first meetings where the idea of the
marketing order was suggested. I was part of
that meeting. From that meeting and the
subsequent National Pecan Shellers Association
meeting in March there became -- there came a proposal for an organizational committee.

   After several conference calls, the committee was formed near the end of 2012, and was named the US Pecan Council, which as we noted earlier, later became the American Pecan Board, which consisted of three growers, three shellers and three grower/sheller members, one from each section of the country, west, central and east. It also had two at-large members.

   I was a grower/sheller representative from the east. I don't recall all the meetings of this Board, both formal and informal, but know that we -- except for the mid-winter sheller meeting in Nashville, Tennessee, I think it was a year-and-a-half ago, I have attended all the meetings of Southeastern Georgia and the National Pecan Shellers, except for that national meeting, and the only reason I missed that was it conflicted with the Georgia Pecan Growers meeting.

   In addition, I attended the Texas
Pecan Growers meeting in 2014. In all these conferences there was a meeting of those APB Board members present, and in most cases APB was part of the program at these meetings. And in a lot of cases USDA representatives were in attendance as well.

As a result of these meetings, and with input from USDA, we wrote a first draft of the Federal Marketing Order. A big meeting of APB occurred this year, January 13 through 16, when the entire Board and representatives from USDA met in Dallas for the purpose of having a rule summit to iron out the FMO.

That, and its subsequent drafts, were finalized into the FMO that we are discussing today and is the purpose of these hearings. And I was a part of all these meetings.

Q Thank you, Mr. Willson. You have received and reviewed Exhibit 1 to these hearings, have you not?

A Yes, sir.

Q And I understand you are going to
refer to Exhibit 1 in your testimony in just a few minutes as a member of the Board of the American Pecan Board to discuss Sections 986.60 through 986.65. Please begin.

A 986.60 is the budget. The budget is the backbone, or road map, for the whole assessment and marketing research program. The Council will meet before each upcoming fiscal year for the purpose of proposing a budget for that year.

It's up to its counsel and its committees to decide what marketing and/or research needs to be funded and how much will be needed for administrative expenses. With that dollar amount in hand, the Council should be able to set the assessment within limits provided in the order based on the estimate of the upcoming accessible crop.

The budget needs to be done before the fiscal year begins. However, this proposed schedule will give the Council flexibility to meet at its convenience, i.e. in the spring or
summer. Alternatives, such as having the Council meet once a month before the beginning of the fiscal year was considered, but the Council might get information later than that. So we opted for more flexibility.

Also, because of the nature of the production area being so large, we felt flexibility would be important to the Council, allowing the Council for example to meet in conjunction with other industry meetings or conferences since in many cases many Council members would be in attendance at those meetings or conferences.

Section 986.60 makes it clear that the Council ultimately has the authority to make the budget with the approval of the Secretary of Agriculture.

As for other expenses, expenses other than those for marketing or research, such as administration, at this time it would be presumptuous for me to say what they might be since I don't know if I'll be on the Council and
I don't know exactly what might be required in
the way of staffing to carry out the mandates of
the Council. I would hope and expect the Council
to minimize expenses so as to optimize the funds
that can go for marketing, research, promotion,
handling authorities and data gathering.

Would you like me to proceed on to the
next section?

Q: Yes, sir.

A: 986 --

JUDGE GUTHRIDGE: Just give us -- last
week, so it'll be section-by-section, so I think
that'd be -- I think worked pretty well that way.

MR. DAVIS: Yes, Your Honor, if that's
the way you'd like to proceed.

JUDGE GUTHRIDGE: Yeah. And I want to
go, at this point, if the USDA has any question
about his opening testimony. It might be
appropriate time to ask about that now.

So, USDA, do you have any questions
about either the opening -- Mr. Willson's opening
statements or the exhibits, the entire section
60?

(Pause.)

MR. HILL: One moment, Your Honor.

(Pause.)

MS. SCHMAEDICK: Melissa Schmaedick, USDA. Is this on?

MR. HILL: It's working, yeah.

MS. SCHMAEDICK: Okay.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Good morning, Mr. Willson. Thank you for your testimony. When you described this Section 986.60 budget, you -- I think you mentioned that it was through the calculation of the budget that you would then I guess arrive at a recommended assessment rate. Can you further describe kind of the process or the calculation that you see being involved in that determination?

A Well, I think the first thing that the Council needs to do is establish a program and try to get an idea of how much money they need to
raise. Based on data that's gathered about upcoming crop and maybe last year's pricing, you know, from that, based on the -- and we'll talk about this a little bit later, based on the amounts for each particular type of -- you know, native versus improved versus seedling, we can set a range -- set a price within that range that would arrive at that dollar amount that you're trying to raise based on basically assumptions that may or may not be right.

Q     So if I'm understanding correctly, you would sort of come up with your ideal amount that you need in terms of money to cover all of the expenses related to the activities of the program?

A     Yes.

Q     And then you would also take into consideration the anticipated production?

A     Right.

Q     And then you would sort of do a calculation where perhaps you would divide the funds needed by production to arrive at a per
pound rate?

    A     That's my understanding of the way it would work, yes, ma'am.

Q     Okay. And just to clarify then, the assessments that are collected under program, is it fair to say that those assessments actually fund the activity of the program?

    A     Yes.

Q     Okay. I'm just trying to clarify it for the record.

    A     Okay.

MS. SCHMAEDICK:  No further questions.

MS. VARELA: Jen Varela, USDA.

BY MS. VARELA:

Q     Good morning --

    A     Hey.

Q     -- Mr. Willson. Just to follow up on what Melissa was saying, and also just to clarify for the record, Is it your impression that these assessments, when collected, remain under the name of the Council to be used for those purposes, that it's not going to the USDA?
A Yes.

Q Thank you.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

REDIRECT EXAMINATION

BY MR. QUIR S:

Q Mr. Willson, would you like to continue with your testimony in Section 986.61?

A Okay. As you can see, 986.61 assessment, Section (a) establishes that the first handler shall pay the assessment. That assessment is calculated to cover the Council's proposed expenditures much as I guess we just discussed.

It should be noted that the establishment of a Federal Marketing Order does not infringe upon any state programs now in effect. For example, Georgia has a check-off program and could continue this program even if an FMO is passed.
Each handler shall pay that pro rata share of the amount they handled as the first handler during the fiscal year compared to the total quantity handled by all first handlers. This formula seems fair, predictable, and is similar to those used in other FMOs.

The payment of assessments will be based on the budget and does not have to be adjusted even if parts of the expenditures in the budget are not made for some reason. It could be cumbersome if assessments were changed based on actual expenditures and would be a burden for handlers. So we don't anticipate changing -- but it could happen -- in the middle of the season.

986.61(a) also establishes -- 961 --

986.61(a) also establishes the concept of the inter-handler transfer, which will be discussed later in Section 986.62.

Your Honor, did you want to stop after every section?

JUDGE GUTHRIDGE: No --

THE WITNESS: This is (a). Just
Okay.

JUDGE GUTHRIDGE: Last week it seemed to work fairly well to take the entire section.

THE WITNESS: Okay. 986.61(b) establishes that there shall be three different base rates for in-shell pecans. The three categories are native or seedling, improved, and substandard.

It's generally expected that the improved rate will be higher than the native or substandard. This simply reflects the market. Good quality improved nuts sell for more than good quality natives or seedlings in most cases. And substandard is just what it says, it's an improved or native pecan that has one or more defects that might cause it to trade at a reduce price.

986.61(c) establishes the range of assessments that the Council can use for the
three classifications, improved, native or seedling and substandard. These ranges will be in place for four years and the Council can set the actual assessment within these ranges based on the budget.

These ranges were arrived at by working backwards from what was reasonably believed would be a sufficient amount of funds to conduct an effective marketing and research program. It also was our intention to try to keep the assessment at less than 2 percent of the average price paid for each category of pecan. Different ranges were discussed in order to reach that goal, recognizing different price levels for different types of nuts, improved, native or substandard.

Different levels of assessment were considered. The ones that we adopted were proposed because they were the most likely to be accepted by handlers and growers, and as noted above, were less than 2 percent of the average grower prices paid based on historical data.
986.61(d) gives the Council the option
after four years of changing the rate of
assessment for each category of nuts. The
assessment rates shall not exceed 2 percent of
the average of all prices for each of the three
classifications.

It should be noted that one of the
stated purposes of this Federal Marketing Order
is to obtain better data about crop size, prices
and disposition. The average pricing used to
change assessment rates could come from that, or
barring good Council data, from USDA figures
which are published at the end of each crop year.

We believe that the 2 percent limit
will give comfort to all parts of the industry,
growers, handlers, shellers, that the rate is not
subject to unlimited increases. It was
determined that 2 percent was fair, it was not
too large, but allowed flexibility in the
industry that thought it needed more funded to --
if the industry thought it needed more money to
accomplish its purposes. It also provides
financial room for growers and handlers to continue to pay for state check-off programs.

It was estimated that had the FMO been in place last year at rates currently being considered, somewhere between 4- and $6 million would have been raised, which would have been around 1 percent based on the prior year's prices. Therefore 2 percent could potentially allow the industry to raise 8- to $10 million based on last year's numbers.

Section 986.61(e) makes it clear that the Council, with the approval of the Secretary, can adjust assessments to address changed circumstances, provided said adjustments are within parameters set forth in the FMO. For example if there were a crop failure for whatever reason, the Council, with the Secretary's approval, could raise or lower assessment in such cases of budget shortfalls or other unforeseen circumstances.

Personally, I would hope that the Council would have sufficient reserves to cover
any budget deficits and not have to resort to
raising the rate during the middle of any fiscal
year. As we talked about, that would be
cumbersome.

Section 986.61(f) allows the Council
to borrow up to 50 percent of projected
assessment revenue for the year if sufficient
funds are not available the first part of the
fiscal year until such revenue is available from
assessments. The FMO recognizes that in any
given year there may not be funds available
immediately for administration and other
operations, and therefore it does allow for the
borrowing of funds.

This recognizes the reality of the
marketplace. Payment of assessments will be
lowered, and in some of the parts of the annual
cycle -- handlers may want to pay in advance
during some parts of the year and if there are
cyclical shortfalls, the Council may need to
borrow funds -- borrow to fund operations until
later assessments come in. And 50 percent we
feel would give the Council enough flexibility
while preventing future Councils from borrowing
too much.

986.61(g) gives the Council the right
to impose late payment changes and/or interest
rate charges if assessments are not made in a
timely manner as prescribed by the Council. We
hope this would give handlers an incentive to
remit assessments on time. Late charges would be
determined by the Council and set high enough to
encourage timely payment, but not so high as to
be punitive. We anticipate a likely interest
rate could be prime plus 1 or 2 percent.

986.61(h) addresses assessments on
handler inventory. This is a key provision to
tracking data and assessment collections. One
goal of the Council is to assess the entire crop
in the fiscal year in which it was harvested. In
practice, some handlers will carry over product
into the new crop or fiscal year. In order to
assess the whole crop each year, this inventory
must be assessed.
And we set the assessment date at August 31. We felt like this was a good bright line date occurring near the end of the fiscal year and just before harvesting of a new crop. It would also mean we get the assessment for a whole crop in the same fiscal year, with the exception of growers warehousing inventory, which we will discuss.

Section 986.61(I) deals with grower inventory and is similar but not identical to the previous section. Again, it reflects the Council's desire to assess the entire crop and it addresses practices in the industry, namely that some growers may choose to hold inventory under the next production year.

Under the Grower Act, as you know, handlers are assessed, growers cannot be assessed, therefore this section provides that grower inventory held on August 31 will no longer be eligible for inter-handler exemption. The first handler that handles such inventory will be deemed the first handler and will pay the
assessment, even if that entity might otherwise be eligible for inter-handler exemption.

How will this work? We anticipate the handler will have to report which crop year that he's reporting on. Again, nuts from the prior year warehoused by a grower will not be eligible for inter-handler transfer. As in Section 986.61(h), August 31 was chosen because, again, it's a good bright line date occurring near the end of the fiscal year and just before the harvest of the new crop. These transactions will be properly reflected on forms that will be drafted by the Council with help of USDA.

The last sentence of 986.61(I) gives flexibility to the Council, in conjunction with the Secretary, to revise the terms of this paragraph in case this process is cumbersome in application.

MR. QUIR S: That's all we have at this point on Section 986.61, Your Honor.

JUDGE GUTHRIDGE: Does the USDA have any questions?
(Pause.)

MS. VARELA: Jan Varela, USDA.

RECROSS-EXAMINATION

BY MS. VARELA:

Q     Can you hear me all right, Mr. Willson?

A     Yes, ma'am.

Q     Let me try to move this a little more.

Okay. I just want to go through a couple of points in your testimony. Thank you very much for trying to describe what's kind of a complicated section.

Going back to paragraph (d) when you were describing the ranges there, I think I heard you say you could change the assessment after four years. But were you describing changing the range within which the assessment would be set?

A     My understanding is -- well, yes.

Q     Okay.

A     In effect, yes, by --

Q     Okay. Just wanted to --

A     -- 2 percent --
Q -- make sure I'd written --
A -- yes, it could be --
Q -- thing down.
A -- it could be higher than that two
to three cents for improves.
Q Okay. Thank you. And then moving
down to the next paragraph, (e), I just wanted to
hear a little more of your understanding about
when those rates could be changed. I thin you
mentioned that this gave you the authority to do
it in the middle of the term if necessary in an
emergency. But do you believe this section is
also the part of the order that gives you the
authority to set the -- a different rate every
year if you need to?
A Well, my understanding is that, yes,
you could change the rate during the season. I
would hope that we would not have to do that,
but --
Q Sure. But my question is, is this
also the language that lets you do it before the
season?
A: I'm not sure if it's in this section or another one, but --

Q: Okay. That's fine. And then on to my next question. Oh, I was curious about the section on advance assessments, advance payment of assessments. You had mentioned that Georgia has a grower assessment, and I was just curious to understand if advance assessments are ever paid under that program.

A: I highly doubt it.

Q: Okay.

A: Not to my knowledge.

Q: Those are usually after the fact.

A: Yes, ma'am.

Q: Okay. And then moving on to some of the -- in (h) and (I) we talk about what's been referred previously as the August 31 rule. Can you give us a little more information on why that date was so important and maybe some of the other options you considered and how the Board settled on these two particular provisions, why these are so important to getting your assessments in.
A Well, August 31 really is the end of a crop year. There -- in some parts of the country there are varieties that they will be harvesting in the middle of September. Most of the production though generally comes in October and November in the east and the west.

But the August 31 -- I don't remember all the different dates that we decided -- I think we looked at September 31 [sic], but just -- we really decided August 31 really was the end of one year and the beginning of another based on harvest, is my understanding.

What was the other part of the question?

Q I was curious as to if you had considered any other dates in terms of --

A We did.

Q -- the need for that?

A We did, but, again, we came back to this one because of the timing of the crop.

Q And as somebody who is both growing and shelling and selling into the retail market,
why is it important for your business to be able

to differentiate between pecans that came from

one year or another?

A   Well, if you want me to speak

personally about my business, we -- any raw

product that we sell in our catalogue is all new
crop. We do use -- I always hate the term old
crop, but that's what they generally call it --

we will use old -- last year's crop in our baked
goods and roasting. But, you know, a lot of

folks want new crop pecans and that's just the

main reason that we do.

Q   All right. So it is a part of the

normal course of business that somebody selling

pecans might not want to pay the same price for

something that was older?

A   Yes. Although oftentimes the reason

a grower might hold it over is the anticipation

that next year's prices may be higher so they

might get a little more for their in-shells.

Q   And would that maybe happen if you had

a shorter crop than expected that --
A Very well could.

Q Okay.

A Very well could.

Q Okay. And thank you for those clarifications. I do want to back track a little more. Sorry to be a little out of order.

A Yes.

Q But one of the things that is very unique to the order that you all have proposed is the three tier structure of assessments with the improved, the native seedlings and the substandards. So if you could, we'd like to hear a little more about how you all settled on those tiers, why those were important to the Board to define, and maybe some of the alternatives that were considered in coming up with these tiers.

A I'm going to answer your last question first. I think one of the alternatives was just to assess everything the same. But we quickly realized that that wouldn't fly with the native growers. Generally an improved variety is just that, it's bred, propagated because it has
superior characteristics.

Generally it's a larger nut, not always, but it's generally a larger nut that gets a higher kernel shell out. And bottom line is, shellers are looking for the amount of meats that they can get out of one pound of in-shell, and so obviously if you get 60 percent or 55 to 60, that's of more value to them than a nut that -- a smaller nut that they might get 30 to 35 percent.

And that -- I mean you have some natives that -- I was telling somebody, You go to a Texas pecan grower show and you can see some natives that are small, you know, they're 500 to a pound. And those are very hard to shell and -- but the -- so the natives generally do not bring the price.

So on a percentage basis the native growers feel like they'd be paying a higher percentage than improved, so we tried to put a structure in place whereas it leveled that a little though, but if you read the economic analysis that the economists did, it appears that
even at the rates at 1-1/2 and 2-1/2, that if
that were used in your assumptions, the natives
still would be paying maybe a little higher
percentage.

But substandard, again, is a reject
that comes out of cleaning plant operation. And
they vary all over the board. You can have, in a
plant like ours where we're trying to get the
very highest quality out, we blow them very hard
in our cleaning plant, and we might take out a
nut that's 45 to 46 percent. It might bring a
little more than, you know, 30 percent, but still
blowouts are different and they're all over the
board.

But generally substandard is that, and
it doesn't need to be assessed at the same high
rate in our opinion. So that was kind of our
thinking. Does that answer your question?

Q Yes. Yes, it does. Thank you very
much. But you brought another question to mind.

A Uh-oh. Darn.

(General laughter.)
BY MS. VARELA:

Q     Sorry. You're an expert, I have to take --

A     I know.

Q     -- advantage of your time here. You alluded to the idea that what's kind of defined as substandard might vary from sheller-to-

sheller, or that -- but --

A     More from grower-to-grower I think.

Q     Okay.

A     The sheller knows what he's getting, so he'll pay appropriately.

Q     So in that kind of process of separating, one processor might have a different -- I think you referred to the force you were using on the blowouts -- do you envision that would be difficult, or is it just really easy for the industry to kind of have a consistent idea of what those substandard pecans are, or is that just a very objective measure that's going to be a little difficult to implement?
A I would say it's somewhat objective. It may be difficult, but I think it's something we're going to have to work through, but --

Q And it might be something that the Council can provide some guidance on for the industry.

A And it may be -- yes, it may be something that the Council would look at down the road.

Q Okay. That's very helpful

A Yes, ma'am.

Q Thank you. And I think the final item within this section that I still have a few questions on is the concept of warehousing. We've heard a little testimony on this already, but obviously it was important enough to be mentioned more than one time in your language.

First, could you help me distinguish between grower warehousing and handler warehousing in terms of how might they be different and how would tracking the volume in those two areas be different?
A Well, as I said earlier, grower warehousing is generally done in anticipation of higher prices later.

Q Okay.

A A grower's going to sell when he thinks he can get the most for his pecans. A handler might warehouse for a variety of reasons. If he's, you know, warehousing because, you know, has shellers or further handlers or China or whoever he's sending them to has a schedule, he might warehouse for that purpose.

Q Okay.

A Tracking, we're hoping that the industry, the Council, and I think some of our language addresses data gathering, and that's been one of the problems in the industry is we don't feel like we're always getting the greatest data. Part of it I think is the fact that we're stretched out over this large production area.

But hopefully the Council can establish a program to where we can get better data so that we can track what's in various
warehouses. Right now we report -- handlers report cold storage holdings and that's published every month. But there's some questions about those numbers. So hopefully we can get better data when this marketing order is in place.

Q Okay. Just to finish up with the idea of warehousing, you mentioned the provisions that allow transfer between handlers, the inter-handler transfer, which I know we'll get to a little more information on in a little bit, so I don't want to be too premature.

But I'm curious about the possibility of a handler having some inventory that isn't assessment yet, and how the Council is defining that un-assessed inventory, because I think in the definition of warehousing in Section 41, that defines warehousing overall as un-assessed inventory.

And I think we might have discussed a clarification to this earlier, but I wanted to get kind of your perspective on how that would be addressed. If we've defined warehousing as being
un-assessed, is it your understanding that there
could be some handler inventory that is assessed
and some that is un-assessed that might --
A    By the same handler?
Q     -- all be called warehoused.
A     Yes, I think you could have both.
Q     Okay. We just want to make sure that
that's what's happening in the industry.
A     Yes.
Q     Okay. So you would support an
adjustment to -- or a clarification within that
definition to address the idea that we might have
both un-assessed and assessed inventory being
warehoused?
A     You talking about changing the
language of --
Q     We had discussed at an earlier hearing
clarifying that definition of warehousing.
JUDGE GUTHRIDGE: By that
definition --
MS. VARELA: Sure.
JUDGE GUTHRIDGE: -- she's referring
MS. VARELA: And that is --

JUDGE GUTHRIDGE: -- Section 986.41.

MS. VARELA: -- Section 986.41.

BY MS. VARELA:

Q     Sorry, I should have brought that up first so you could look at it.

A     Warehousing means to hold un-assessed inventory. Oh. Yeah, I would think that would be fine. Yeah.

Q     Yeah, I just wanted to --

A     Because --

Q     -- make sure that change was -E

A     -- you could -- I see what you're saying. You could have a handler that had assessed and un-assessed inventory.

Q     Okay. Thank you for revisiting that with us.

A     Okay.

Q     I think that is all I have for you.

MS. VARELA: Are there any other questions on this section?
JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. VARELA: Nothing else on this section. Thank you.

JUDGE GUTHRIDGE: Mr. Quirós?

FURTHER REDIRECT EXAMINATION

BY MR. QUIRÓS:

Q Yes, Mr. Willson, thank you for taking us through a complex section. There was a question Ms. Varela asked you about Sections (h) and (I). Is one of the reasons that you want to have that information on August 31 from the handlers and growers so that you can make sure that the assessments are applied to the right crop year --

A Yes.

Q -- in case the assessment rate changes?

A Yes.

Q Thank you. We talked about the tiers of assessments, there being three tiers of assessments as proposed. Do those assessment
rates as currently proposed reflect what you think are the relative values of each type of nut?

A     Yes, I think they do.

Q     So you believe that the improved, in general terms, generally gets a higher price and the native --

A     Right.

Q     -- seedling and substandard get lower prices.

A     Right.

Q     Is that correct?

A     That's correct.

Q     And that went into the thinking of the American Pecan Board when --

A     It did.

Q     -- they drafted that section? Thank you. You mentioned that there can be some confusion, but I wanted to ask you, is there much chance of there being any confusion in terms of identifying the improved, native and substandard nuts when a sheller receives them, and being able
to apply the correct assessment to those?

A  There could be some gray areas, but I think for the most part a sheller would understand and the grower would understand what the sheller was buying and the grower was selling, so.

Q  Q

Thank you. And this is an important area with regard to monies being charges. We have the power to be able to assess --

A  Right.

Q  -- those rates. Do you think it might be in the future that the American Pecan Board, in conjunction with the USDA, might envision proposing regulations as issues comes up that they feel need more clarification with regard to this section?

A  Yes, sir.

Q  But right now you think it's clear as a general --

A  I think it's --

Q  -- but you think right now it's clear
as a general statement?

A    I think so, yes.

Q    Thank you. We talked about a little bit about the grower inventory and the warehousing inventory as well. And I know you'll get to it in a few minute, but isn't it important that for purposes of 986.65, this is the data gathering section that we'll talk about later, that we have this important information at the end of the year which we are able to get through this assessment process?

A    It's certainly important to a lot of segments in the industry that would like better data for making business decisions going forth in the new year, yes, sir.

Q    Okay. So this data that we get on August 31 helps with that process --

A    Yes, sir.

Q    -- of reporting to the Secretary and reporting --

A    Yes.

Q    -- to the industry the carry in
inventories --

A    Yes.

Q    -- et cetera. Thank you.

MR. QUIR S: No further questions on
this section from the Proponent Group.

JUDGE GUTHRIDGE: Are there any more
USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

BY MR. QUIR S:

Q    Yes, Mr. Willson, if you'd please walk
us through the next section, which is Section
986.62 --

A    Okay.

Q    -- for handler transfers.

A    This is a goodie. This section
discusses -- excuse me, 986.62 discusses inter-
handler transfers, and is, in my opinion, key to
making the entire program work. There are
hundreds, possibly thousands of handlers. The
first handler is defined as those who actual
procure the nuts from the grower. This might
include hardware stores, gas stations, mom and
pop retail outlets that just buy a small number
of what we call yard crop pecans over here, and
many more.

This provision will assist in
collecting the assessment from these smaller
operations that may only buy a couple hundred
pounds of pecans in a given year, as they can ask
the next handler to pay. Since one of the goals
of the Council is to maximize the amount
collected at the least cost, the concept of the
inter-handler transfer was written into the FMO
and it really reflects the way the industry
works. We only want to collect an assessment
once, but we do want to collect it.

In our discussion with handlers, many
pointed out in the industry some handler transfer
nuts to other handlers for accumulation or
additional processing before the nuts are sold to
the final user. This section of the order allows
any handler to transfer the obligation to pay the
assessment to the next handler, as long as the
proper paperwork has been filled out.

It also spells out that the Council, with approval of the Secretary, will establish methods and procedures, including the necessary reports, for the documentation of such transfers. The Council would expected to have input from handlers and USDA when devising the various forms needed for inter-handler transfers.

Theoretically the assessment -- the obligation to pay the assessment could be passed more than once, as long as the proper paperwork is maintained. This was discussed at length at various meetings with handlers and shellers, and they support it.

Q     Mr. Willson, I think that we may have made a mistake in drafting Section 986.62 in the first sentence. I'm not sure if that reference should be 986.61(I) or 986.61(h). Would you --

A     I'm sorry, what --

Q     -- mind -- this is in the first sentence of 986.62. I can't decide if that section reference should be 986.61(I) or 61(h).
Would you mind if we revisit that issue at a
later time so that we can --

A     Sure.

Q     -- make sure that the cross-reference

is appropriate?

A     Yes, sir.

Q     Thank you. Thank you.

A     Yes, sir.

MR. QUIRS: We have no further
questions of this witness at this time, and we
reserve any questions until after the USDA has
asked.

JUDGE GUTHRIDGE: Does the USDA have
any questions?

MS. VARELA: Jan Varela, USDA.

FURTHER RECROSS-EXAMINATION

BY MS. VARELA:

Q     Mr. Willson, I want to go back to a
portion of your testimony where you mentioned the
least cost being applied in the process to maybe
some of the smaller handlers. I just want to
clarify that -- is it your impression that you're
trying to ease the burden overall, not
necessarily a monetary cost, maybe also time and
effort that it might take a very small entity,
like you mentioned the hardware store who's just
collecting sales from yard crop.

A     Well, I think the cost -- you're
talking about where I said one of the goals was
the Council was to maximize the amount collected
at the least cost --

Q     Yes.

A     -- to the Council.

Q     All right. The cost to the Council.

Okay.

A     If the Council is collecting thousands
and thousands of handler inventory -- I mean
receipts, reports, whatever.

Q     And that might be --

A     I think that would be more --

Q     -- within compliance?

A     It would be more burdensome though.

Q     Okay.

A     And --
Q     Understood.
A     And quite frankly you might have a
little more trouble collecting if you tried to
get every little individual mom and pop. It
would be difficult.
Q     Okay. Thank you for that
clarification. The only other portion of this
section that I wanted to get a little more
information on was -- I think it's the second --
well, it might just still be the first sentence
here. Yep, I think it's just one long sentence.
Are you looking at 62 right not? Yeah, it's up
there.
A     I am.
Q     Okay. This language here that says,
Any assessments or other marketing order
requirements, can you speak a little to what you
understand some other marketing order
requirements to be?
A     Where are you reading? Let's see --
Q     It's the -- towards the end of that
first sentence.
A Any assess --

Q May transfer in-shell pecans to another handler for additional handling.

A Any assessments or other marketing order requirements. I'm not sure what --

Q Okay.

A -- what that refers to.

Q Well, let me clarify --

A All right. I sure --

Q -- my question. I'm sorry, that was a little discombobulated. The order has a number of requirements in addition to merely paying assessments. And we've talked about some of those, like record keeping, also I think a little later on when we get into marketing policy and reporting and the potential for great in size requirements.

I'm curious to hear your view of how those might play into this transfer, because I want to know how you would apply this language to those other potential requirements. Is the handler only passing on the ability to have to
pay the assessments, or are they also passing on
the ability to move some pecans that maybe have
not met say a size requirement for the next
handler to have to meet that requirement?

A I --

Q Does it --

A -- I really don't think we were
trying to address that in this particular
sentence. I mean I think transferring the
requirement to pay the assessment transfers any
obligations on that handler to the next handler.
So I --

Q So you intend this to kind of have
maximum flexibility --

A Yes.

Q -- to allow the industry to --

A Yes.

Q -- use it.

(Pause.)

MS. SCHMAEDICK: Melissa Schmaedick,
USDA.

BY MS. SCHMAEDICK:
Q Not to belabor the point, just for clarification.

A Yes, ma'am.

Q So you mentioned that there are several small entities that maybe act as an accumulator in the market. Is that correct? The hardware store example, they receive pecans?

A Yes.

Q Okay. So the inter-handler transfer allows those small entities to receive pecans, but then pass the assessment burden on to a larger handler.

A A larger accumulator, yes, ma'am.

Q So if there were grade or quality standards in effect, that hardware store could also pass on the burden of meeting that grade and quality standard --

A I see what you're saying, yes.

Q -- to the larger handler.

A Yes.

Q And that would be allowed for under this Section 986.62, inter-handler transfer?
A     Yes.

Q     Is that the intent --

A     Yes.

Q     -- of the Board?

A     Yes.

Q     Thank you.

MS. SCHMAEDICK:  No further questions.

JUDGE GUTHRIDGE:  Are there any other USDA questions?

MR. DAVIS:  No, Your Honor.

JUDGE GUTHRIDGE:  Mr. Quirós?

MR. QUIRÓS:  Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. QUIRÓS:

Q     Following up on that question, it might be the case that some of those smaller accumulators wouldn't have a cleaning plant. Is that correct?

A     True. Yes, sir.

Q     And so being able to grade out those pecans in the way that a cleaning plant might enable them in a mechanized way would be more of
A challenge.

A Yes.

Q So this section, the inter-handler transfer section, 986.62, really does ease the burden on small accumulators, does it not?

A It does.

Q And though the cost is low for them to file the paperwork, this alleviates them also from the paperwork in such case, except for the transfer form itself.

A Yes.

Q Thank you. Ms. Varela was asking you some questions regarding perhaps the future, if you want to think about it, and there's a section, for instance Section 986.69, which talks about handler authorities in the future. So for instance if the Council required handlers, let's make up an example, to grade their pecans in the transfer process, this language that Ms. Varela was pointing out, And any assessments or other marketing order requirements, could come into play in that instance --
A     Yes.

Q      -- could it not?

A     Yes, it could.

Q      So for instance if the requirement or
regulations passed by the Council said, When
you're passing them, you need to say what grade
they are, what size, that would fall under this.
Is that correct?

A     Yes.

Q      So that does give us the maximum --

A     Yes.

Q      -- flexibility to conform with the
other portions. Thank you very much, Mr.
Willson.

MR. QUIR S:  No further questions at
this time, Your Honor.

JUDGE GUTHRIDGE:  Does the USDA have
any more questions?

MS. SCHMAEDICK:  Melissa Schmaedick,
USDA. These are really big.

(General laughter.)

MS. SCHMAEDICK:  Okay. I think I got
it now. All right.

FURTHER RE CROSS-EXAMINATION

BY MS. SCHMAEDICK:

A     Mr. Willson, I'm going to try to walk

through a scenario here and see if you can
explain the American Pecan Board's intent. But
in the assessment language it says, Any -- it
basically implies that the first handler would
pay an assessment -- pay the assessment rate. Is
that correct?

A     Yes.

Q     So I want to think about a scenario

where you have grade and size regulations in
effect. Is there potential for a first handler
to receive pecans and perhaps handle them to a
certain point, but not meet the grade and size
regulation? For example a handler could receive
the pecans, clean them and maybe shell them, but
not further process them to meet the grade and
size regulation?

And let me explain the -- why I'm

asking this question.
A     Okay.

Q     I'm wondering, if there are grade and size regulations in effect, there's -- is there a potential for one handler to receive let's say just for example 100 pounds of pecans, and if the grade and size regulations were applied, maybe only 80 pounds of that 100 would meet the minimum grade and quality standards. Should the assessment be applied on the 100 pounds or on the 80 pounds? And if it should only be applied on the 80 pounds, should that assessment be collected on the handler that does the grading and sizing so that the assessment is not placed at the -- on the 20 pounds that do not meet? Does that clarify?

A     It clarifies it, but, Ms. Schmaedick, at this point I don't I could tell you how that would be done. I think that would be future Councils that would set these grade and size standards. I don't -- I'm trying to think of examples in our business now where that scenario might have played out, and I'm just -- so I don't
think I can answer that question honestly, no.

Q      Okay. Well, let me ask another
question. Is it the intent that the assessment
be collected on -- only collected on pecans that
meet any minimum grades and size standards that
are in effect?

A      The idea is to collect on all pecans.
I would anticipate in your scenario if 80 pounds
were met, that the others might fall under the
substandard and would be assessed that way. But
I'm just try to think ahead, but I really don't
know.

Q      Well, that's a very helpful answer.
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.

FURTHER REDIRECT EXAMINATION

BY MR. QUIR S:
Q  Mr. Willson, would you walk us through
Section 986.63, contributions?

JUDGE GUTHRIDGE: Before you do that,
Mr. Quirós, I actually have a little
clarification just for my own mind here.

MR. QUIRÓS: Please, Your Honor.

JUDGE GUTHRIDGE: You mentioned the --
something like a hardware store that might
collect a couple hundred pounds of -- and I think
the term is yard crop.

THE WITNESS: Yes, sir.

JUDGE GUTHRIDGE: And that would --
that hardware store, that would -- would that be
an accumulator under the definitions of the --

THE WITNESS: It would be a handler.

JUDGE GUTHRIDGE: Okay.

THE WITNESS: Accumulator applies to
someone that --

MR. QUIRÓS: We'll put this definition
up --

THE WITNESS: Oh, the definition.

Okay.
MR. QUIR S: -- just to assist you,

Mr. Willson.

JUDGE GUTHRIDGE: Wait, I guess --

THE WITNESS: I was going to give you

my definition of --

JUDGE GUTHRIDGE: -- that's less

important -- that's really not what I want to ask

you about, though. But would that hardware store

generally be getting that small of an amount that

the hardware store is going to get early in the

crop year?

THE WITNESS: Probably not, because

generally yard crop is just -- waits till the

crows and the other critters knock the nuts off

the trees, they're not shaken. I mean there's a

big -- in Georgia there's a large what we call

yard crop, which is those that aren't

commercially farmed.

JUDGE GUTHRIDGE: Well, would it be --

THE WITNESS: So, it's --

JUDGE GUTHRIDGE: Would it be at the

very end of the crop year, so when this August 31
date might hit?

THE WITNESS: Oh, no, no, no, no, no,

no. I'm sorry.

JUDGE GUTHRIDGE: So it would be

well --

THE WITNESS: I'm sorry. Georgia
harvests generally the second week in October. They might start coming in the end of October,
first of November, something like that. No, you
would be talking --

JUDGE GUTHRIDGE: But it's highly --

THE WITNESS: -- about next summer.

JUDGE GUTHRIDGE: -- highly unlikely

that this hardware store would have --

THE WITNESS: No, they wouldn't.

JUDGE GUTHRIDGE: -- that crop still

on August 31.

THE WITNESS: Yes, sir.

JUDGE GUTHRIDGE: Okay. Thank you.

BY MR. QUIR S:

Q Mr. Willson, just to clarify that,

take a look at the definition of --
A Right.

Q -- accumulator, which is Section 986.61. If you'll take a quick look at it.

A Yes, sir.

Q Let me know when you're finished.

A All right.

Q So in the example that the Judge gave you, a seasonal business like a hardware that takes in yard pecans, they would be an accumulator, wouldn't they?

A Well, from other persons, yes.

Q Yes. Thank you. And then that brings them as an accumulator, then they would be a handler as well.

A Right.

Q Is that correct?

A Right.

Q Thank you. That's a seasonal business for a lot of those small accumulators, isn't it?

A Yes.

Q And in -- specifically in this area don't many of the yard crop collectors, these are
the growers that have those, that's -- we used to
call that Christmas money. Is that correct?

A  Yes.

Q  Thank you.

MR. QUIR S:  No further questions,

Your Honor, on this definition.

JUDGE GUTHRIDGE:  Any more USDA

questions?

(No response.)

JUDGE GUTHRIDGE:  Okay.  All right.

Sorry for the interruption there.

MR. QUIR S:  That's okay, Your Honor.

BY MR. QUIR S:

Q  Section 986.63, contributions.  Mr.

Willson, tell us why you all included that in the

proposed Federal Marketing Order.

A  This section merely states that the

Council is authorized to accept contributions

both from within and out of the production area,

provided that any such contributions are free

from encumberances or restrictions and made

according to the law. And it anticipates that
the Council might at some point solicit
contributions.

MR. QUIR S: No further questions at
this time, Your Honor.

JUDGE GUTHRIDGE: Are there any USDA
questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIR S: Thank you, Your Honor.

BY MR. QUIR S:

Q Mr. Willson, can I ask you to turn
your attention to Section 986.64, accounting.
Would you walk us through what the American --

A Yes, sir.

Q -- Pecan Board was intending by this
section?

A Yes, sir. In discussion with industry
organizations and individual members, concerns
were raised that assessments in excess of
expenses should not be hoarded, but instead
should be returned to those assessed. This
section was drafted to address those concerns and
to make clear what would be done with all
assessments, including those in excess of
expenditures.

986.64(a) describes in detail what can
be done with assessments in excess of expenses.
These include, one, they can be used as a
reserve, provided that reserves are not already
in excess of three years anticipated expenses.
Second, to cover deficits incurred during periods
when expenses exceed receipts of assessments on
had. Three, to defray expenses when, for
whatever reason the order or part thereof has
been suspended or not operating. Or, four, to
cover expenses incurred in the liquidation of the
organization.

986.64(b) addresses what will be done
with assessments in excess of amounts needed for
liquidation in the event the order is terminated.
In essence it provides that the Secretary will
dispose of the funds to the extent possible by
returning funds to those assessed. The language,
to the extent practical -- excuse me -- was
included to cover situations where perhaps the
handler assessed might be out of business or
cannot be located.

986.64(c) states that the assessed
funds can only be used for purposes specified in
the order. This prevents the Council from making
unnecessary expenditures. This is common sense,
but we want to make clear to industry that the
funds will be used only for the purposes it has
agreed to in advance, and further that the
Council and its members must at all times be
prepared to report to the Secretary on all
receipts and expenditures. The last clause of
986.64(c) was included to help ensure
transparency and accountability.

986.64(d) requires all Council members
who leave office, either by removal at the end of
his or her term, to account for receipts and
disbursements, and to return all organizational
property and funds to the Council and to sign all
needed paperwork to effectuate the return of all
such property. The property referred to in this
section is any and all property related to the Council's work, including of course actual funds, but also information, data and intellectual property.

986.64(e) makes the provision for the appointment by the Secretary of a trustee to receive and hold property in the event of a suspension or termination of the order or other times the Secretary deems necessary.

Q Thank you, Mr. Willson.

JUDGE GUTHRIDGE: No further --

MR. QUIR S: No further questions,

Your Honor.

JUDGE GUTHRIDGE: Does the USDA have any questions?

(Pause.)

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

FURTHER RECROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Mr. Willson, in looking at 986.64, accounting, paragraph (a)(2), you state that
reserves could be collected so that they equal approximately three fiscal years expenses. Can you talk about the American Pecan Board's discussion about why three fiscal years was identified as the reserve limit? Why not one, why not one-and-a-half?

A I honestly don't remember that discussion.

Q Well, then --

A I think -- I mean we just -- I think we just don't want there to be excess reserves sitting there that we're not using. But I don't remember the specific discussion of that.

Q Okay. Thank you. If you would turn your attention to paragraph (b) of 986.64, the last sentence -- this is if there's a termination, you would refund any assessment monies held to handlers. And the last sentence there says, To the extent practical such funds shall be returned pro rata to the persons from who such funds were collected. Can you explain what pro rata means?
A  It means their share.

Q  Their share?  Okay.

A  Their percentages.

Q  Thank you.

MS. SCHMAEDICK:  No further questions for me.

MS. VARELA:  Jan Varela, USDA.

BY MS. VARELA:

Q  Just to follow up a little more.

That's fine that you can't recall the exact discussion on three.

A  Okay.

Q  I'm not --

A  You're not going to let me off on that one.

Q  -- trying to criticize there.  But given your experience with other organizations that are handling industry money, does the three years seem reasonable in terms of money that you might need to keep the Council going in case of a problem with the crop?

A  Well, if we had a couple of -- you
know, if we had a couple of bad crop years in a row --

Q  Sure.

A  -- I would think three years would keep it going adequately.

Q  And in your experience have other organizations had to rely on reserves to keep running in short years?

A  Most other organizations, these pecan associations don't have a lot of reserves.

Q  And so did that make it important to you all to make sure that you had a good reserve base? Is that one of the benefits of having the Council?

A  It is, as long as we want to keep this program in place and the growers want to continue it. We want to anticipate off years where we don't have a marketing year one, and promotion, and down here the next year. So hopefully the reserves would even out that.

Q  Thank you very much.

A  Yes, ma'am.
MS. VARELA: No further questions from me.

JUDGE GUTHRIDGE: Any other USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIRÓS: No further questions on that section, Your Honor.

JUDGE GUTHRIDGE: I have one.

(General laughter.)

JUDGE GUTHRIDGE: The 64 refers specifically to the assessments. Would the treatment to the assessment funds also be -- happen to any contributions that were received under .63, would the same -- would they be subject to the same treatment?

THE WITNESS: That's a good question. I hadn't thought about it, but I would think so, yes, sir. In other words, would we -- termination or whatever, would we give them back or -- I would think so.

JUDGE GUTHRIDGE: Okay.
THE WITNESS: Yes.

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIR S: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. QUIR S:

Q Section 986.65, Mr. Willson, entitled marketing policy. Would you review for us what --

A Yes, sir.

Q -- the intent was of the American --

A Yes, sir.

Q -- Pecan Board with this section?

A Before I get to the specific provisions of 986.65, as a handler/grower in this industry for over 35 years, as I think we mentioned this earlier, I don't think that there has been accurate data on the size of the pecan crop in the pecan market. These estimates usually are cobbled together from different segments of the state and national organizations. They usually -- not usually, they often reflect organizational biases. It's kind
of a given in the industry that growers want high prices, they estimate low; sellers want lower prices, they predict big harvests. So oftentimes crop estimates are wildly inaccurate.

I think more accurate market data could assist my business and every other business in the industry. It's currently difficult to make informed pricing decisions and to make accurate business plans because of the lack of accurate crop information. One of the goals of the proposed FMO is accurate market information and Section 986.65 addresses the type of information we hope to collect and distribute to the Secretary and the industry.

The first paragraph of 986.65, the first sentence requires the Council to prepare for the Secretary each fiscal year a report and recommendation on the marketing policy of the Council for the next fiscal year. This will require the industry to adequately analyze its forecasted production demand and marketing outlet for the coming year where this analysis of the
Council will be used to set the assessment rate.

The next sentence in the first paragraph of 986.65 is key. It specifies that the Council must approve the report and recommendation by a two-thirds vote. The reason this is key is that no one faction of the Council, be it grower or sheller, can force through a plan without buying from the other group.

Two-thirds vote requires that 12 members of the Council vote for a plan for it to be recommended to the Secretary. With nine grower and six sheller members, the math dictates that the groups work together. This is referencing back to Section 986.55(c) where we talk about super majority voting.

The last part of this line says, Where applicable on an in-shell basis. The reason for this is traditionally the pecan industry and the USDA have reported the crop on an in-shell basis. Meats are converted back to in-shell on a percentage basis, in some cases established by
the shelling industry and by definition in 986.42 by weight. Therefore when possible we want to use the industry norm.

986.65(a) calls for estimates of grower and handler cleaned production. The segments are sometimes overlooked and we're trying to cast a broad net to get all the information on the crop size that we can.

986.65(b) discusses disappearance. This is essentially a report on product that is lost between growing the nuts and getting them into the stream of commerce. This can happen in a number of ways. Two prime examples would be blow outs at the cleaning plan that are not commercially marketable, and milling loss at the shelling level. That's a term you might call shrinkage in general.

986.65(c) concerns estimates of improved versus native seedling versus substandard. As we've talked earlier, this is important since each of these categories has a different pricing point. So estimates of this
would yield better data and different future assessment collections that may affect our budget.

986.65(d) concerns an estimate of handler inventory on August 31. Again, this is an area that has not often been counted, but which might have an affect on the market price of nuts in this and upcoming years.

986.65(e) discusses the estimate of un-assessed inventory. While we have reports on actual assessments, this will attempt to identify the quantity of nuts in the system which has not been assessed. Nuts in the inter-handler process or held by growers.

986.65(f) is estimates of trade supply. This is a cumulative report of all pecans in a given year, shelled and in-shell. This information about the whole crop will be valuable information in making decisions and future business plans.

986.65(g) refers to the preferable handler inventory. It's a term that has been
used in the pecan industry, but has been used in other FMOs. It's the industry's best estimate of the amount of nuts that handlers will need in inventory in the coming year to meet their marketing goals when added to the anticipated new crop that will be harvested after October 31.

986.65(h) projected prices in the new fiscal year is the Council's best estimate of what prices should be in the upcoming year based upon all market data that has been collected. Such information will be extremely helpful to growers and handlers in arriving at a reasonable price.

986.65(I) refers to competing nuts supplies. Pecans are just one of many nuts, and are not sold in a vacuum, and must compete against these other nuts. Information on competitive nut supplies can affect pecan pricing and will help growers and shellers make more informed decisions on pricing.

986.65(j), any other relevant factors is a catch-all that will allow the Council to
report on other factors that may affect supply and pricing. Examples might be drought conditions in certain growing regions, insect and pest problems, increase in the cost of production, such as fuel or fertilizer.

That's --

Q    Thank you very much, Mr. Willson. Mr. Willson, you mentioned the correlation to 986.55(c). We'll get to that in just a minute, but this is a two-thirds vote that you've set, and that will always require growers and shellers to vote together, will it not?

A    Yes, sir.

Q    Okay. It's that important, isn't it?

A    It's important.

Q    Okay. And you anticipate not only this information being made available to the Secretary as required in here, but also to the industry as well.

A    Absolutely.

Q    Thank you.

MR. QUIRS: No further questions at
this time, Your Honor.

JUDGE GUTHRIDGE: Does the USDA have any questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

FURTHER RECROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Mr. Willson, in describing 986.65, marketing policy, you used a couple of terms that we've seen in previous witness testimony, but I'm wondering if you could also share your thoughts on those terms so that we can get a better understanding of them. The terms that I'm speaking of specifically are trade supply. If you could look at 986.38, which is the definition of trade supply.

MR. QUIR S: And, Mr. Willson, we'll have it up there on the board in just a second.

THE WITNESS: Okay.

(Pause.)

BY MS. SCHMAEDICK:

Q And I'll just read it into the record
so that we know what we're talking about.

986.38, trade supply, states, Trade supply means
the quantity of merchantable in-shell or shelled
pecans that growers will supply to handlers
during a fiscal year for sale in the United
States and abroad.

And then that term, trade supply,
draws on the term merchantable pecans, which is
986.26, and I will read 986.26, paragraph (a)
into the record. It says, In-shell, merchantable
in-shell pecans means all in-shell pecans meeting
the minimum grade regulations that may be
effective pursuant to 986.69, authorities
regulating handling.

So just to give you a bit of
background, based on my understanding of previous
witness testimony, merchantable pecans -- there's
a relationship between merchantable pecans and
any grade and size regulations that may be in
effect. Is that your understanding of 986.26?

A    Yes, I think so.

Q    So my next question is, if there are
no minimum grade and size regulations in effect, what does merchantable pecans mean?

A It means any pecan that someone in the trade is willing to purchase, or willing to sell.

Q Okay.

A I mean if we don't have standards, there are still standards in the industry that people go by.

Q Okay.

A I mean if the Council doesn't specifically set grade and size standards.

Q Okay. Well, I'm needing that clarification to understand the term trade supply which relies on the quantity of merchantable pecans. So it's important to understand that, if I'm understanding your statement correctly, the American Pecan Board intends to say that even if there are no grade and size regulations in effect, merchantable pecans means the pecans that are being bought --

A Bought and sold.

Q -- and sold.
A Yes.

Q Okay. So hold that thought. I know.

I apologize.

A That's all right. It's all right.

Q I don't intend to torture you.

(General laughter.)

BY MS. SCHMAEDICK:

Q So look at the term, 986.12, which is disappearance. So, and I'll read that into the record as well. It says, Disappearance means the difference between the sum of grower-cleaned production and handler-cleaned production, and the sum of available supply of merchantable pecans and merchantable equivalent of shelled pecans.

So I'm -- you mentioned that disappearance means -- or is sort of the industry term for shrinkage, it's kind of what is lost.

A Right.

Q Right?

A Yes, ma'am.

Q But I'm trying to understand this
definition. Does this definition clearly capture that intent of what is lost? Because it says the sum of grower-cleaned production and handler-cleaned production. So if it's grower-cleaned and handler-cleaned, is that speaking to the product, the volume of product after that shrinkage has already been taken into calculation? And --

A     I guess I'm not really -- I mean I know how the process works, but I'm -- maybe this language is a little confusing to me, but I mean -- I'm sure you all discussed this the other day with Randy. Right? So -- under definitions.

But, you know, I really don't know how to answer your question. I know that there is shrinkage or loss at various levels in the process, and, you know, if that's not going into the stream of commerce, that's not going to be assessed to my understanding, the way we defined what will be assessed.

Q     So let me approach it a little bit differently. So in marketing policy -- let's
just talk on a sort of theoretical concept level.
Okay? Just to capture the intent.

A     Okay.

Q     So marketing policy, is it -- it's my understanding the marketing policy is supposed to allow the future Council to basically carry out an analysis of the industry and all factors that contribute to supply and demand. Is that correct?

A     That's correct.

Q     And so in the list of elements that are given in 986.65, marketing policy, the intent there is to capture all of those elements related to supply and demand. Is that correct?

A     Yes.

Q     Okay. And included in these factors you want to account for disappearance, which you intend to be shrinkage, or they -- I think you described it as the difference between what comes out of the orchard and what goes into the stream of commerce.

A     Right.
Q    Right?
A    Right.
Q    Okay. So -- and you want to look at trade supply, which I believe is the amount of production produced in the production area that is available to go into the stream --
A    Right.
Q    -- of commerce.
A    Right.
Q    Okay. So based on those conceptual clarifications, would you feel that if clarifying changes are necessary to make sure that the terms disappearance, trade supply and marketing policy and merchantable pecans all work together to meet your intent, or the Board's intent, would clarifying changes be acceptable to you under those conditions?
A    You're talking about the future Council being able to make those changes?
Q    In terms of --
A    You're not talking about us rewriting the law now, I mean as it's written, or are
you -- I mean --

Q    Would you be comfortable with --

A    I mean I would be comfortable clarifying those phrases, yes, ma'am, because obviously there's some confusion here.

Q    Okay. So one of the tasks that USDA has is to make sure that we're understanding clearly what you're intent is.

A    Right.

Q    And that if there are areas that need clarification to accurately capture your intent, that those modifications --

A    Yes.

Q    -- could be made.

A    Yes.

Q    So I'm asking your permission to do that.

A    Yes.

Q    Okay. Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Are there any more USDA questions?
BY MS. VARELA:

Q I'm sorry, Mr. Willson --
A No.

Q -- I, again --
A No.

Q -- need your expertise. I'm looking at this first section with the estimate of grower-cleaned and handler-cleaned production, and it's been made very clear that estimates of production overall would be of the utmost value to the industry. I don't question that at all.

So my question is more along the lines of helping me understand in a practical sense how those types of production -- or, sorry, those two types of estimates are different from each other, and how they might actually be approached. So I'm looking at -- we want an estimate for the fiscal year, and in the marketing policy, as I understand it, and correct me if this is not your understanding, is that we're looking forward to the next fiscal year, we're trying to make an
estimate --

A  Yes.

Q  -- for the coming year. And
understandably you want to do that before the
season starts because you're setting your budget
and you're annualizing that.

Is your idea that -- I'm trying to get
it practically how would that type of estimate
make the distinction between how much is going to
be cleaned at the grower level and how much is
going to be cleaned at the handler level. Would
it be maybe based on previous experience or just
understanding which sources of cleaned pecans
come from growers?

I imagine it might vary by region
because you have different sized operations. But
I'm just trying to make the distinction between
the two and how we know which volume is being
cleaned at the grower level and what proportion
is usually coming from being cleaned at the
handler level. Is that very confusing?

A  That's very confusing. But, no, I
think --

(General laughter.)

BY MS. VARELA:

Q     Okay. I'm sorry.

A      -- you know, ultimately we just want
to get accurate data --

Q     Okay.

A      -- and one of the problems, as we've
talked about, is we're stretched from California
to North Carolina, and it's just very hard to,
you know, to get the various regions to go out
and look, you know, one, it's pistachios,
almonds, they're all right there together. They
can get out there with a -- and do a fairly
accurate analysis. And the bottom line, it
doesn't really matter, if we get accurate data,
whether it is handler-cleaned or grower-cleaned
or where. Right now, as we talked about, we're
just getting estimates from all different parts
of the industry. It starts in June in Louisiana-
Arkansas-Mississippi meeting and then it goes to
Texas and then the National Pecan Shellers
meeting. Everybody comes out with their own idea.

I honestly can't tell you how it's going to work. My mind's not -- I can't --

Q     Oh, that's --

A     -- I haven't really sat down and thought about it, but the Council's going to have to come up with a way to get good accurate data from all the various groups and put it together and come up with a consensus number that the entire industry can live with.

USDA has tried to do that, they work through the state associations in the fall, they survey growers in the spring, they survey shellers, and they come out in July with a final estimate, which we were able to get them to -- you know, there's a couple of years where they didn't even do that.

But they're estimating again. It may be that we wind up assisting that effort in a better way and -- because I think USDA is still going to come out with their numbers, but I would
anticipate relying more on this Council to get that information. But as for your question about whether grower or handler, I don't know that that matters.

Q So just to sum that up --

A Yeah.

Q -- the important part for you is that total number. It's not --

A Yes.

Q -- the proportion either.

A I'll give you an example, every year we go to the National Shellers meeting in September, and they put up the final numbers from USDA. There are people that -- in that group, that really follow the numbers, a couple of them you've heard from.

Bruce Caris, he's really -- and they look at -- they follow the crop, they look at anticipated crop, look at carry-in, which is what's being left over either at the sheller level or at the grower level. Generally at that point, by August 31 or whatever, nuts handled at
the grower level -- or nuts still in-shell at
that level are not as big a proportion.

They estimate what's coming in from
Mexico and other sources, either shelled meats or
is converted back to in-shell again. At the end
of the day, they estimate consumption and try to
come up with, you know, what we're going to have
as a pot load of nuts to service the industry for
the coming year.

Q    And just so that I'm clear, that total
would be the bulk of the trade supply, if not --
A     Yes.
Q     -- all of it. You know, we see in
paragraph (f) there that you might take into
consideration some other information.
A     I think the pecan industry can't
afford to turn its back on any kind of
information we can get --
Q     Right.
A     -- if it clarifies the situation.
Q     So the analysis, the future Council
when it presents that analysis, it has the
flexibility to say the trade supply we know of is
this total production --

A    We think it's this, yes.
Q    -- and maybe if you can find reliable
estimates of imports --

A    Right.
Q    -- you might also include that --
A    Right.
Q    -- in the analysis.
A    Yes.
Q    Okay.
A    I would think so, yes.
Q    That's very helpful. Thank you --
A    Thank you.
Q    -- very much.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q    Mr. Willson, earlier in your testimony
you spoke about accumulators. Can I ask you a
question about accumulators?

A    Yes.
Q So in your work with the American Pecan Board, were you present during discussions about the proposed make-up of the Council?

A Yes.

Q And so you're aware that there is a seat for an accumulator?

A Yes.

Q So in the discussions of the Pecan Board, American Pecan Board, was it discussed -- are there any eligibility requirements for an accumulator? Can it be any entity that accumulates, or does it have to be a pure accumulator? Was there a discussion about that?

A I don't recall whether we set any limits on it or not. You mean size or --

Q Well, for example we've heard a lot of testimony about folks who are growers and handlers, sometimes they're shellers, sometimes they're accumulators. We have persons, or individuals in the industry that fill many different roles.

A Yes.
Q      And, again, as I understand it, sometimes you have a person that accumulates on the side, and you have other people who the only thing they do in the pecan industry is accumulate. So when the Board was talking about the Council and the type of interests and representation that they wanted on the Council --
A      Yes.
Q      -- with regard to that accumulator position, what is the interest that the Board is looking for? Is it looking for a pure accumulator or could it be any accumulator?
A      No, my understanding is the grower, whether he be an accumulator of some sort, and a sheller, that we were looking for someone that is purely an accumulator, maybe has a yard crop, maybe have a tree in his yard or something, but one that primarily makes their income from buying and selling, a broker for example, that type of thing, rather than grower or sheller.
Q      Okay.
A      A sheller is a handler, but they -- or
can be an accumulator, but they represented as
shellers.

Q Thank you. So again, for clarity
sake, would it be appropriate to make that
clarification that an accumulator needs to be --
their primary interest needs to be accumulating?

A I don't know that that would be
helpful or not.

Q So if we were to project 10 years into
the future, and you had an individual who was a
grower, a sheller and an accumulator, and they
wanted to fill that accumulator seat, would you
want the ability to say, The intent was that seat
needs to be filled by a pure accumulator?

A That would be my preference, but I
don't -- you know, I can't speak for the rest of
the Council, whoever they might be.

Q Okay. And so to your recollection
there wasn't a clear discussion on what that
should be, or if there should be anything? And
it's okay if --

A I'm sorry, I honestly --
Q  -- you don't remember.
A  -- don't remember an exact
discussion, but --
Q  Okay.
A  All right. Okay.
A  Sorry. Sorry.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. SCHMAEDICK: Yes, Your Honor, just a moment, please.

(Pause.)

JUDGE GUTHRIDGE: Could --

THE WITNESS: After this section.

After this section.

JUDGE GUTHRIDGE: After -- okay. Mr. Willson would like a break after this section.

THE WITNESS: After this, yeah, before we get to conclusions or whatever.

MS. SCHMAEDICK: Oh, sure. Okay.

Well, we just have one other point that we hope that maybe your experience with the American Pecan Board could help clarify. If you could
turn to 986.47, alternate member, and I have a
question that is specific to paragraph (c), and
I'll read that into the record.

MR. DAVIS: Give me just one second
and I'll get it up for you, I think.

(Pause.)

BY MS. SCHMAEDICK:

Q     I'll go ahead and read it into the
record. In the event any member of the Council
and their alternate are both unable to attend a
meeting of the Council, any alternate for any
other member representing the same group as the
absent member may serve in the place of the
absent member.

So in previous testimony it was
explained that this was sort of a provision for
an alternate of the alternate.

A     That's what it sounds like.

Q     And sometimes in other marketing
orders we end up in a situation where there's
confusion of who -- which alternate can serve for
which other alternate.
So my question for you is, it says here that it has to be the same group as the absent member, but if you look at the structure of the proposed Council, you have large and small entities, large and smaller growers and large and small shellers, and then you have those divided up by region. So is the -- in your opinion and based on your recollection of the Board discussions, is it -- is the preference that the size of the entity, is that the group classification?

A You're trying to define group?

Q Right. I'm trying to understand.

Like if you have a small grower that's missing from Region 1, do you replace that person -- the alternate with another grower from Region 1, or with another small grower from Region 2?

A No, another grower from Region 1.

Q Grower from Region 1. So it's the region you want to keep all together.

A Yes.

Q And then the grower interests from
Region 1 and the sheller interests from Region 1 together.

A Right.

Q And it doesn't matter if you have a small grower alternate sitting in for a large grower member.

A That would -- we would try to have a small grower sitting in for a small grower.

Q You would try. But in the event that you can't, and I appreciate that this maybe sounds like, you know, splitting hairs, but --

A I suppose anything is possible. So, yeah, I mean it could, but --

Q Okay. So the intent then of the Board --

A You're -- whether group means region or whether group means size is what you're asking.

Q Correct.

A I would say it means both, but it's not clear.

JUDGE GUTHRIDGE: What Ms. Schmaedick
seems to be getting it is there would be --
there's only -- there's -- as I understand it,
there's a smaller grower member and a small
grower alternate from each --

THE WITNESS: Region.

JUDGE GUTHRIDGE: -- region.

THE WITNESS: Yes, sir.

JUDGE GUTHRIDGE: But if neither the
small grower member nor the small grower
alternate from a region is available, then we get
to the alternate to the alternate situation. In
that case there would not be another small grower
from that region, small grower alternate, but
there would be a large grower alternate. Would
that large grower alternate be able to sit in for
the small grower member? Is that --

MS. SCHMAEDICK: Thank you for that
clarification. Yes, that's my question.

JUDGE GUTHRIDGE: That's what you're
getting at.

THE WITNESS: I would think so.

JUDGE GUTHRIDGE: And that that would
1. be --

2. THE WITNESS: Yes.

3. JUDGE GUTHRIDGE: -- more important

4. than taking a small grower alternate from another

5. region and putting --

6. THE WITNESS: Region trumps size.

7. MS. SCHMAEDICK: Okay.

8. JUDGE GUTHRIDGE: Okay.

9. MS. SCHMAEDICK: Thank you. That's --


11. MS. SCHMAEDICK: -- clear and helpful.

12. No further questions.

13. JUDGE GUTHRIDGE: Are there any more

14. USDA questions on this section?

15. MS. SCHMAEDICK: Your Honor, do we

16. need to take a break?

17. JUDGE GUTHRIDGE: Should we take the

18. break now, or are you --

19. MR. QUIRS: Your Honor, I have just

20. a few more questions --


22. MR. QUIRS: -- in response to 40 --
in response to this last section before he gets
to his conclusions. Should we finish those now?
It'll just be a minute.

JUDGE GUTHRIDGE: Yes.

THE WITNESS: That's fine.

MR. QUIRS: Thank you, Mr. Willson.

THE WITNESS: Unless it prompts them
to ask more questions.

(General laughter.)

JUDGE GUTHRIDGE: Of course it will.

FURTHER REDIRECT EXAMINATION

BY MR. QUIRS:

Q     Let's stay on 986.47(c).

A     Oh, back to --

Q     Yeah, just take a quick look and

refresh yourself on that --

A     All right. Yes.

Q     -- .47(c) which Ms. Schmaedick just

asked you about.

A     Right.

Q     Take a moment to review that, please.

A     Uh-huh. (Perusing document.)
Q You read it?
A Yes, sir.

Q Thank you, Mr. Willson. It has been described as an alternate's alternate in the past, the but process there is intended to be fair, is it not?
A Yes.

Q And so the idea of having someone from another group was to do as best you could to replicate the Council member's seat for which they're sitting in.
A Yes.

Q Is that correct?
A Yes.

Q Thank you. And there -- in this language, though it may seem confusing, it's also intended to be flexible, is it not?
A Yes.

Q Depending on who's there at the meeting at the time.
A Yes.

Q Right? If there's a quorum issue and
people may be available, they may not be available to do that.

A  Yes.

Q  Is that correct?

A  Yes, yes.

Q  Thank you. In other organizations that you're a member of, we're talking now on the question of who chooses the alternate's alternate, and under the organizations that you've been a member of, is it your past experience in those situations that the chairman chooses who would sit in in those instances?

A  Yes and no. The Shellers Association sometimes is just somebody from the southeast that's there and if someone else is missing, they sit in, so.

Q  With the guidance here that any alternate for any other member representing the same group would -- oftentimes that would -- somebody' got to make that decision.

A  Right.

Q  Would it likely be the chairman that
makes that decision?

A Yes.

Q Thank you. Let's turn to Section 986.1, accumulator, please.

A 986 point what?

Q Yes, sir, the definition --

A Which one?

Q -- of accumulator.

JUDGE GUTHRIDGE: 986 point --

MR. QUIRS: One.

JUDGE GUTHRIDGE: -- one.

MR. DAVIS: It's up there also.

THE WITNESS: Okay. All right.

BY MR. QUIRS:

Q You mentioned that the -- you thought that it would likely be a pure accumulator that would be chosen for the at large accumulator seat, did you not?

A I did.

Q But the definition gives the Council appropriate flexibility, does it not?

A It does.
Okay. Thank you. Now I'd like you to turn to section 986.65, the intended section. Yes, 65, subsection (a). There was a question there about the estimate about the grower-cleaned production and the handler-cleaned production. Take a moment to review that, please.

All right.

Well, maybe let's set a basis for this first. In 986.14, fiscal year is from October to September, is that not true?

Yes.

Thank you. So the -- before 986.65, the first sentence requires that this report be made before the end of each fiscal year to the Secretary. Is that correct?

Yes.

So that would mean before the end of September in a normal fiscal year calendar. Is that correct?

Yes.

Thank you. And so in (a) where it's talking about the estimate of the grower-cleaned
production and handler-cleaned production in the area of production for the fiscal year, that refers to the then current fiscal year.

A Yes.

Q I just wanted to make sure we were -- there is a -- we've talked about projections of the next year, but this is information that we need to get from the past fiscal year.

A From the past year, yes.

Q So we will have approximately, depending on when that reports given between nine and probably eleven-and-a-half months of data to get that --

A Yes.

Q -- information. Is that correct?

A Yes.

Q And that's also why we established in 986.61(h) and (I) those August 31 dates, so we could get that information to include that. Is that correct?

A Yes, sir. Yes, sir.

Q Thank you very much.
MR. QUIRÓS: No further questions of this witness at this time on this section.

JUDGE GUTHRIDGE: Are there any USDA questions?

No questions?

MR. DAVIS: Right.

JUDGE GUTHRIDGE: Is that the end of his testimony or --

MR. QUIRÓS: No, sir, he -- I think he wished to take a break before he gave his conclusion, Your Honor. I think we'll only have --

THE WITNESS: About 10 minutes?

MR. QUIRÓS: -- 10 minutes or so, depending on questions after he comes back.

JUDGE GUTHRIDGE: It's 10:03 right now, let's come back 10:15.

THE WITNESS: Thank you, Your Honor.

(Whereupon, a short recess was taken.)

JUDGE GUTHRIDGE: All right. Back on the record.

Mr. Quirós, before you go on, could I
ask a question of Mr. Willson about this
alternate thing?

MR. QUIRS: Oh, please, Your Honor.

JUDGE GUTHRIDGE: I could envision a
situation where the small/large differential is
more important than the regional differential,
and were -- if neither a smaller grower nor the
alternate for a region is able to attend a
meeting, whether that delegate, or that member
might think that that viewpoint would be better
reflected by a small grower alternate from
another region rather than a large grower
alternate from their region, would there be
flexibility that would permit them -- permit the
member and delegate to designate their alternate?

THE WITNESS: I think the way that
reads, it does allow for that flexibility, yes --
excuse me -- yes, sir.

JUDGE GUTHRIDGE: Okay. Thank you.

FURTHER REDIRECT EXAMINATION (RESUMED)

BY MR. QUIRS:

Q Mr. Willson, have you had an
opportunity to receive and read Exhibit 23 to these hearings, which was an executive summary of the economic analysis of the implementation of a Federal Marketing Order for pecans prepared by Dr. Marco Palma?

A     Yes.

Q     Thank you. And I understand that you have some thoughts that you wanted to share as a grower with the hearing.

A     Okay. As I've said, I've read, I think I mostly understand and agree with Dr. Palma's economic conclusions that an FMO for pecans should increase pecan prices. And I agree with his analysis that the benefit should outweigh the cost of said program.

He shows that when assuming an assessment rate at the mid-point of the range for improved at two-and-a-half cents and native at one-and-a-half cents, when compared to prices paid to the grower, results in -- it results in an average cost of about 1-1/2 percent to the grower.
Using generic promotion demand increase, which he does of 1-1/2 percent, yields an average return of 6.3 percent to the improved grower and 3.6 percent to the native grower. Obviously the benefits outweigh the cost of these assumptions. And I think he's shown similar benefits that will accrue to the handler, and therefore I agree with his conclusions.

I further believe that the Council's authority, through its product-handling authority regarding quality, size, packaging of pecans will improve prices. Further handling regulation after full Council review can only help to increase the attractiveness and desirability of our product. Again, I feel the benefits gained will more than offset any added cost.

I feel that the authorities granted in 986.68 and 69 are essential and beneficial to the pecan industry. One other benefit of the FMO's collection of pecan product data for publication, and the one other benefit is, the FMO's collection of pecan product data for publication
and delivery to the USDA and the industry, for
too long, as I've stated earlier, this industry
has operated without accurate data in supply and
demand and pricing and inventory.

An important benefit of the proposed
FMO is data collection for the benefit of all
industry participants, growers, handlers and
consumers.

Would you like for me to go on with my
comments --

Q     Yes, sir.
A -- and conclusions?
Q     Yes, sir.
A Therefore, I am in favor of an FMO for
pecans. Some of my reasons are we need a unified
voice for this entire industry. For too many
years disparate factions of this industry have
gone on their own way doing their own thing.
While certainly helpful, these -- none has been
able to raise the kind of dollars that we think
an FMO will raise. Our research has been limited
and scattered.
Secondly, we need to stimulate domestic demand and prices. Things are good right now for the grower with China buying a high percentage of the US crop, but what happens if this suddenly is turned off? There is already concern about this year's export to China with the crack down on corruption in China we've all been reading about recently.

On top of this, do the results of some of the Chinese increase in purchasing is in response to higher prices. There have been tens of thousands of acres planted across the pecan belt in the last few years. Supply is increasing and will continue to increase. We need to stimulate demand here at home, and we feel the FMO would do that.

We've discussed this three or four times already, we need better measurements and market information. The order gives the authority to the Council to do just this. I've been attending National Pecan Sheller Association meetings for about 20 years, and I can't think of
a meeting where the issue of obtaining good data was not mentioned.

Several times NASS has been there and been on the program. That's the National Agricultural Statistical Service. Part of the problem, as we have discussed earlier, is that this industry is spread out over such a large area, from California to North Carolina, with each state doing its own gathering and reporting of data. Hopefully the FMO will help unify this effort.

The authorities allowed the Council under 986.67 through 69 should help improve pecan products for all parties and help pecans compete more effectively with other tree nuts.

Finally, as I have noted earlier, I have been a member of most organizations related to pecans over the last 30-plus years, and have seen some really good research and promotion come from these organizations. This FMO is not designed to conflict with other groups' efforts, but to complement them and cover other issues.
Thank you.

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIRÓS: No further questions at this time.

JUDGE GUTHRIDGE: Does the USDA have any more questions? Mr. Hinman?

MR. HINMAN: Yeah, Don Hinman, USDA.

FURTHER RECROSS-EXAMINATION

BY MR. HINMAN:

Q Mr. Willson, thank you for your very thorough testimony. Just one clarifying question. In your reference to Dr. Palma's study, you mentioned 6.3 and 3.6. I believe that you spoke the words percent.

A I'm sorry.

Q Did you mean six point -- I believe you said 6.3 and 3.6 percent. Did you mean 6.3 and 3.6 cents?

A Cents. I'm sorry. Yes.

Q Good. Thank you for that clarification.

MR. HINMAN: No further questions.
JUDGE GUTHRIDGE: Any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

MS. VARELA: I have some. I'm sorry.

JUDGE GUTHRIDGE: Oh, I'm sorry.

MS. VARELA: Sorry. Jen Varela, USDA.

JUDGE GUTHRIDGE: Got to be quick.

(General laughter.)

MS. VARELA: All right.

BY MS. VARELA:

Q Mr. Willson, could I have you look at Section 986.19, to handle, the definition of handle.

A 986.19? To handle.

Q Yes.

A Yes, ma'am.

Q To handle.

A All right.

Q I believe in describing your business, I believe I heard you use the phrase toasting.

A Okay.
Q: And I wanted to make sure that -- I wanted you to take a look at this definition, which includes to receive, shell, crack, accumulate, warehouse, roast, pack, sell, consign, transport, export or ship, I mean you can see it up there behind you.

A: Yes.

Q: Is toasting synonymous with something in this definition, like roasting?

A: It is.

Q: Okay. That's fantastic. And if it wasn't, in here we have kind of catch-all language that say, Or otherwise put into the stream of commerce. Does this definition, as you look at it, does it capture pretty all the ways --

A: Yes.

Q: -- the industry is putting pecans into the market?

A: It gets -- I would say so, yes.

Q: It's pretty exhaustive.

A: Yes.
Q: Okay. And do you see any potential to need to add to this, or are you satisfied that going into the future this will still cover all of the handling just going on the market?

A: I'm satisfied at this point, yes.

Q: Okay. And I just had -- regarding this definition, I just had one kind of question within the question, and I think we actually have a separate definition that's included here with pack, which includes cleaning, grading or otherwise preparing for market.

Can you give us some examples of how that term is used in the industry, where in that process of getting things to market pack might come in. Like in your experience what's the context for packing? Is it handling a raw product still or is usually used in terms with handling something that's gone through some more processing?

A: I think it can be either one.

Q: I can be either. Okay.

A: At the grower level it would be in
the, you know, the supersack, at the shell level
it might be in a 30-pound box, or roaster, the
same thing, so, yes.

Q     So it can definitely vary --
A     Yes.

Q     -- depending on where it's used in
the process. Okay. Thank you. That helps clear
some things up for me.

JUDGE GUTHRIDGE: Are there any more
USDA questions?

MS. VARELA: I do. I'm sorry, I do
have one more.

THE WITNESS: Okay.

BY MS. VARELA:

Q     It's just that I know you know a lot
of things, Mr. Willson.

A     Don't be sorry.

(General laughter.)

BY MS. VARELA:

Q     I want to move into the section we had
on procedures and just see if you can help tie
some things up for me there. And I'm going to
try to get the section number for you.

(Pause.)

JUDGE GUTHRIDGE: Are you talking about 55?

MR. QUIR S: Procedures, 55.

BY MS. VARELA:

Q Fifty-five. Okay.

A 986.55, is that what you said?

Q Yes. And we have had some testimony on this so I'm not going to ask you to describe all of them. But you did mention the need for the two-thirds vote in a couple of different instances. And if you could look at the kind of paragraph 1 that outlines the actions of the Council that do require that two-thirds vote.

Do you -- first of all, do you recall some of the conversations where the Board discussed what needed to fall under this section?

A Do I recall some -- yes.

Q Yes. Could you just give me your -- kind of your opinion on why these that are listed here in particular are important enough to
require a two-thirds majority?

A You want me to take them --

Q I should have said super majority, I'm sorry.

A You want me to take them one at a time or you just -- I mean I think what --

Q You can group them together if that's easier.

A Anything that's, you know, that's important enough to call for a major change or vote, we just felt like that the super majority was called for such that one section of the industry might not try to take advantage of the other.

I think you've been with us long enough that you understand the history of the industry, and we feel like we're at a critical point where we've gotten growers and shellers to talk together and work together, and we're excited about that prospect. But, you know, history is long. People remember things.

So we just felt like having a super
majority on important issues was important. And I don't need to go over these one at a time, but I think the Board felt -- the American Pecan Board felt like these were the areas that would require that, rather than just a simple majority.

Q And beyond that, this section right here also indicates that that discussion would have to take place at an in-person meeting. Can you give me a little more background on why you think in-person is so important?

A You could see what the other person's looking like rather than just hearing him. I just think when --

Q Sure.

A -- when you're making important decisions, face-to-face is obviously better than a conference call. You lose a lot in a conference call.

Q And I see that you do have, further up in this section, there is the option to have some meetings by a conference call.

A Right.
Q So was the intent there that there is a certain amount of flexibility the Council needs to operate, but these particular pieces were just too critical --
A Yes.
Q -- to not have some extra pounds on.
A We're trying to give flexibility in meetings and conference calls just again because of the nature of the production area. And I do anticipate that this Council would try to meet maybe in conjunction with others, because a lot of people do go to some of these national meetings and state meetings, so. It doesn't have to though.
Q Okay. Okay. And I think I just have --
A Yes.
Q -- one more question for you. Could you look at Section 986.49, called acceptance?
A Okay.
Q Do you recall discussing this concept when the proposed language was being put
together?

A  Not specifically, but let's --

Q  And it's also up behind you. So in practical terms, how would you describe that this section is carried out? Why is this language included here, and how do you envision this process happening in terms of a potential member accepting their position?

A  You mean how are we going to go about choosing the -- or -- this is just talking about the acceptance, that they --

Q  Right. The kind of --

A  -- that they shouldn't be asked if they're not willing to serve. Right?

Q  Correct. And so is it your understanding that that potential member will provide some information before everything is signed off on, and that there will be kind of --

A  I would think so, yes.

Q  -- a couple of steps. Okay. Thank you very much.

MS. VARELA: I think that's all I
have.

MR. HILL: Brian Hill. I'll try and be quick, Your Honor.

THE WITNESS: Yes.

BY MR. HILL:

Q Could you just please --

JUDGE GUTHRIDGE: Take your time, whatever time you need.

MR. HILL: Okay.

BY MR. HILL:

Q Could you just please explain what you feel the importance of contributions could be?

A You mean outside of the assessment?

Q Yes, 986.63.

A Well, I mean contributions can be important just to show that other parts of industry or related industries believe in what we're doing. I don't know about other FMOs, whether they get any -- I personally can't see us getting a lot of that.

We certainly could solicit it from, you know, affiliated industries that make a lot
of money off pecan growers and shellers. And in
some cases we -- I know in some of the
organizations we have had some voluntary
contributions made by some of those members. So
they could be a very important part. It could
add significant numbers.

Q And if you do receive these
contributions, what do you think the importance
of making sure that they are free of
encumberances?

A Oh, we wouldn't accept anything if
somebody signed something to it. So that's very
important.

Q Would it be important to the
confidence of the stakeholders in your industry?

A Yes.

Q I just do want to look at one last
thing here, and I'll let you go. If you look at
986.61(h) or (I), if you'll go to (I), and if
you can read the last sentence. I can read it
for you.

A In terms of this paragraph?
Q    Right. Yes, the terms of this paragraph may be revised subject to the recommendation of the Council and approval of the Secretary. I'm just going to contrast that with some other language that we have in this order. Let's go to say 986.45(c). And it says there that Council may recommend, once again subject to the approval of the Secretary, revisions to the above requirements for grower and sheller seats to accommodate changes within the industry.

Okay. So one last section, I promise, 986.32(b), which is regions. You see that?

A    Yes, sir.

Q    And there it says, With the approval of the Secretary, the boundaries of any district may be changed pursuant to Section 986.58, reapportionment and redistricting. If you notice, in that last language it makes no mention of the Council, whereas the other provisions did make mention of the Council subject, once again, to the approval of the Secretary, but it makes mention of the Council.
Do you expect those sections to work the same, the approval sections? Are we expecting -- or was it the Board's intent that Section 986.32 work the same as say Section 986.61(I) at the end, the last sentence?

A  Yes.

Q  Okay. And if it's not clear, to the extent that it's not clear, would you be fine with a clarifying change if it's needed?

A  I would think so, yes, sir.

Q  All right.

MR. HILL: I have no further questions.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: No? Mr. Quirós?

MR. QUIRÓS: No further questions of this witness, Your Honor.

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

(No response.)
JUDGE GUTHRIDGE: No? So, Mr. Willson, you're excused.

THE WITNESS: Thank you, sir.

(Whereupon, the witness was excused.)

MR. DAVIS: Your Honor, the Proponent Group recalls Randy Hudson.

JUDGE GUTHRIDGE: All right.

(Pause.)

JUDGE GUTHRIDGE: Welcome back, Dr. Hudson.

THE WITNESS: I wish I could say it's an honor to be back.

(General laughter.)

JUDGE GUTHRIDGE: I'm sure it is.

You're still under oath for this hearing, so I don't need to administer the oath again.

THE WITNESS: Yes, sir.

(Witness was previously sworn.)

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DAVIS:
Q Let's kind of begin at the beginning. Please state your name and spell it for the record.

A Randy Hudson, R-A-N-D-Y H-U-D-S-O-N.

Q And where do you reside?

A Ocilla, O-C-I-L-L-A, Georgia.

Q Dr. Hudson, you testified at some length about your background and experience in the pecan industry while you were in Las Cruces, because it's possible somebody did not know you in Las Cruces. So in Georgia I do not think we need to go into all of your background, because you are very well known in the industry here.

A Probably known too well.

(General laughter.)

BY MR. DAVIS:

Q But why don't you for -- to lay a foundation for your discussion of some of the sections we're going to go into this morning, tell the Court and the audience here your background in pecan organizations in general and
in the American Pecan Board in particular.

A    Well, I've been in the pecan business all my life, I guess since birth. And one of the things, and one of the very early lessons that we learned was that, you know, we're pretty much on our own as a grower. You produced a crop and then you tried your best to sell it, and depending upon the relationships that you've had in the processing side of the industry for the most part, depending upon just how well you were at marketing your crop.

And regrettably being a small grower for a number of years, and not having perhaps the connectivity to the processing side of the industry, it was quite a chore. In fact, I've said this for a long time, I remember as a young guy in the pecan business growing one of the best Schley pecans, which is a paper shell pecan, and then literally hauling it around all over the state of Georgia in essence begging somebody to buy it, and was eventually able to sell it for 16 cents a pound. So that was the state of our
industry. I guess that probably was about 45 years ago.

Now since that time, and getting involved on a much larger scale, I have served as the past president of the Georgia Pecan Growers, I was on the Board prior to that. Four years ago a discussion started in regards to trying to organize our industry and the potential positive impact that that might have.

At that time I presented a paper at the Southeast Pecan Growers in regards to the beneficial effect that organizing our industry could have, particularly on the growers, but not just for the growers but also for processors, just how it might help stabilize our industry, increase our prices and help us with demand. And so since that point in time I have served in working toward developing this Federal Marketing Order in conjunction with other pecan leaders from around the country.

Q Well, and you were selected to go on the Board of the American Pecan Board. Is that
correct?

A That's true, yes.

Q As a part of your duties as a Board member, did you attend various industry meetings and organizations and talk with the members about what a Federal Marketing Order might look like for pecans?

A Yes, we did. In fact, I'll be quite honest with you, when we first started the discussions, and I'll never forget this, and I may have mentioned this in Las Cruces, we had a meeting in Biloxi of all places, but in Biloxi, at a casino, by the way. And the discussion came about about a marketing order. And we were, for the most part, predominantly a group of growers who were discussing what our industry might could be.

And quite honestly, that was a very contentious meeting in that we really didn't know what we wanted to be, we just knew that our history, if we continued to repeat it, we were doomed to the same future. So we knew we needed
to do something, but we didn't really know what.

But there were enough guys from across
the country there at that meeting that day, from
New Mexico, Mike Adams was there from Texas, guys
out of the mid-South were there, and then
representatives out of the southeast, many of who
are here today and who you will hear the next few
days. Finally decided that we were going to get
together and we were going to do the best that we
possibly could to try to unify our industry. But
at that time we really didn't know what we wanted
to do. We just knew we wanted to do something.

And under the guidance of some
individuals, we put together a loosely-held
council and decided that the best place for us to
go decide what we wanted to be was Washington.
And one of our first trips was to Washington to
just explore the opportunities that existed in
regards to organizing an industry like ours.

Q   Now, again, for the record, and
there's been some mention of it today, in the
early organizing days what was this group
referred to? This was the US Pecan --

A    US Pecan Council.

Q    Okay.

A    And it was made up of an equal number
of growers and shellers.

Q    Okay. And then, what, some issue came
up about some confusion about that name though,
and that was the group that --

A    Right.

Q    -- just changed its name to the
American Pecan Board. Is that correct?

A    Right. Its connotations in regards to
council and US as opposed to American and so we
were advised that perhaps to better indicate what
we were all about and what we were trying to do,
that American Pecan Board was perhaps a better
term.

Q    And then again for this record, the
American Pecan Board is what is also referred in
these proceedings as the Proponent Group. Is
that correct?

A    Yes, we are the Proponent Group.
Q  Okay. Let's go back just a little bit to that meeting in Washington. As a result of that meeting with officials at USDA, did your group kind of reach a consensus on which direction you should go among the various options that were being considered at that time?

A  Immediately no, because at that time we all had opinions as to what we thought we might want to be. And quite honestly we had some who wanted a check off, who really wanted it — once the definition was outlined, wanted a marketing order. And then we had some folks that said they wanted a marketing order, who in turn wanted a check off. And it was just really a misunderstanding of the different opportunities that existed that could help our industry.

And so with the leadership of USDA, and they did a wonderful job, we just really could not have gotten where we are today without the support of the USDA. With the support of the USDA and with considerable deliberations not only among the growers and shellers and support
entities, but also with our lawyers, who played a very important role, we felt like that a Federal Marketing Order was the best solution for what we were trying to accomplish.

Q Okay. Well, once that kind of idea began to form, did the Board then start an outreach program, going around talking to various industry groups and individuals?

A Yes, we did. In fact, at last count -- I don't know how many meetings I've been to, but there's people in this room that's been to a lot more than I have. I can tell you --

Q Just in round number I mean.

A In the 30s to 50 meetings from regional meetings to individual grower meetings. You know, here in the east we have the Southeastern Pecan Growers, we have a Georgia Board, we have a Georgia Commodity Commission, and then we have probably, I don't know, 30, 40 grower meetings a year, where the opportunity existed to talk about, you know, to talk about the opportunities.
I can tell you this too, and we all should be proud of the diligence at which growers from across this country have contributed their time, effort and considerable amount of money. I know that on the American Pecan Board some have not received any compensation at all.

And the in-kind contributions that they have made to get this Board to where it is today, has gone into thousands of dollars, more than $30,000, that they have contributed to get this process to where it is today. So many hours of contributed time, labor, expenses working to try to develop a proposal that we felt like would be accepted by the industry as a whole.

And that was a very important part of this. We felt like to have a successful order, or a successful plan that would unify our industry, that it couldn't just be a bunch of growers because of the importance that the processing industry plays in the overall business model. By the same token it couldn't just be processers. And if we wanted our industry to be
strong, you know, for our children and our
grandchildren, then we had to unify the industry
as a whole, and that was our mission from the
very beginning, to try to do that.

Q And again, just for the record to make
it clear, these meetings did they take place from
sea to shining sea? I mean did you cover the
production area in these meetings?

A Literally from sea to shining sea.

Mike Adams, from California to the Carolinas, I
mean to be honest with you, before this process
started I had never been to Las Cruces, New
Mexico. And now I've averaged in the last three,
four years being in Texas and Las Cruces at least
two if not three times a year discussing this.

Q Okay. Do you anticipate -- and my
next question, you personally attended meetings
in the western region, in the central region and
in the southeastern region.

A Yes. And not only did I go to these
meetings, but also as a token of how important
unanimity was as a country, I actually joined
their associations, and they did likewise. And I think that was really unique too.

Regrettably, historically, you know, we had these adversarial relationships between growers and shellers, and we haven't tried to hide that from anyone. I mean this relationship was contentious, more so than the east and in the west. But it was more than just that. It was also growers. We didn't talk to each other. I mean really the growers in the east were competing against the growers in the west, and so we didn't really want to share a whole lot because quite honestly we were competing most years for price.

In the east we tried our best to lock up the gift pack business and the early large nut business, and the guys in the west very closely held their relationships with the shelling industry. So -- and they did a really good job of it. So these kind of issues not only divided us as processors and growers, but also as growers competing against each other.
Q    Now during this phase of the process
were you listening to the growers and the
handlers -- and the shellers, excuse me, and
getting input from them for what they would want
in this proposed order if it went forward?

A    Certainly, and that was pretty much --
we all understood -- and by we all I mean both
growers and processors -- understood that if we
were going to make this thing work, we had to be
willing to listen to each other. And we had to
be willing to accept maybe some very contentious
concepts that heretofore we probably would not
have accepted.

   And it was just -- and it was really
part of this mediated process of all trying to
get a point where quite honestly where we trusted
each other. And that was a real big issue of
trust. It was really interesting too when we
first set the first US Pecan Council with an
equal number of growers and shellers sitting
around a table trying to decide what the future
of this industry might look like.
The first couple of meetings were contentious at best. I mean quite honestly there was this nature of -- we just -- where are we going to go? I mean really how are we going to get this much of folks with such different concepts about what this industry ought to be together.

And I've said this before, and I said it in testimony in Las Cruces, once we learned to trust each other and once we gained confidence that we were trying to do what was best for our industry, I do not know of a single vote that we had as a Board on parts of this order where we didn't -- when the final discussion was over and we took a vote, where it was not unanimous. And I think that speaks highly of how hard we worked together to try to develop a marketing order that we felt like that we could get the industry to accept.

Q Well, now, somewhere along this continuum as you were listening to information, you probably turned to the issue of actually
trying to draft this proposed market order. Is that a correct statement?

A   Yes, we did.

Q   We have heard something about a rule drafting meeting or something in Washington, DC. Could you tell us approximately -- was there such a meeting, when did it occur, did you participate?

A   Yes, I did, but the rules and the drafting of these rules was sort of a continuum process. I mean we sat down and obviously a formal meeting where we voted and developed the process. But for the most part it was a continuum of trying to develop the rules, modify the rules to the point that it wasn't just acceptable, that it was something we can understand. And even then it sometimes gets rather complicated.

Q   As we've seen. In this process were you trying to incorporate what you had heard in this listening tour and the concerns that you had heard from the growers, shellers, large and
small?

A Yes. That was exactly the position we were taking was that we wanted to make sure that this document was diverse. We wanted to ensure a level of diversity so that whether you were a large grower, a small grower, or a large sheller, a small sheller, that you were included as a part of this process. And we wanted to guarantee that.

Q Again, if you said it, I missed it, but approximately when was this rule summit in DC, if you remember?

A I'm sorry, all dates have kind of run together the last --

Q Kind of run together.

A -- three or four years.

Q All right.

A But you may want to refresh my memory on that.

Q I think we've heard testimony, and the record will speak for itself, but I believe it was in January perhaps of this year. I'm not
absolutely sure about that, but --

A Yeah, it was.

Q -- it was sometimes in and around that --

A Right.

Q -- time. Right?

A I couldn't remember if it was February or March. It seems like for the last three or four years time has just sort of flown by.

Q So, and then after this process starts did the Board publicize the drafts as they were being made and letting the members know kind of what the -- as this thing was taking shape kind of what it looked like?

A Yes. Yes, we did.

Q And how would you do that, how would you --

A Well, quite honestly there are no secrets in the pecan industry, I'm just going to tell you. In particular there were really no secrets in regards to developing the rules and policies for this market order. So generally
when we would -- as the Board would discuss a
matter and then get ready to take it back to the
rank and file to get their input, they already
knew. I mean they generally already knew.

And here again it was a process of
give and take, and so that all parties, all
interested parties were given significant
opportunity to have input.

Q    Well, let's talk about those
opportunities. Again, you've described kind of a
tour of all the regions gathering input. Was
there also a tour of the regions and different
sections --

A    Yes.

Q    -- to discuss what was being
formulated --

A    Yes.

Q    -- at the FMO level?

A    Yes, there was. In fact, we made it
a point, and I made it a point at that time. For
a period of time I was also president of the
Georgia Pecan Growers. And I wanted to make
sure that the Georgia Pecan Growers were involved
in this process from the very beginning to the
very end.

Many of the growers in this room here
I spoke with individually about certain
components of the order. Particularly those
parts which might be most contentious in regards
to what the assessment might be, or
representation might be and those things. So I
made sure that the Georgia Pecan Growers knew
first, because at that time I was representing
Georgia Pecan Growers, as well as the growers in
the southeast, but particularly the growers here
in Georgia.

And I don't know how many times the
market order was brought up and discussed as a
part of the Georgia meeting, both at the Georgia
Pecan Growers Association meetings, but also with
the Commodity Commission and with our annual
Georgia Pecan Grower meeting. But it's fair to
say that at every meeting since we started this
process, there has been at least some discussion
about this market order.

Q Did you also take advantage of technology that might be available to use and things, like websites and the like, to get out information?

A Yes, we did, with -- more with media, mass media and trying to make sure that perhaps growers who weren't connected to the associations in some way were made available -- or were made -- or had knowledge that this process was in the works and welcoming their input.

Q And then, again, I believe we've had some testimony about this. Did you take advantage of the industry publications, such as Pecan South --

A Yes.

Q -- or The Georgia Pecan magazines?

A Right. Pecan South out of Texas I would say probably in every edition for the last three year had some article about the process, where we were in the process. And I know that The Georgia Pecan Growers Magazine, for just
about every magazine edition we've had, I think
we do four a year, for the last three years has
had a section in regards to where we were and the
processes that we were going through in
developing this market order.

Q Mr. Hudson, do you believe that the
industry was given a fair opportunity to have its
input into what this Federal Marketing Order
would look like?

A Certainly. I would say, yes, they
have, and I can assure you that at least -- I
mean I can't say I've heard from everybody, but I
can tell you that at some point in time I had
some calls, some quite contentious at times about
certain provisions that were being progressed.
So, yeah, we had plenty of input.

Q Do you feel that the proposed order,
or should I say the order as proposed reflects
the concerns and interests of the industry as you
heard it in these many meetings?

A Yes, it does. It really does. And
quite honestly, if you took our original
documents, as issues were being raised by
constituents, the document would reflect those
interests and those revisions, those subsequent
revisions that occurred.

Q     And as proposed do you believe that
there is widespread support, both among the
growers in the various regions and the handlers
in the various regions as you have talked to them
about this proposed order?

A     Yes, I'm very proud to be able to say
that where we are currently with the document
that we have, that we have what I feel like is
very strong consensus support.

Q     Why don't we talk about some of those
revisions right now? How about that? We are --

A     Well, I would welcome that

Q     We are trying to move numerically
through this order, and I'll say for the record
that we ended on provision 986.65 with Mr.
Willson, and I was a little bit concerned that we
had skipped 66, but, in fact, there is no 66, so
we're going to move right on into Section 67 if you have that --

A     Yes, I do.

Q     -- in front of you. And it has a heading of Recommendation for Regulations. Why don't you just tell us in general terms what was the Board intending to do by having this Section 67.

A     This section specifically authorizes the Council to propose regulations to the Secretary after submitted the marketing policy required under Section 986.65 to in essence effectuate the policy of the Act.

Q     And what is your understanding is the policy of the Act? What is --

A     Well, it in essence gives us, or gives the Secretary authority to act.

Q     And the Act, of course we're referring to the 1937 Act, and it's main goal or purpose is to add -- or lend stability to commodity --

A     Yes.

Q     -- prices. Is that correct?
A     To commodities, yes.

Q     Now what is the role or purpose of the
marketing policy as it relates to recommending
regulations?

A     Well, specifically it would allow us
to collect data and that make regulations and
implement regulations that are important to, in
our case, the pecan industry.

Q     Now how would -- would regulations of
this type be something that would be of high
interest and would lead to a great deal of
deliberation with the Council?

A     Yes, certainly it would. If I might
elaborate just one little bit here, in my
opinion -- and I did this the other day and went
off on a tangent and I got pulled back, as you
might very well remember.

But in regards to some very
significant parts of this order, the ability to
market, provide funds for research and education
and then collecting of data is really the meat of
this market order. And so I would say
particularly this section, it relates -- allows
us to be able to do the things that we really
want to put this order in place for.

But now with that said, because of the
make-up of our Board and the importance of the
issues that we would be deciding, it's very
important that these decisions be discussed open,
in earnest, and that the Board would then vote on
these issues. And to ensure, to ensure that
we're doing the best for the industry as a whole,
the super majority provision then comes into
play. And that -- I think that is a very
important part in regards to this authority.

Q     And of course we've all --
A     And that's -- right.
Q     -- part of that's the 986.55 --
A     (c)(1).
Q     -- (c)(1) --
A     Sections 8 through 10.
Q     There we go.

MR. DAVIS: Your Honor, I believe
those are all the questions I have on Section 67.
JUDGE GUTHRIDGE: Does the USDA have any questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Thank you, Dr. Hudson, for your testimony. With regard to Section 986.67, I want to start simply with the title, Recommendations for Regulations. And I want to -- you described in great detail the drafting process and the -- I guess the understanding that you have developed over time about marketing orders and how they work. Can you speak to why this section is called Recommendations for Regulations?

A Well, here again, ultimately the authority would lie with the Secretary. And so that a proposal that we might make, particularly if it was a contentious proposal that may in some way adversely affect the industry, I would say that in a position like that, the Secretary may very well have an opportunity to say, Now, look,
the regulations as proposed might need some additional consideration. So I would say that that would be my interpretation, and I may be off base there.

Q No, thank you, that's very helpful. So, again, when you were learning about marketing orders and how they operate, did you ever hear the term informal rule making? Do you recall that term? And if you don't, that's fine. I'm just curious.

A No.

Q No. Okay. So let me rephrase -- or let me develop my question then. So based on your understanding, is the role of the Council to have the ability to process and deliberate what types of regulation might be best for the industry, and how the most appropriate and intended affect on the industry, and then the role of that Council is to make that information known to the Secretary, is that what is meant by the recommendation process?

A Yes, I would suspect so.
Q    And then does the Secretary -- based
on your understanding, does the Secretary then
have the duty to make the recommendation known,
the recommendation and I guess potential
regulation known to the public, and is there an
opportunity for the public to give feedback
before that regulation comes into effect?
A    I'm sure that that would be the
circumstance, yes.
Q    Thank you. So in essence does 986.67
establish --
A    Sixty -- okay.
Q    986.67.
A    Right.
Q    Let me back up and rephrase this.
When we -- when you were in the process of
learning about marketing orders, did you ever
hear the term tool box?
A    Yes, I did.
Q    And tools that were put into the tool
box?
A    Yes.
Q And in that context, based on your recollection, do tools refer to authorities under the Act -- or under the marketing order?

A It could, yes.

Q Okay. So is this simply an authority that allows the Council to communicate its best recommendations to the Secretary for consideration and for public comment --

A Yes.

Q -- prior to implementation?

A Yes, that would be my interpretation.

Q Okay. Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Any more questions from the USDA?

(No response.)

JUDGE GUTHRIDGE: Okay.

MR. DAVIS: Thank you, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis.

REDIRECT EXAMINATION

BY MR. DAVIS:

Q Let's move on to 986.68, and that's on
the overhead here for you, authority for research and promotion activity. Take a second and refresh yourself with that provision.

A (Perusing document.) Yes.

Q Okay. And again, in general terms without -- we'll dive into some of the specific phrases here, but in general what was the Board's intent in proposing this section?

A Well, here again, I think this is probably one of the most -- well, is, in my opinion, the most important section, and really is that part of the order which -- that I feel most dear about, and that is that it authorizes the Council to engage in research and promotion which will aid all facets of the pecan industry, from production and agriculture, growing pecans, to distribution, marketing and packaging.

So, yeah, in my opinion this is perhaps the most important section in regards to what we're trying to do here. And that is to support the marketing of pecans and then hopefully have sufficient funds to conduct
research on pecans and education programs to
effectuate that research. And we just have not
had that in many years.

Q Let's go through a few of the clauses
there in the first sentence. You see that the
Council, with the approval of the Secretary, may
establish or provide for the establishment of,
the first is production research. What in your
mind is production researching?

A Well, quite honestly production
research to me is what allows us to make money.
In other words, how we can reduce our input cost
and produce a higher value, safer product. And
in the last several years, I would say really
since the mid '80s, if you look at monies that
were available for research on pecans, they have
just slowly dried up as result of continued
budget cuts, both at the federal and state level.

Q Well, let me interrupt you there just
to say, currently where, to the extent that there
is any production research going on, where is
that research taking place?
There are -- current research is being conducted by two USDA facilities, one in College Station, Texas, one in Byron, Georgia. And for the most part that is our USDA contribution to pecan research. Now there's token projects here and there, but for the most part that is the most significant funding.

Now our land grant institutions and our 1890 institutions may have a pecan project of one nature or another. I know the University of Georgia has projects, they have them in Auburn, they have them at Texas A&M. There is some research going on in some 1890 colleges.

But for the most part, to be able to have the level of research that we need to continue to promote and develop our industry, our industry has suffered for a number of years, as evidenced by the fact that our scientists just do not have sufficient funds to carry on a sustainable pecan project. So --

Well, now of course we don't have the Council in place yet and we don't know who would
be on it, but would you see production research being sponsored by the American Pecan Council to be in conjunction with these existing efforts, or as a supplement to them, or kind of how would they --

A    Right.

Q    -- how would they fit together?

A    Well, it'd be a complement. And I'll give you an example of this at two levels, one at a federal level and one at state level. A few years ago, and I think Dr. Lenny Wells was a part of this, I think Dr. Bill Goff was a part of this. The pecan industry submitted a national project proposal for pecans.

Q    Submitted it to whom?

A    The USDA for funding. And it was rejected. And the reason it was rejected was on the grounds that there wasn't sufficient industry support. At that time our industry was still for the most part localized in our states and there wasn't a broad multi-state support for a national research project.
Through the American Pecan Board and the fact that we would truly represent the industry as a whole nationwide, it would open up the opportunity to have true national efforts on research projects for pecans. And it would allow us to take monies, small amounts of monies, and then leverage them at the federal level for higher levels of money, so we could leverage up.

But then too for example, in both Texas and Georgia where we have Commodity Commissions, there currently are ongoing research projects that are being funded at the state level. And they're very important. And they're, for the most part, state specific, and I'll give you a good example of that. In Georgia we're having problems with scab, very high humidity, a lot of rainfall, we're getting scab and it's costing us a lot of money trying to control disease resistant scab.

So the state of Georgia is putting a token amount of money toward trying to help us to develop ways to control scab here in Georgia. On
the other hand, it's quite the opposite out in West Texas and New Mexico. They're having problem with water. And what their growers out there are doing are having research projects on trying to maximize and use more efficient use of water.

So there's opportunities here to have access to leverage up on a national level a national kind of initiative, as well as on state level have state targeted research projects that could in some part be supported through the national marketing order.

Q So again to summarize, you would envision some production issues being looked at on a national level, perhaps by people retained directly by the Council, but you also see that the Council could collaborate and cooperate with helping more localized research on localized problems.

A Yes.

Q And you think that you have the flexibility to do that in this marketing order?
A    Yes, we would.

Q    Okay. Good. Next, again, just going clause-by-clause, it says --

JUDGE GUTHRIDGE: Mr. Davis, before you go on, could I ask a --

MR. DAVIS: Oh, please.

JUDGE GUTHRIDGE: -- questions of Dr. Hudson?

I think you used the term 1890 college.

THE WITNESS: Yes.

JUDGE GUTHRIDGE: What does that term mean?

THE WITNESS: Those are minority colleges and universities that are funded separately under the Smith-Lever Act. In Georgia we have Fort Valley State, in Alabama it'll be --

JUDGE GUTHRIDGE: Tuskegee probably?

THE WITNESS: Tuskegee.

MALE VOICE: Tuskegee, Alabama, yes.

THE WITNESS: Tuskegee. So those are predominantly black institutions for historical
purposes, and do a lot of really good -- great research goes on there.

JUDGE GUTHRIDGE: Thank you. I just wasn't familiar with that term.

THE WITNESS: Yes.

MR. DAVIS: Thank you. I thought it was land grant, so I'm glad you clarified that though.

JUDGE GUTHRIDGE: He used land grant also --

MR. DAVIS: In the same sentence, yeah.

JUDGE GUTHRIDGE: -- and so --

MR. DAVIS: Thank you.

BY MR. DAVIS:

Q     All right. We are moving on then again to just the preface. The beginning is that the Council, with the approval of the Secretary, may establish or provide for the establishment of marketing research that will go down -- and which will assist, approve or promote the marketing, distribution and consumption or efficient
production of pecans. What kind of marketing research are you envisioning?

A Well, to give you an example of marketing research, and I'll use a precedent a little piece of data that was collected a couple of years ago here in Georgia. For numbers of years in Georgia, through the Georgia Commodity Commission, we had hired a public relations group to market pecans. And a goodly portion of their marketing activities was spent around the holiday season, and for the most part we were marketing pecan pies and cakes.

Well, we were doing this at a time when the nation was changing on us. And so the foresight of our Commodity Commission was let's take a real good hard look and let's invest some money just to see where we should be spending our marketing monies. And so they did.

And what they found out was what most all of the yuppies around here, including my son, know, and that is that the eating habits of the American people are changing and they're going
away from eating pecan pies and eating snack foods that are healthy and rich with products that are high in antioxidants, like nuts.

And so at the same time we were trying to sell pecan pies, we should have been selling dry roasted, unsalted pecans in a small bag. And so that kind of research, targeted research into where we could spend our marketing monies would in essence effectuate some significant -- hopefully drive some additional demand in marketing pecans.

And I hate to use this, but to tell you how smart I am, I'll never forget the night I first saw Colbert at the Super Bowl ad where he dressed up like a pistachio. And the first thing that came to my mind was that is absolutely the biggest waste of money I have ever seen in my life.

But then within two weeks they were saying that pistachio sales had increased some astronomical, like 15 percent. And it wasn't that he was sitting there with an eagle dressed
up like a pistachio, but it went public and went
viral on every social media and literally sold
millions of pounds of pistachios by having
Colbert do something like that.

So I'm just saying that, you know,
there are marketing opportunities out here that
our industry has never touched. But what I do
know is, that if we continue to try to sell pecan
pies and cookies, that that is not going --
that's not the future of our industry.

Q      Well, and that many of your comments
I think would also apply then to the other clause
that's at the beginning of this, the marketing
promotion. How -- is that correct? I mean some
of the things you've been --

A     Right. Yes.

Q      -- talking about is research to kind
of find out what --

A     Right.

Q      -- Americans want, but then promotion
would be trying to market to those consumer
desires, if that --
A Exactly. Right. For promotional activities.

Q And we talked about production research, some of it being local, some of it being national. The marketing is more likely to be a national project, is it not? It'll --

A Yes. Yes, it would be. I very strongly suspect that our marketing activities would be national in scope, and quite honestly it would be in those areas of the United States north of the Mason-Dixon Line that have not been exposed to pecans. You know, after all of these years you get north of Virginia and west up into the northwestern states of the United States, and you just do not see pecans in the marketplace.

Q We kind of skipped over, and I think, to be candid, you and I may have struggled a little bit with exactly what the clause, development projects. Was there any discussion of what would be development projects that the Council may recommend?

A Yes, I can give you a good example of
a potential development project. For example, historically there are certain products of the pecan industry, and we talked about some of these in regards to very low quality pecans and what might be done with those.

In recent months really, and within the last year-and-a-half, there's been a considerable amount of discussion in regards to pecans, pecan flour, meal and oil, which can be extracted from really the by-products. Pecan oil can be made some of the most rancid pecans.

And there is a company in Fitzgerald, Georgia that was interested in getting into the pecan oil, meal and flour business. In fact, they've recently bought a flouring -- a very expensive machine to pulverize pecans to a flour so it could be blended into a smoothie as opposed to being meal and gritty and -- but to put into milk, make a pecan milk.

And what they found out was they did their business model and they modeled the value of the oil and the flour and found out that under
current market structure, that the meal, oil and 
flour was probably the most profitable side of 
the business, including the very top halves or 
pieces.

So that what was in essence considered 
to be almost a waste product a few years ago now 
may be more valuable than the very top quality 
product as we've perceived it in the past. So 
I'm saying those kinds of research opens up 
market opportunities that we can't even imagine 
today.

Q     Okay. And for the benefit of -- 
perhaps if there's someone that's not in the 
pecan industry here, rancid pecan does not 
necessarily mean the same like as rancid meat, 
does it? It's not spoiled necessarily, it's just 
not top quality?

A     I've never -- let me put it this way, 
rancidity is a product in pecans, it is a product 
of moisture and breakdown of the nut. And a 
rancid -- a good high quality pecan is the best 
thing you've even eaten. A truly rancid pecan is
absolutely the worse thing you've ever eaten.

But that product is, when the oil is exacted, is
a marketable product.

Q     Still has some value. Right?

A     Still has value. As opposed to rancid meat. The only thing you can do with that meat
is make dog food out of it.

Q     So those are some of the kind of --
when you development projects, you were -- you're envisioning development of new products, or
development of new uses for pecans that perhaps we haven't thought of yet.

A     Yes.

Q     Okay. And again, those would be national in scope and would benefit the entire --

A     The entire --

Q     -- industry.

A     -- industry, yes.

Q     Okay. Could the Council use an assessment to fund specific research or promotion projects to deal with a particular problem that has arisen?
Q So can you think of any examples, perhaps health scares or anything like that we may be able --

A Yeah. Yeah, and I did mention this in earlier testimony. One of my biggest fears quite honestly in being in the pecan industry is that we do not have a national critical response team to some sort of health issue. If we were to have an E. coli or salmonella outbreak, we currently do not have a national response team in place.

To my knowledge, I believe every other industry has a team. I know we drafted a plan. I think Dr. Lenny Wells might could address this in more detail a little later on. I think we have names on a piece of paper. But in regards to having identified significant parties to address an outbreak of E. coli or salmonella, which could devastate our industry, I mean it could bring our industry to its knees, we currently do not have that in place.

And this -- one of the things we've
talked about, and Mike and I have talked about
this, and -- with others, is that we need -- one
of the first things we're going to do is try to
put together a critical -- you know, national
response team for a situation that might develop
like that.

Q Would this authority, or as I think
we've heard it referred to, a tool in the tool
box, benefit small producers and handlers in this
industry as well as large producers and growers?

A Certainly. You know, both, whether
it's research on new products, or whether it's
addressing a national instance with some sort of
contamination, it would benefit all growers, and,
in fact, all growers and processors.

Q Was this proposal, Section 68, what
they discussed with producers in the industry
prior to this hearing?

A Yes, it was. Here again, there is
very little content that exists in this marketing
order that has not been thoroughly discussed.

Q And would you have an opinion on what
would be the impact on the industry if this
authority were not implemented?

A     Yeah, I have a real good opinion of
that. I mean all you've got to do is look back
at the last 50 years. I mean we would go right
back to doing what we've always done, which would
be to grow pecans and hope that we could sell
them.

And, you know, our biggest fear right
now is we've got a little glitch going on with
going pecans into China, and in the absence of
China in the market, we're looking at, you know,
we're looking at 100 million pound surplus of
nuts on the market. And if you could imagine
what that would do to price, it would be
devastating.

MR. DAVIS:  I believe those are all my
questions on Section 68, Your Honor.

JUDGE GUTHRIDGE:  Are there any USDA
questions?

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

BY MS. SCHMAEDICK:

Q    Dr. Hudson, you just said something that kind of made me recall the testimony of Ms. Helen Watts. I don't think you were present for her testimony though. But she talked about the price of pecans in the marketplace vis-à-vis other nut products currently in the marketplace, and I believe she said that the pecan prices are higher vis-à-vis those other nuts. Does that sound accurate to you? We're talking at the consumer level.

A    Well, yeah, I have had an opportunity the last few weeks to look at that, and that -- it is quite remarkable that it is. If you look -- and what's confusing about that is that prices at the grower level in many cases are actually lower, but you get into the marketplace and the price of pecans are higher. And I have ideas about that too.

Q    Okay. I would appreciate, if you're comfortable sharing those ideas, because it was
confusing for me --

A Right.

Q -- and when you put that into the
context of the issue you just brought up of --

A Right.

Q -- potentially having all this
product that should go into the export market,
but it might be here.

A Right.

Q How -- I mean how are we --

A Well --

Q -- what do you see happening?

A Well, and this is a very important
point, and this even substantiates why -- more --
why we need a market order. And that is lack of
insufficient data to be able to develop a
marketing strategy that's compatible with supply
and demand.

For example, and I can show you a
picture, I have it in my phone because when I saw
it, it just irritated me beyond -- pecans --
there's pecans being sold in Ocilla, Georgia, a
one-pound bag for $16 a pound. Now in my little business out there, we're 5- or $6 a pound cheaper than that.

And you ask yourself, you know, why is there that big a difference in the price at the commercial level than at my little business out here where we're selling it. And it all goes back to this, more than likely that supplier underestimated the level of demand that was going to be necessary to fill his contracts with this grocery store chain. So as a result of that, he purchased what he thought was sufficient supply to cover that demand.

Well, as the season went on, demand increased, supplies in his warehouse got smaller and so he started raising his prices in response to curb the amount of demand -- or supply that would be necessary to cover his customer, but at the same time have product on the shelf.

Another point too is that sometimes certain nuts are used as market makers. And regrettably, quite honestly, I think year pecans
were used as the market maker because there were
opportunities for some really -- to be able to
buy and to market at what some folks would have
thought was a value less than what should have
been the fair market value of pecans at that
time, and so the pecans were used as a market
maker.

JUDGE GUTHRIDGE: Excuse me. Dr. Hudson, what do you mean by the term market
maker?

THE WITNESS: Well, you've got
almonds, walnuts, pistachios and pecans all
sitting on a shelf. And let's say you're long on
almonds and so you --

JUDGE GUTHRIDGE: And by long on
almonds you mean --

THE WITNESS: You've got a lot of
almonds.

JUDGE GUTHRIDGE: -- you have a lot of
them.

THE WITNESS: You've got a lot of
almonds, you want to sell your almonds. So what
you want to do, if almond prices are higher and
you've got a shelf full of almonds there, and you
don't have a whole lot of pecans, and you want to
push folks to almonds, what you do is you put
pecans on the shelf at $16 a pound. And they're
going to look over there and say, My lord,
pecans, $16 a pound? Almonds are only $10 a
pound. I'm going to buy almonds.

So I think there's some of all of
that. I think -- and I cannot grasp, and it's
really beyond my education as a farmer to
understand those levels of marketing. But I can
tell you it goes on in the industry. And in the
absence of having clear data in regards to supply
and demand, we can't develop a business model.
How do you do that?

And that is the reason why for 50
years this industry has just wallowed in
mediocrity, because you can't budget when you
don't have the numbers to do so. And we just
haven't had the numbers.

BY MS. SCHMAEDICK:
Q Thank you. I appreciate your response.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. VARELA: Jan Varela, USDA

BY MS. VARELA:

Q I have a brief one for you, Dr. Hudson, going back to the clause in there about marketing research and development projects. And in your discussion of developing the new markets for something like pecan flour and those alternative uses, could that section kind of cover not necessarily developing the product itself, but coming up with the types of projects and research you might need to figure out if there is a market for that product after it's been developed. Is that the type of situation you think could fall into that clause?

A Yes, it would.

Q And do you think it would important to be able to fund that to fill the gap between
developing a new product and putting money behind actual advertising for it?

A Yes, certainly so.

Q Thank you.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. VARELA: No further questions.

Thank you.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. DAVIS:

Q No further questions on that section.

Let's move on to 986.69, which I believe may be the longest section we're going to talk with you about. And we can't get it all up at one time, but we'll kind of try to walk through it, if we can. But take a second and look at -- you have Exhibit 1 in front of you, don't you?

A (Perusing document.)

Q Section (a), let's focus on Section (a) for a second. It has four subparagraphs, and
if you could maybe perhaps just talk in general
what is this section addressing and why did you
include it?

A Where here again this section is
everely important in that in order to be able
to gain the confidence in the industry, that we
need a level playing field in regards to not only
standardization in qualities or sizes of pecans,
but also some standardized weights and measures
and manners in which the product may very well
be -- might very well be marketed into the
marketplace. So this section allows us to do
that.

Q Now, again, I don't think we need to
put it back up, but we started your discussion
with Section 67, which was a recommendation for
regulations, and that seemed to be a general
authority to allow the Council to propose
regulations to the Secretary. This section kind
of reiterates that authority, does it not, but
just narrows the focus down to handling
regulations. Is that --
A Yes, it does.

Q -- correct? But once again, it is a recommendation to the Secretary on implementing those regulations. Is that correct?

A Yes. In fact, what we wanted to do was to make it very clear that although the Council has wide authority to regulate, that we regulated or addressed those issues, which in this case dealt with handling, packaging, sizing of products.

Q And once again, would this be the type of action by the Council that requires the super majority, so --

A Yes, it would.

Q -- buy-in from all sections?

A Yes, it would. Any time there is a decision that would require a change in the way that we're grading or packaging, that the industry would have to support that with a super majority.

Q Are there any -- currently are there any industry standards on handling?
No, there are not. There are some general practices, common practices. But to just give you an example, some companies will sell shelled meats in a 28-pound box, boat box. Some companies will sell them in a 30-pound box. Boxes in all different sizes and dimensions.

On a smaller scale I mean we sell a 12 -- I mean a 16 ounce bag of pecans. Others sell 12 ounces or six ounces or two ounces, which is fine, there's no issue there, but it does become an issue at times in regards to pallet size, you know, number of cases per pallet, number of boxes or cases of pecans that you could get on a pallet, you know, whether it's 1200 pounds to a pallet or 1500 pounds to a pallet.

And so the opportunity, if the industry were to decide that some type of uniform specificity in regards to bulk boxes and the number of pallets per -- or number of boxes per pallet, and then结果ingly the number of pallets that you might could get onto a container, that would, at some point in time, if
we went to some sort of uniform standards, would save money.

Because then if I were marketing pecans or someone else was marketing pecans to a customer and we talked in terms of a pallet or a box, that the uniformity -- they would know exactly what we were talking about.

Now here again at times, and I'm not saying that this happens often, but new customers will come into the business and they'll call and say, What will you sell me a case of pecans for. And if I'm pricing a 30-pound box and someone else is pricing a 28-pound box, then, you know, there's a possibility there's some confusion there. And I'm not saying this is a big issue, but here again it just really points to the kind of problems the industry's had in the past, and that is just non-uniformity when it comes even to packaging and boxing.

Q  Well, but I think we have heard from some growers, I'm remembering some testimony in particular, that this lack of uniformity is
another example of lack of information at the
buyer and seller level. You know, we're not
always sure that they're talking apples-to-
apples, oranges-to-oranges. And you alluded to
that, somebody says they want a container --

A     Right.

Q      -- is that container 30 pounds or 28
pounds.

A     Or 28 pounds. Right.

Q      So do you believe that some uniformity
in this area would help the industry?

A     Yes, certainly I believe that it
would. It would at least make the dialogue
easier in that when you started talking about
certain quantities of pecans for trade, that if
we had some uniformity that everyone would
understand where we're being at.

But one other point too, and this
would be -- address it on an international basis.
We're asked to, at times, develop packaging for
international sales. Well, it would be really
nice if the industry was, in fact, unified, that
if I wanted to send a load of pecans to say Riyadh, Saudi Arabia and it needed to be in Arabic, that maybe there would be a standard template that we could use for exporting to Saudi Arabia, or if it needed to be in some other language as opposed to having to go out and develop this independently, just over and over again redeveloping the wheel just to do, you know, what should be standard commerce.

Q Would that kind of help and regulation assist small shellers as --

A Well, it would probably --

Q -- in particular?

A -- quite honestly it would probably have greater benefit to the smaller operators by having access to some of that information.

Q What type of specific quality issues do you anticipate may cause the need to regulate -- for regulation in the future?

A Well, that is a good question, because we commonly deal with quality issues. In fact, I'm involved with an episode right now of a
quality issue on an international level. And we currently don't have anybody to respond to that. There is no court, or no real remedy other than in court and that being a person going and trying to get someone to help decide an international case on quality. Or for that matter even a domestic on quality.

And the reason for that is that the standards that are currently being used here in the United States with USDA, although we have standards, it's such loosely held standards it's not nearly as applicable as it should be. In fact, one of the first pieces of information that we should take up as a Board would be to try to get more reliable pertinent quality standards into the industry.

Q     And once again, do you think that that will be a topic that will take a great deal of discussion and collaboration among the various elements of the --

A     Certainly, and like with container size and these other issues we've been talking
about, would require a lot of discussion among -- particularly among the processors and it would require a super majority by the Board to be able to implement those standards. But I think we're all in favor of it, I really do. And I think I've heard that from the processing industry that we need, we need standards that would help industry.

Q Okay. And you've alluded to this, kind of the health issue, but would the ability to address quality issues provide authority for the Council to perhaps act as a unifying voice in the event that there were some kind of health scare involving the product?

A Yes, it would. It certainly would. And it's something that's very necessary.

Q Does the proposed authority allow for different regulations for different market destinations? In particular I guess I was looking at 69(a)(2).

A Yes, it does.

Q Do you think that that would be
valuable?

A Yes, it is.

Q And I think you alluded to one example in particular, is if you shipped something to Saudi Arabia, it has to have Arabic --

A Right.

Q -- printing on it. And perhaps we could address that. My next question I guess would be can you think of a quality problem that might be localized, or perhaps from one producer, but which nonetheless would affect the entire industry and for which the industry needs a unifying voice and standard?

A I'm sorry, repeat that?

Q Do you -- can you think of any kind of a situation where a quality problem may be either localized to a particular region, or to a particular producer, but nonetheless the results of that quality problem might adversely affect the entire industry, and therefore the entire industry needs a voice to speak on behalf of the industry?
A     Yeah. Yeah, certainly so. I mean as I mentioned earlier, all it would take is one E. coli outbreak and then we would have -- here again that would be disastrous for our pecan industry as a whole.

Q     And currently is there any organization that would speak for the industry as a whole if there was an outbreak?

A     Currently there's not. We do not have a unified voice.

Q     Can you think of any current need for improved packaging or containers?

A     Yes. Yes, there are, and, you know, I mentioned that. I really do believe that some, you know, some uniform packing standards -- you know, USDA, number one, really does not mean anything. No disrespect by the way. But that is kind of a catch-all term that's often used as a marketing opportunity, but doesn't mean anything in the pecan business. And so those kinds of terms, those kinds of terminology needs to be developed and then appropriately identified, and
then used in the market -- used in the industry.

Q. Do you believe that the authorities that are provided for here in Section 69 would improve the marketability of pecans, and if so, how?

A. Yes. Yes, they will. And the way that they will is that it will give the American and world consumer confidence in what they're buying. And I'll say this again, and no disrespect to anybody, as I've said many times, with all due respect, I went over to Albany, Georgia here a while back, and sitting there in a bin was the biggest pile of rancid pecans I've ever seen. And I wanted to make sure they were rancid, so I bought one of them just to be sure. And, yeah, they were rancid.

And the bad -- the sad thing about that is, is I called the manager and I said, Look, hey, these things are rancid. And he said, How do you know? I said, Well, I can look at them and tell they're rancid. These things were rotten. And he said, No, they're not, sir.
And so I just let him -- but anyway, the point is, that kind of product hurts us, hurts our industry because a new -- a person buying those would take them home, and if they've never eaten pecans before, they'd open them up and they might eat them, but they'd never eat another one. And that is the kind of product -- it has value, but certainly it shouldn't be sitting out being sold at a very discounted price to the public as a high quality US number one pecan. It just -- that kind of sale should never occur.

Q And if I've heard your testimony here, if the industry is hoping to break into new markets, this quality, as you go into new markets, is probably more important than in our existing markets. Would you agree with that?

A Right. I agree with that. And I can certainly -- I certainly agree with that. You know, it's one thing to sell somebody something that's of lesser quality, as long as they know it. If you tell someone, Look, this nut is of
lesser quality and that's the reason why you're
getting it cheaper.

But to sell someone something that
it's not, and there's no labeling specifications
on the bag stating that this product is amber or
something, then I think we're hurting the
industry as a whole. So regulations and
standards would help us with that product -- with
that problem.

Q     Well, now of course this section just
gives the authority to propose these regulations,
but we don't actually --

A     Right.

Q     -- have the regulations. But you
would agree in general there may well be some
cost that would be incurred by the industry if
reasonable regulations are put in place. Is that
correct?

A     Yes, there would be some cost.

Q     But do you have any belief that -- how
the benefits may balance with those costs?

A     Well, here again, you know, it would
probably be a bigger expense on a smaller producer, on a smaller manufacturer initially. But long term it would offset that expense with consumer confidence and a willingness to buy the product. So I think probably as a nit it would probably come out over time as being pretty even.

Q     Now if there were regulations implemented, would there also be a need for inspection, a certification process to ensure compliance?

A     Yes, there would be.

Q     Does this proposed program have that authority?

A     Yes, it does.

Q     In particular --

A     Federal State Inspection.

Q     And then is that also provided for in 986.54(g) and (h)? Do you have Exhibit 1 in front of you there?

A     Yes.

Q     Does it have the authority to ensure compliance and do inspections?
A  Yes, they do.

Q  If there's going to be this compliance
    and inspection program, do you have any idea what
    agency would carry out such?

A  It was my understanding it would be
    Federal State Inspection.

Q  There's obviously no industry
    inspection or compliance team available today, is
    there?

A  Yes, there is. I mean Federal State
    Inspection is an agency that is currently in
    existence.

Q  And you envision that these
    regulations would be provided to that agency and
    then they could help or conduct the --

A  Yes.

Q  -- inspection and compliance?

A  Yes. If given the authority.

Q  Look at subsection (c).

A  Catch me up. Now where are we?

Q  Subsection (c) of Section 986.69, the
    authority to regulate as put forward in the
subsection shall not --

A    Well, wait --

Q    And it's also --

A    986.69?

Q    69(c).

A    (c). Yes, the authority to regulate is put forward in this subsection.

Q    Just take a look at that, and what exactly was the Board intending to address here?

A    (Perusing document.)

Q    And I'll refer you to page 5 --

A    Yes. Right. Well, I can tell you that in discussions that we had, that all of us had, in going around the country, this issue was probably the most widely held negative in regards to what we were trying to do.

And so what we wanted to do in regards to this is we wanted -- and the way we responded to this and have responded to this, is that we wanted to make it clear that the Council has wide authority to regulate. It cannot and will not regulate production by setting limits or reserve
pools or allotments.

Now other industries have tried this. There was a real conversation in meetings about this, but the growers and shellers in this country I can assure you are adamantly opposed to this concept. And so this statement clearly shows that we are not going to go in that direction.

Q     And again, just to summarize, although the Board has got broad discretion in making recommendations on regulations, handling and perhaps some other areas, if there's any question, it's going to be interpreted to mean that they are not trying to restrict production in any way. Is that --

A     Absolutely not.

Q     -- fair to say?

A     There will not be any volume regulations as a part of this market order.

Q     Is there strong consensus in the industry on that issue?

A     Yes, there is. I would say that at
all levels there's total unanimity on that point.

Q     And for -- I guess this would apply to all of Section 69, not just Section (c), but was there -- were there other alternative considered as to how to reach a balance between any restrictions on production, no restrictions on production, as to how that would relate to handling and how were those discussions conducted?

A     Well, they were pretty short-lived discussions quite honestly. And that is that there would be absolutely no production limitations in this regard.

Q     Okay. We've had some discussion, I believe you were present for some of them, in our earlier sessions, but just pull up if you would Section 986.26, the definition of merchantable pecans. Take a second and familiarize yourself, and (a) and (b) are really kind of mirrors of each other, one deals with in-shell, so we can look at that, but merchantable in-shell pecans means all in-shell pecans meeting the minimum
grade regulations that may be effective pursuant to 986.69, the section we're talking about. Is that correct?

A Yes.

Q And then of course merchantable pecans is going to be one of the data points that the Board is going to try -- or, excuse me, the Council --

A Right.

Q -- will try to gather. And again, this is my question. Were you present for this? Could we address -- could we have an amendment to this that would clarify the situation of what happens up and until such time as these regulations are put into place, could we come up with an alternative definition of merchantable pecan?

A Yes, we could, and I would just say that, you know, my interpretation is that pecans that meet the regulations as outlined in 986.26, you know, they must meet a certain quality standard. And I guess to say that any additional
thoughts on that would be defined at some later point. And here again it would take unanimous consent -- not unanimous, super majority.

Q But since this term, merchantable pecans, is used in so many different places in these regulations, we probably do need to think about the eventuality of what if we have not yet developed those -- these regulations under 69 or it gets held up for some reason, and just come up -- address how we would define the term, merchantable pecans, until such time as effective regulations are put in place. Correct?

A Yes.

Q I'm not skipping around too much. Let's go back to 69 for a second now, in particular look at Section (b). We didn't touch on that, subsection (b) and subparagraphs (1) and (2). What was the intent of having this section?

A All right. Catch me up now. Where are we?

Q Let's go back to --

A I hate going back.
Q I know. It's -- we're not moving in
the right direction here. Section 69(b),
subsections (1) and (2). If you can --
A (b).
Q -- point that out -- there we go.
A (Perusing document.) Okay.
Q What were you -- what was the intent
of the Board here in providing this section?
A Well, in my interpretation here, and
I know that's some very shaky ground, but was to
give us at least the opportunity to make changes
if at some point in time it became necessary.
Q I think we've looked at some similar
sections, and the word flexibility has been
bandied around. Would you agree that this would
give the Council flexibility in the event that
some problem comes up in a regulation that's been
proposed to the Secretary?
A Yes.
Q Okay. Thank you. And then finally on
this section, if you'll just take a quick look at
subsection (d).
A    Yes.

Q    And again, is this kind of an enabling

section that authorizes the Council to make the

recommendations under this section?

A    Yes, it does.

MR. DAVIS: I have no further

questions on this section, Your Honor.

JUDGE GUTHRIDGE: Does the USDA have

any questions?

MS. SCHMAEDICK: Melissa Schmaedick,

USDA.

FURTHER RE CROSS—EXAMINATION

BY MS. SCHMAEDICK:

Q    Dr. Hudson, when you were talking

about under 986.69, authorities regulating

handling, it would -- under (b) -- oh, I'm sorry,

no, not under (b). Under -- never mind, I'll

just explain it.

You were talking about potentially if

regulations were developed and put in effect,

that there would be an inspection component with

that --
A Yes.

Q -- to certify that the product is meeting the requirements. So my question -- I'm just trying to connect the dots here between various parts of the program, so going back to assessments, the initial premise of the assessment language says that first handlers would be assessed.

But if there were an inter-handler transfer that moved pecans from one handler to another, and the assessment for that -- for those pecans was transferred, is there also the authority to transfer that inspection requirement to the receiving handler?

MR. DAVIS: Can we get up inter-handler transfer?

BY MS. SCHMAEDICK:

Q I just want to make sure, if you have an inter-handler transfer, can that transfer include both the assessment obligation and the inspection and certification requirement? It may not need to, but can it?
A  Yes, I mean it can.  It can.  Yes, it can.

Q  Okay.  That's all I needed.  Thank you.

MS. SCHMAEDICK:  No further questions.

JUDGE GUTHRIDGE:  Are there any more USDA questions?

MS. VARELA:  Jen Varela, USDA.

BY MS. VARELA:

Q  Just as a very quick follow-up to that last question.  I think we have a good amount of evidence in that in speaking of how that inter-handling transfer would be documented.

And just to make sure that we have a good background when we're developing some of the further rules and forms in doing that, do you think it would be important that any types of records there not only indicate who in that transaction is responsible for the assessment, or is it also going to be important for compliance and for record keeping to note if any of those other obligations have also been passed along?
Is that -- do you intend that that one set of
documentation will include all of those details?
Or do you think it would important to?

A    Here again, it could. But now you
need to understand this inter-handler transfer.
You have hundreds of grocery stores and hard -- I
mean hardware, who buy pecans in medicine bags, a
pound. And then they just pour all of these into
a large bin. And they make a note of the pounds
they might have bought, they may or may not have
made a note of who them bought them from.

There may or may not be a variety or
grade more times than not associated with that.
But rather it would come to the handler as just a
hodgepodge of everything that might have come in
that week.

JUDGE GUTHRIDGE: By the handler you
mean that initial grocery store handler, that
first handler in that context?

THE WITNESS: The intermediary handler
to the handler in this case. And that's what --
the question was in regards to intermediary
handler. Right?

BY MS. VARELA:

Q It could be --

A Well, also at handler level two, but --

Q It could be at the handler level or the accumulator level?

A Or any level.

Q Any.

A So if there had to be, particularly at

the intermediary handler, some type of paper trail in regards to quality for every transaction, I just don't see that as being workable. It's not practical.

At the handler level on larger lots, yes. So I would just say that that would -- it could be done if that became a necessary part of the process. But I can tell you that it would be a very burdensome piece of paperwork.

Q But if I'm understanding you correctly, the ability to pass on some of those requirements to the larger later handling entity
would really relieve that small operator of what could be a really large burden that might even be difficult to comply with.

A Yes.

Q Okay.

A Yes. Absolutely.

Q Thank you.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:

Q This may sound like a really silly question, but you've used the term medicine bag a couple of times, and in my world medicine bag is about two inches by two inches and you hang it around your neck. So what kind of a medicine bag are you talking about?

A My medicine bag might be a little bigger than that.

(General laughter.)

THE WITNESS: Maybe three inches by about four inches. Literally less than a pound of pecans.
BY MS. SCHMAEDICK:

Q    And people deliver --

A    Sell --

Q    -- pecans --

A    Yeah.

Q    -- in that size bag.

A    I don't know if you want this on the record, but we actually have a lady every day will start on one side of town walking toward our business picking up pecans off the street and sidewalks, and every day comes and you can tell when the nuts are falling because she may have a bucketful, and then some day she may have a medicine bagful. And we'll pay her --

JUDGE GUTHRIDGE: Your medicine bag or her medicine bag?

THE WITNESS: My medicine bag.

(General laughter.)

THE WITNESS: My medicine bag. But that's just the nature of the business. It's very -- at some level it's a very small quantity of trade.
BY MS. SCHMAEDICK:

Q    Thank you. So now I'm going to ask what might be a little bit of a challenging question, but you've just described an individual that picks up pecans from the ground, on the street, and brings them to your place of business. If there are quality regulations in effect, is that going to impact the value of the pecans picked up off the street versus the value of pecans grown and harvested in an orchard?

A    No.

Q    Why not?

A    Well, because if you've got quality -- I mean she may very well be picking up some out of my orchard as she's coming across there.

(General laughter.)

THE WITNESS: And they're very high quality products. In which case I'm probably still not going to pay what they're worth, but she'll get a higher price than if she brings me some pecans over in late December that are molded and the quality is very poor.
BY MS. SCHMAEDICK:

Q     Okay. Thank you.

MS. SCHMAEDICK: No further questions.

JUDGE GUTHRIDGE: Mr. Hill?

MR. HILL: Brian Hill.

BY MR. HILL:

Q     So, Dr. Hudson, can you please look at (b)?

A     986 point --

Q     Six nine.

A     -- 69(b).

Q     Yes.

A     Regulations.

Q     So the language is a little bit unclear for me so I just wanted to double check this. (b)(1), it says, well, (b), regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined that, one, that such action is warranted upon recommendation of the Council, or other available information, or, two, that regulations issued hereunder no longer tend to
effectuate the declared policy of the Act.

Is it your understanding that the Council can terminate -- amend, modify or suspend or terminate without the approval of the Secretary? Or would this necessitate the approval of the Secretary after the recommendation of the Council?

A     It's my understanding that the Secretary would have be involved.

Q     Thank you.

MR. HILL: That's all I have.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MR. HILL: Right. I will ask that.

BY MR. HILL:

Q     Would you be open to a clarifying change if that's not clear?

A     Yes, we would.

JUDGE GUTHRIDGE: Now are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis?
MR. DAVIS: Your Honor, I note we're about to move into another section. This witness is only going to handle three more sections, but we are into the lunch hour. If you would like a break?

JUDGE GUTHRIDGE: I was noticing that myself, and I was going to ask you before you start the next section how much longer you -- how long do you think it will take to get through these next three sections?

MR. DAVIS: Probably a half hour, something like that.

JUDGE GUTHRIDGE: Well, I think we're all too hungry for that. How are you?

(General laughter.)

JUDGE GUTHRIDGE: Well, we'll recess. It's right now 12:17 on my watch. 1:30?

MR. DAVIS: 1:30 is --

MR. HILL: Yes --

MR. DAVIS: -- excellent. Thank you.

JUDGE GUTHRIDGE: Recess till 1:30.

(Whereupon, a lunch recess was taken.)
JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Yes, Your Honor --

JUDGE GUTHRIDGE: You were involved in

this one. Right?

MR. DAVIS: May it please the Court,

yes, sir, we will continue on with Mr. Hudson,

and I direct his attention and the Court's

attention to 986.70, which we've put on the

overhead here, handling for special purposes.

FURTHER REDIRECT EXAMINATION

BY MR. DAVIS:

Q     Take a second, Mr. Hudson, and

familiarize yourself with these sections.

A     (Perusing document.) All ready?

Q     Yes, why don't you --

A     Okay.

Q     -- tell us the background on this

section, please.

A     Okay. You know, based on my

experience and experiences with other industries

I've had, we felt that it would be beneficial for

the Council to have the flexibility to grant very
limited exceptions from the regulations provided
in Section 986.69. This section provides for
such exemptions and gifts, specific examples,
such as situations where pecans are being donated
to charity or for relief efforts or pecans are
being handled for experimental purposes.

Q To your knowledge has members or
representatives of the industry donated pecans
under such circumstances in the past?

A Yes, we do fairly regularly.

Q What about that -- focus on that
experimental purposes. What might you have in
mind there?

A Well, I mean the most obvious would be
using nuts for determining health benefits,
comparative health relationships with other nuts,
you know, used as samples to be given away to
prominent groups, support groups, given away
maybe in trade shows to just give folks a little
taste of what a pecan might --

Q Well, we're focusing on --

A -- would be.
Q      -- experimental purposes.
A      Right, for experimental purposes.
Q      And then I think earlier you talked
about some product --
A      Right.
Q      -- development projects, things like
that.
A      Right.
Q      Is that kind of what we're doing?
A      Right.
Q      Does this section allow products
exempted for special purposes to go un-assessed?
A      Yes, it does.
Q      Well, it doesn't specifically address
that, does it?
A      No, it doesn't.
Q      But you believe that it would probably
in practice be un-assessed nuts.
A      It could be.
Q      Okay. Look at subsection (c) for a
second. It basically says you can have this
exemption --
A Right.

Q -- for other purposes which may be recommended.

A Right.

Q Why have that section?

A You know, what it does, it gives the Council flexibility that if there is some occasion that could arise that they could, in fact, handle pecans for that reason.

Q But it would have to be kind of in the same general tenor as the specific examples (a) and (b), relief --

A Right.

Q -- charity, experimental purposes.

A Right.

Q Did you find similar provision in other FMOs that you reviewed?

A Yes, we did.

Q Okay.

MR. DAVIS: Nothing further on this section, Your Honor.

JUDGE GUTHRIDGE: Does the USDA have
any questions?

MS. VARELA: Jan Varela, USDA.

FURTHER REÇROSS-EXAMINATION

BY MS. VARELA:

Q    I think this will just be a brief one. Would you characterize at least the two or three examples set out there as uses that don't have a lot of commercial impact?

A    Yes, they would be.

Q    Thank you.

MS. VARELA: Any other questions for me?

THE WITNESS: Let me expand on that one minute. It doesn't have a significant amount of impact in regards to the amount of product being given away, but the opportunity to be -- for purposes to participate at a level where there would be charity. There's a tremendous amount of benefit in that. If you understand what I'm saying.

BY MS. VARELA:

Q    Let me see if I do. So it might not
be a large volume, is that one aspect of that, that it might not be a large volume coming off of the market, but it could be very beneficial in terms of perception of your industry --

A     Yes.
Q     -- to do that? Is that part of --
A     Yes.
Q     -- what you were getting at?
A     Yes.
Q     Okay. Thank you.

JUDGE GUTHRIDGE: I imagine it could also have a commercial impact for the ones that are used experimentally for a new -- something new that's developed from that could have a significant commercial impact for the --

THE WITNESS: That's absolutely correct, yes.

JUDGE GUTHRIDGE: But for the particular product that's being transferred for that purpose, it would have little commercial impact.

THE WITNESS: Right.
MS. VARELA: Understood. Thank you very much for the clarification.

JUDGE GUTHRIDGE: Are there any more USDA questions?

MS. SCHMAEDICK: Not at this time.

JUDGE GUTHRIDGE: Okay. Mr. Davis?

FURTHER REDIRECT EXAMINATION

BY MR. DAVIS:

Q The next section, if Mr. Quirós would put up Section 986.71, it's related to 70, but let's take a look at that. Heading, Safeguards. Why don't you explain the intent of the Council --

A Okay.

Q -- or the Board I mean with --

A This simply will be a safeguard to ensure that the provisions of Section 986.70 is not abused. And the Council can set up a system to check on the special handling exemptions to ensure product was handled and used for the approved purposes.

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

JUDGE GUTHRIDGE: Does the USDA have any questions?

MS. SCHMAEDICK: Not on that section, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis?

BY MR. DAVIS:

Q     Okay. Let's move on to Section 986.72, notification of regulation.

A     Okay.

Q     I think we -- you know, we've had testimony that in ever occasion it is the intention of the Council to recommend certain things to the Secretary. Does this section kind of close the loop, that the Secretary will then notify the Council and the industry as to what regulations have been --

A     Yes, it does.

Q     -- adopted. Right? Do you think -- why is this notification process important?

A     Well, you know, it's important that regulations, amendments and modifications be
promptly distributed to the industry for their knowledge. And it's to keep the industry informed.

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

JUDGE GUTHRIDGE: Does the USDA have any questions?

MS. SCHMAEDICK: Melissa Schmaedick.

Not on this question. Thank you.

JUDGE GUTHRIDGE: Not on this section?

MS. SCHMAEDICK: Not on that section.

JUDGE GUTHRIDGE: Yeah. All right.

Mr. Davis?

MR. DAVIS: Your Honor, I believe that those are the sections that Dr. Hudson was going to address. If I could wrap up in conclusion, those of us that were in Las Cruces got to hear Dr. Hudson voice his enthusiasm for this FMO in perhaps too colorful language. So perhaps I could ask Dr. Hudson if he could restrain himself somewhat in these proceeding --

(General laughter.)
MR. DAVIS: -- and tell first, do you
support the FMO and if so, express your
enthusiasm somewhat.

JUDGE GUTHRIDGE: He was out of town
on that other --

MR. DAVIS: That's exactly --

(General laughter.)

JUDGE GUTHRIDGE: He's calm now, he's
going to behave.

THE WITNESS: Yeah, I apologize to the
Court for that, but, you know, after six hours of
testimony, I don't know if I was so greatly
enthused about the market order or just being
enthused about being finished.

(General laughter.)

THE WITNESS: But, yes, I still share
that, and, you know, this marketing order will
lead our industry into the future. In the
absence of this marketing order, we are doomed to
relive the past, and that has been less than
pretty.

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

    JUDGE GUTHRIDGE: Does the USDA have any more questions?

    MS. SCHMAEDICK: Melissa Schmaedick, USDA.

    FURTHER RECROSS-EXAMINATION

    BY MS. SCHMAEDICK:

    Q    Dr. Hudson, thank you for your testimony, and I'm wondering if I might be able to ask you a few questions to help clarify some sections that have also been testified by --

    A    I will do my best.

    Q    Okay. And again, my purpose of these questions is to just help clarify the record.

    A    Yes.

    Q    So could you turn to Section 986.46, Council nominations and voting. So what I'd like to do is just sort of recap my understanding of how this section has been described based on other testimony, and then ask for your input on some key elements.
I understand that there are three grower seats per region, and that seats one and seat two of grower seats are for growers with equal to or more than 176 acres of pecans. But under part 3, let's see, it would be (b)(3), nomination procedure for grower seats, it indicates that seat one the votes would be counted based on volume of production voted, and for seat two the votes would be tallied based on just the number of votes cast.

Can you explain based on your experience and involvement in American Pecan Board discussions why one seat is voted by volume and one seat is voted by number?

A Yes, I can. Here again it goes back to a diverse representative Board. And what we wanted to ensure was that we had at least a large grower, a small grower, and then a grower elected by the greatest number of votes.

So by ensuring that we had one weighted on volume it would ensure that a large grower -- and we don't necessarily guarantee it,
but it would -- there'd be a fairly high probability that that person would be a large grower with a lot of acres, because a small number of growers with large acres would elect him based on volume of acres. On the other hand, it does not necessarily mean that popular vote would reflect a large grower being elected.

I would -- if you ask me how I see this thing perhaps occurring, sometimes large growers, you know, are not very popular because by the nature of their size they're very competitive. There's large growers out there -- I mean small growers out there, medium sized growers that would be a lot larger if the large grower hadn't bought up their farm or rented out their land.

So I'm just saying we wanted to make sure that the large grower -- and in this case the medium sized grower and the small grower were represented. And we felt like this was the best way for this to occur.

Q Thank you. Now if I could ask you to
turn to 986.47, alternate member. Again, I'm wondering if you can go back and recollect the discussions that were had with the American Pecan Board. I want to focus on paragraph (b) of that Section 47 where it talks about -- oh, I'm sorry, it's not 47. It's 50. My apologies, term of office, 50.

MR. QUIR S: Just one second, Ms. Schmaedick, let me see if I can get it for the witness. Do you have a subsection, Ms. Schmaedick? Is it --

MS. SCHMAEDICK: 986.50, paragraph (b).

MR. QUIR S: A portion of it's on the screen, Mr. -- Dr. Hudson.

THE WITNESS: (Perusing document.)

Okay.

BY MS. SCHMAEDICK:

Q Okay. So the first sentence of that paragraph (b), I'll read it for the record, says, Council members and alternates may serve up to two consecutive four-year terms of office. And
then it goes on to say, 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 -- 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 having serving up to two consecutive
terms may serve as an alternate if nominated.

So it's the following sentence that I
have a question about. A person having served
the maximum number of terms as set forth above
may not serve again as a member or an alternate
for at least 12 consecutive months.

So my question is, and it's based on
some confusion relating to different types of
testimony we've heard. Does that statement, A
person having served the maximum number of terms
as set forth above, does that mean a person has
served as a member for eight years and then an
alternate for eight years, and at that point they
are required to take a 12-month break? Or does
it -- I guess I'm just going to stop there. Is
that what that means?

A     My interpretation, which is probably
erroneous, in which case my lawyers will -- is
that you can serve two years -- two two-year
terms as either/or the other.

MR. QUIR S: Four-year terms.

THE WITNESS: Two four-year terms,
eight years. I'm sorry. Two four-year terms
either as a member or an alternate. If either of
those periods is interrupted as one or the other,
then it allows you to serve a full term. If
you're eight years as an alternate and then
you're not selected as a member, you come off.
If you're eight years as a member and you're not
selected as an alternate, you come off. If
you're eight years as an alternate and then you
get elected as a member, then you have eight
years is my interpretation. Now if I'm wrong --
BY MS. SCHMAEDICK:

Q    Okay. So then taking it --
A    But you -- it's not --
Q    -- one step --
A    -- it's not one or the other. And if you can understand this, is that the member, the member obviously is the one that is elected and for the most part has the authority and the alternate would serve in his place in the event that for whatever reason he could not serve. So he's not endowed, or she's not endowed with the full responsibility of the position.

    So it would allow a person who is an alternate to also be elected as a member after this person were to fulfill the term. Now that is my interpretation.

Q    Okay. So let me take it one step further. You have an alternate who serves eight years, they're elected as a member, they serve eight years.
A    Right.
Q    Can they turn around and serve as an
alternate again for eight years, or do they have
to take a break?

A You would have to take a break. I
don't know if it's they would have to take a
break, or I need to take a break.

(General laughter.)

THE WITNESS: But it's one or the
other.

BY MS. SCHMAEDICK:

Q Thank you. That --

A Do we need to parlay on this one or
is -- no, that would be a break --

Q Okay. Thank you.

A -- is my understanding.

Q Thank you. That's helpful. And then
I apologize for sort of ping-ponging back and
forth, but if we could go back to nominations.
We don't necessarily need to read the specific
language I don't think. But let me just
paraphrase what I believe I understand based on
the testimony, is that each time there's a cycle
of nominations --
JUDGE GUTHRIDGE: Okay. Which particular -- is this part of .46 you're talking --

MS. SCHMAEDICK: Nominations, this is nominations.

JUDGE GUTHRIDGE: Is it a particular subsection of .46 or --

MS. SCHMAEDICK: It's relating to 986.46 and it would be under (b)(2), voting for nominees.

JUDGE GUTHRIDGE: All right. Thank you.

BY MS. SCHMAEDICK:

Q Okay. But just generally it's my understanding that in a nomination voting process a person elects to participate either as a grower or as a sheller. Is that correct?

A Yes, that is correct.

Q Okay. And that you're also looking at having half of your Council roll over every two years, it's what we at USDA commonly refer to as staggered terms.
A  Yes.

Q  So theoretically you could have votes occurring in a region -- or nominations occurring in a region every two years.

A  Yes.

Q  Okay. So if you have a person who is a grower/handler operation, and qualifies as a grower under the grower definition and as a sheller under the sheller definition, does that person get to elect a different -- to they get to self-identify differently every nomination? Could they be a grower one nomination and the next time around they're a sheller and then the next they're a grower? Or do they just say, I'm a grower and then they're always going to be a grower?

A  That is an excellent question.

Q  Thank you.

(General laughter.)

BY MS. SCHMAEDICK:

Q  And again, I'm just sort of posing the question. If you need to think about it and get
back to us, but that's something that we'd like
to know.

MR. QUIRS: Five addresses it.

MR. DAVIS: Yes, it's under number
five.

THE WITNESS: I know there's a
designation, you have to designate. But I mean
are you always --

MR. QUIRS: Yeah, take a look at
five, I think it's salient definition.

(Pause.)

THE WITNESS: That is my
understanding, that you must designate as either
a grower or a sheller.

BY MS. SCHMAEDICK:

Q Okay. So to restate my question, the
language in five reads, If a person is both a
grower and a sheller of pecans, such person
must -- or may not participate in both the grower
and sheller nominations. Such person must elect
to participate either as a grower or a sheller.
So is this -- if you have nominations every two
years, does the term in this subparagraph (5),
does nominations mean all nominations forever in
existence under the order, or does it mean every
cycle you declare?

JUDGE GUTHRIDGE: So if -- what you're
asking is if someone -- if one of those persons
declares as a grower this year, two years later
are they still a grower and four years later
they're still a grower, or can they change to be
a sheller two years later?

BY MS. SCHMAEDICK:

Q     Can they change to be a sheller?

MR. QUIR S: I think we're looking for
the policy on that.

MS. SCHMAEDICK: Okay.

(Pause.)

THE WITNESS: I just wanted to check.

At this point it's not clarified and that may
very well be something that we would need to
clarify in the future.

BY MS. SCHMAEDICK:

Q     Thank you.
JUDGE GUTHRIDGE: Is that a clarification that would have to be made by the American Pecan Group --

MS. SCHMAEDICK: The Council?

JUDGE GUTHRIDGE: The Council itself or the -- what do they call it --

THE WITNESS: American Pecan Board.

JUDGE GUTHRIDGE: Board, yeah, I'm sorry. American Pecan Board as part of the development process of this regulation, or is that something the Council would address later I guess is what --

MR. QUIR S: There's a question about by-laws and regulations and how they fit. That's your question right now.

THE WITNESS: As we understand the process, this Board could, in this process, make a clarification, or perhaps they would decide that that's something that they could handle by regulation I believe. It's not clear as written.

BY MS. SCHMAEDICK:

Q Would it be correct to say that if a
person were able to switch identities every two years, that there might be some concern about -- especially if that entity had a lot of volume, that that may impact how a vote -- the outcome of a vote. Would that be a potential concern?

A     I don't think so. I don't think that that would be an issue on that basis, to try to manipulate the vote. I think it might become an issue if someone really had a burning desire to be on the Board, and so they weren't elected as a grower, and then because they wanted to be on the Board they elected to be voted on as a sheller. I mean I don't think that, and trying to recollect, I don't think that there would ever be a situation where that might occur to manipulate the vote.

Q     Okay. But to recapture your comfortable or confident in that the way the proposed program is written, there is flexibility for the proposed counsel to create guidelines and what we loosely refer to as rules and regulations to ensure that this process is done in a fair and
consistent way.

A    Yes, for sure. And I do believe, and
just an opinion here, in the nature of our
business if you're a grower, you want to be so
identified as a grower. If you're a sheller, you
want to be so identified as a sheller. If you're
dimorphic, then oftentimes you have other issues
at hand.

(General laughter.)

BY MS. SCHMAEDICK:

Q    Okay. Thank you.

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

MR. DAVIS: I'm not going to ask to
define dimorphic. We would like that ambiguity
to remain in the record if we could.

JUDGE GUTHRIDGE: I know, I think Mr.
Willson wanted an explanation.

(General laughter.)

MR. DAVIS: Do you have any questions,
Your Honor?

JUDGE GUTHRIDGE: I do actually, two.
One on the -- you talked about -- well, for the
two grower seat, one by volume of production and
one by number of votes. And as you said, these
large growers are probably the more competitive
guys so I can envision the seats where the number
one and the number two guy in a region are
competing for that production seat. Is there an
explanation in here on how that volume of
production vote is calculated?

THE WITNESS: Yes, it is. It is
identified, yes.

MR. DAVIS: I believe, Your Honor,
within Exhibit 50, remember one of the draft
ballots, they not only say they're -- that
they're voting as a grower, but they put their
volume on that form. So we would calculate it
using that ballot I believe.

JUDGE GUTHRIDGE: But still I mean I
don't -- I'm not sure that explains how that
production -- how the -- what's the word again --
the volume of production votes is calculated. I
mean that -- if they put on their form what their
volume is each -- that each voter puts that on
there?

MR. DAVIS: Yes.

JUDGE GUTHRIDGE: So then is the
volume, the total volume from all those forms
added up for candidate one, total volume for
candidate two, that's all added up, and then
whichever one of those is higher is the winner.
Is that the way it works?

MR. DAVIS: Is that what you see, Dr. Hudson?

THE WITNESS: Yes.

MR. DAVIS: I think that's what their
envisioning, yeah.

JUDGE GUTHRIDGE: Okay. Then the
other thing is, and I don't know, maybe I'm the
only one that keeps getting confused by this, but
it seems to me that nomination is used in two
different contexts. One, there's nomination, I
want to run to be on the Council. And then so my
fellow growers, or I nominate myself with two
others I guess is how it works, and then there's
the election to become a nominee.

THE WITNESS: Yes.

JUDGE GUTHRIDGE: So, okay. I just wanted to make sure --

MR. DAVIS: The words --

THE WITNESS: Right.

MR. DAVIS: -- are used in that way, but --

THE WITNESS: Right.

JUDGE GUTHRIDGE: Is that the way they normally are in these marketing orders? Okay. So you folks won't have a problem with that.

MR. QUIR S: And, Your Honor, we did suggest two changes to clarify that.

JUDGE GUTHRIDGE: You folks being the Department of Agriculture persons.

(General laughter.)

MR. QUIR S: We would suggest two changes to make that clear.

MR. DAVIS: I think there will be some slight clarification on those issues also.

JUDGE GUTHRIDGE: Which issues?
MR. DAVIS:  As a result of this process there would be -- we're going to try to make sure that those terms are distinguished as they're used in that section.

Your Honor, any further questions?

JUDGE GUTHRIDGE:  No.

MR. DAVIS:  Okay. I just wanted to state for the record that on behalf of the Proponent Group it has been our intention to put on testimony concerning each and every paragraph of Section 986, that would be from Section 1 through Section 99.

With the conclusion of Dr. Hudson's testimony, we believe we have touched on each one of those sections. And would like if anybody -- if anyone in the audience or the USDA thinks we have missed any of those, we would welcome that information. But we believe we have concluded.

JUDGE GUTHRIDGE: I've written down each section, but they're not in order, and I'd hate to have go back and go through them all, so --
MR. DAVIS: Well --

JUDGE GUTHRIDGE: -- I'd ask you all to figure that out.

MR. DAVIS: -- the record will remain open for another couple of days if anybody sees any.

JUDGE GUTHRIDGE: It's open till I think -- didn't we decide it had to open till August 31 for all the comments and everything? In the first day of the hearing, didn't we talk about that.

MR. HILL: I think we discussed on that day the briefing schedule.

JUDGE GUTHRIDGE: The briefing schedule.

MR. DAVIS: I believe that the record -- unless there's a carry over till this Thursday, it'll close on Wednesday, and that's -- by Wednesday we would like to know if we have missed one of those paragraphs because we have witnesses available. I don't think we could reopen the proceeding after that because we'd
have to have notice and --

JUDGE GUTHRIDGE: Then I guess that

would be up to you folks to resolve that and see

if any --

MR. DAVIS: That's procedural I

believe, but --

JUDGE GUTHRIDGE: Yes. I would

think --

MR. DAVIS: -- but if it's not, they

could say it on the record. It would not be ex

parte if we said it openly.

JUDGE GUTHRIDGE: Right. I think the

Proponent Group and the USDA attorneys could get

together and just go through the numbers and see

if you hit every number. Is that correct, Mr.

Hill, or --

MR. HILL: I'm not sure if I can

actually do that here, because I guess at that

point I'd be alerting them to any deficiencies in

their case at that point. I'm not sure --

JUDGE GUTHRIDGE: Okay.

MR. HILL: -- I'd be able to do so.
JUDGE GUTHRIDGE: I guess you'll have to -- Mr. Willson -- Mr. Davis, you'll have to --

MR. DAVIS: Well, for our purposes we believe we have touched all those, and if we go back through our notes and find something, we will bring up another witness. But right now we think we have concluded that. And with your permission, we'll let Dr. Hudson step down.

JUDGE GUTHRIDGE: Does the USDA have any more questions?

MS. VARELA: Yes, Jan Varela, USDA. I need to be a little taller so you can see me down here.

BY MS. VARELA:

Q    I just have a few quick holes I'm trying to fill in here while we still have you, Dr. Hudson. If you could look at Section 986.51 labeled vacancy, while we're still kind of talking about how different particulars fit into those terms of office, I'm just curious thinking back to the discussions of how the terms of office might be calculated and what the intent of
the Board was.

Is it your opinion that the intent was that a portion of a term that was filled as a vacancy would not count towards the maximum terms of office?

(Pause.)

BY MS. VARELA:

Q     And if you don't recall that there was a discussion about that, that's fine too. I'm just trying to help fill some of those gaps.

A     Hold on just a second while I think about this.

Q     Sure. Well --

A     Okay? Just --

(Pause.)

THE WITNESS: No one may serve more than eight years.

BY MS. VARELA:

Q     Okay. And then just one more hopefully quick question regarding kind of eligibility and elections and that whole topic.

Do you recall that I had asked Mr. Willson some
questions earlier about how the Council might
deal with eligibility of accumulators?

A     Yes.

Q     Is that type of flexible area

something that you think the Council might prefer
to deal with through their authorities to have
certain rules and regulations later on, that that
might be something they can clarify and establish
as they need to?

A     Yes.

Q     Okay. Thank you very much.

MS. VARELA: Those are all the
questions from me.

JUDGE GUTHRIDGE: Are there any more
USDA questions?

MS. SCHMAEDICK: Melissa Schmaedick,
USDA. Just to clarify, we may have questions on
sections in the upcoming days. So by answering
no further questions at this point does not
preclude us from asking questions later on, I
would hope.

MR. DAVIS: We agree with that. Yeah,
sure.

MS. SCHMAEDICK: Okay. Thank you.

No further questions.

JUDGE GUTHRIDGE: There seems to be no objection from the Proponents on that, so fine.

BY MR. HILL:

Q Dr. Hudson -- this is Brian Hill by the way --

A Yes.

Q -- can you please look at 986.32. I'm going to ask you the same question I asked Mr. Willson. And on that particular page of the document there are several examples, which is why I'm choosing this page. On 32(b) it says, With the approval of the Secretary -- this is 986.32(b) -- With the approval of the Secretary the boundaries of any district may be changed pursuant to 986.58, reapportionment and redistricting.

If you look on that same page in 986.33, there's a slightly different nomenclature. And if you look at 986.45(c)
there's also slightly different nomenclature.

I'll read (c) for you, The 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.

So my question, it's the same question I asked Mr. Willson, 986.32 and 986.45(c), do the Board intend that the same -- that this would be the same process in voting, in making changes?

A     Yes, we did.

Q     Okay. And to the extent that there's any confusion, would you be open to clarifying changes if there needed to be?

A     Yes, we would.

Q     All right. Thank you.

MR. DAVIS:  Well, let me --

MR. HILL:  One last question.

BY MR. HILL:

Q     And this does appear in several other sections throughout the document. Would you be open to making the same clarifying changes
throughout the document to make sure that they're all the same or similar and not that there's no confusion?

A Yes, we would.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

FURTHER REDIRECT EXAMINATION

BY MR. DAVIS:

Q But I guess to -- since the draft person may be in the room here, in their defense, on -- if you look at Section 32, take a look at Section 32(b), it expressly incorporates the provisions of Section 58. Correct?

A (No audible response.)

Q Correct. And then if we -- for the record, was that yes? Section 32 incorporates --

A Yes.

Q -- the provisions --

A Yes.

Q -- of 58. And then if we look at 58, it starts off by saying that Council may
recommend, subject to the approval of the Secretary, so that recommendation by the Council is incorporated back into 32. Correct?

A     That is correct.

Q     But to Mr. Hill's point, it is always your intent that the Council will recommend and the Secretary will then take whatever action the Secretary wants. Correct?

A     That is correct, yes.

Q     Okay. So, all right. I believe that's --

JUDGE GUTHRIDGE: Any more questions, Mr. Davis?

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Any more questions, USDA?

(No response.)

JUDGE GUTHRIDGE: Does anyone in the audience have any questions for Dr. Hudson? I see a hand up.

Could you stand up to the microphone and identify yourself and your -- let me see,
what other -- I think I'm supposed to ask your occupation.

MR. COBB: Okay. My name's Bill Cobb, I'm a farmer.

MR. DAVIS: I'm sorry, Bill?

MR. COBB: Cobb, C-O-B-B.

MR. DAVIS: Thank you, Mr. Cobb.

MR. COBB: And I farm 300 acres of pecans up in Terrell County and Randolph County.

JUDGE GUTHRIDGE: And that's in Georgia?

MR. COBB: Yeah.

JUDGE GUTHRIDGE: What's the name of the farm?

MR. COBB: Bill Cobb Pecans.

JUDGE GUTHRIDGE: Okay.

MR. COBB: Okay. My question is there are a lot more growers than there are shellers, and you got to the point that, you know, growers are always trying to sell them and get as much as they can, and shellers always try to buy as low as they can, but both of them make money.
And, but you've got growers and
shellers, and you may have a sheller that calls
himself a grower, but he's still got the interest
of a sheller in mind on that committee. And you
could have, you know, three so-called growers and
then you may have three shellers, you may have
two people -- four people who call themselves
shellers, but two people may call themselves a
grower when they asked for maybe a sheller or two
more shellers.

And the growers may be outnumbered by
the shellers because somebody may call themselves
a grower when they're sheller. You understand
what I'm talking about?

JUDGE GUTHRIDGE: Mr. Cobb, do you
have a question for Dr. Hudson?

MR. COBB: Yes. It seemed like to me,
you know, a grower needs to be somebody that, you
know, is a grower, and, you know, a sheller needs
to be somebody that's a sheller. I know you have
growers that are shellers. A lot of times grower
and sheller has the interest of a sheller and
he's also got the interest of a grower.

But if he's a grower, a small grower

but a large sheller, he can still go in as a
grower. And, but he could have -- even though it
costs -- he could have the interest of a sheller.

JUDGE GUTHRIDGE: Yeah, but this seems
to be more like maybe some testimony that you
would like to give rather than a question for Mr.
Hudson. Is that -- that seems to be what you
want to do is get some evidence in the record.

MR. COBB: I just want to make sure
that you got a plan where the balance is going to
represent growers.

JUDGE GUTHRIDGE: And I think that's
more in terms of evidence that you would want to
present it sounds like, than testimony of
anything you're trying to get from Dr. Hudson in
the form of a question. That's -- I'm thinking
about the procedure that's --

MR. COBB: Yeah, you know, I'm just
wondering how many pounds you've got to produce
to be considered a grower versus -- I know a
sheller we're talking about you've got to shell
over a million pounds a year I think. But I mean
a sheller could have just a small amount of
pecans and a lot of, you know, a lot of nuts he
shells, and yet might want to call himself a
grower.

JUDGE GUTHRIDGE: Okay. That's again
sounding more like testimony. What I would like
to do --

MR. DAVIS: We can help -- I think I
can help. I can pose some questions --

JUDGE GUTHRIDGE: Right.

MR. DAVIS: -- I think would address
his --

JUDGE GUTHRIDGE: Well --

THE WITNESS: And I would like to
address his concern.

JUDGE GUTHRIDGE: Well, you detect a
question.

MR. QUIR S: Your Honor --

THE WITNESS: Yeah, I heard a
question.
MR. HILL: I think he did ask how many pounds --

JUDGE GUTHRIDGE: That's true.

JUDGE GUTHRIDGE: -- qualified you as a grower. And maybe this witness can answer that.

THE WITNESS: Mr. Cobb, I appreciate you being here to begin with. And if we hadn't talked, we should have. And if we haven't, I apologize. You're one of the few that I might have missed.

But I can promise you, as a pecan grower who by the way also owns a shelling company, and we shell for our gift pack business and that's the only reason we do it, is for our gift pack business. I understand your sentiments, and I can promise you that this Board did absolutely everything it possibly could to be able to bring forward a proposal that managed, or had your interest at heart.

Because quite honestly, the success of this program, and we've got five years to get it
right, is going to depend upon our ability to
convince rank and file like yourself that this is
something that's not just good for the big
growers or the big shellers, but it's good for
rank and file.

   Because you guys are going to be the
ones that vote it out, you know. If it's voted
out in five years, it's going -- we're going to
have to prove to you that it's been a benefit to
you. So I can promise you your concerns were
voiced, they were taken into consideration,
because at one time I had 20 acres of pecans.
That's all I had. And my daddy had 20 acres, my
granddaddy had 15 acres, my great-granddaddy had
five. And I'm not going to be a party to
anything that doesn't take care of the base, take
care of rank and file.

   MR. COBB: And you testified, you
know, getting in it, you know, making sure there
is no bias in there when it gets over-staffed
with sheller/growers and the growers just don't
seem to have a representative in there.
THE WITNESS: No, sir, we're not going to allow that to happen.

MR. COBB: Okay.

BY MR. DAVIS:

Q I'll follow up with just a couple of questions. But to address first off Mr. Cobb's very basic question, in order to vote as a grower you have to certify that you have at least 30 acres, or you have produced 50,000 pounds during -- on average during the previous four fiscal years. Is that correct?

A That is correct, yes.

Q And then also to give Mr. Cobb and other that may have this question some comfort, if a person has elected -- say it's this mixed grower/sheller, but elects to run as a grower, is it not true that the growers will be only growers will vote.

A Will be voting for, yeah. Right.

Q So if someone like Mr. Cobb were suspicious that somebody may really have more interest as a sheller than as a grower, he could
simply vote against them. Is that what he would
do?

A He's not going to get elected.

Q Yeah. Okay.

MR. HILL: I just want to say thank
you, Mr. Cobb, for your question, your
participation.

MR. DAVIS: I think there was another
question.

JUDGE GUTHRIDGE: Does the USDA have
any follow-up questions of Dr. Hudson?

MS. SCHMAEDICK: No, my question was
asked by counsel.

JUDGE GUTHRIDGE: Okay.

MR. DAVIS: There was one other --

JUDGE GUTHRIDGE: Was there another
question -- yes, sir. Could you come up and
identify yourself?

MR. FULLER: My name's Barry Fuller.

JUDGE GUTHRIDGE: I'm sorry, could you
spell that, please?

MR. FULLER: F-U-L-L-E-R.
JUDGE GUTHRIDGE: What's your first name again? Spell that.

MR. FULLER: Barry, B-A-R-R-Y. I classify myself as a small grower in Cook County, Georgia. Now let me make sure that we're only interested in questions, we're not concerned about public comment here. Is that what you're trying to tell us?

JUDGE GUTHRIDGE: What I'm saying is that while Dr. Hudson is on the stand, then if you have a question for him, you should ask it now. But I've also -- as I also said earlier, if you would like to testify yourself under oath, you are free to do that. And we will make room for you. I'm not sure --

MR. DAVIS: We have time this afternoon.

JUDGE GUTHRIDGE: Could we do him before you -- both these gentlemen before your next witness?

MR. DAVIS: I believe we have time, Your Honor, this afternoon.
JUDGE GUTHRIDGE: All right. Any objection from USDA on that?

MR. HILL: No objections, Your Honor.

JUDGE GUTHRIDGE: So --

MR. FULLER: I'll try to work on a question as soon as I can.

JUDGE GUTHRIDGE: Well, no, what I'm saying is, as soon as Dr. Hudson gets off the stand, we could put both Mr. Cobb first, since he stood up first, and then you on the stand, put you under oath and you could testify right at this time. Is that what you would like to do?

MR. FULLER: Well, I'd like to ask a couple of questions --

JUDGE GUTHRIDGE: Okay. And if you have questions for Dr. Hudson, then go ahead and ask them.

MR. FULLER: All right. Doctor, who sent this out to us, this package?

JUDGE GUTHRIDGE: And what do you mean by this? Somebody who's reading this transcript --
MR. FULLER: It's from --

MR. DAVIS: It's Exhibit 1 I believe,

it's the proposed --

MR. FULLER: -- the United States Department of Agriculture.

JUDGE GUTHRIDGE: Is it -- could you read the caption on the other document?

MR. FULLER: The other document is their -- it's Federal Register.

MR. HILL: Exhibit 1 he's talking about.

JUDGE GUTHRIDGE: So that -- we'll refer to that for the record as Exhibit 1. And the reason I need to do that is because if somebody is reading this, when you say, This document, they're not going to know what you mean. But now they know it's Exhibit 1, the proposal.

MR. FULLER: All right. So the question is, who sent this? Does anybody know?

THE WITNESS: Mr. Fuller, it's my understanding that that was sent out by USDA.
MR. FULLER: All right.

THE WITNESS: Apparently your probably on record as being a pecan producer I guess at FSA in Cook County?

MR. FULLER: Yeah.

THE WITNESS: I would suspect that that's probably how they got your mailing address.

MR. FULLER: Okay. And the only reason I'm asking, I guess justifying my question, is I'm really surprised something came from a federal agency. There's no cover sheet, no cover letter, explanation or anything. So I guarantee you most of the pecan growers in Cook County don't have master degrees or legal backgrounds, and it's -- I'm sure this is in their garbage can. Somewhere in the middle of this page on this exhibit that you're discussing here, it starts in the middle right down here. This over here has got something to do with something -- I don't know what it is.

THE WITNESS: Yes, sir. I got my copy
too and opened it, and --

MR. FULLER: When I saw that, I said, How unprofessional that is. So that's why I'm --

I was concerned about Section 72 and

notifications, because if that's --

THE WITNESS: Yes, sir.

MR. FULLER: -- their notification you

were looking at -- let me see, how can I make

this into a question -- assessments --

THE WITNESS: Yes, sir.

MR. FULLER: -- you were talking

about. I'm not sure how you're going to do it.

This is a dirty little secret about this

industry, you know it. This is a cash industry,

until it gets to the big guys. I know people who

do 40,000-plus in nut sales each year and it's

all paid out in $100 bills whenever they go to

the buyer. None of that. It's a little 1099,

give it to them. This is a cash industry until

you get to the big guys. So I don't know how

this assessment thing will work out.

I know right now you're doing an
assessment there, if there's so many acres when
you sale, now you get some type of assessment I
think for the Georgia Farm kind of thing. So I
don't know how you're going to do that in a cash
industry.

THE WITNESS: Yes, sir.

MR. FULLER: That'll be interesting.

JUDGE GUTHRIDGE: Do you have a

question for Dr. Hudson?

MR. FULLER: Yeah, how are you going
to do it?

(General laughter.)

THE WITNESS: Well, okay, I'll -- you
know, you're probably aware of our buying point
in Irwin County, and we will still buy pecans
like we've always bought pecans, and the grower
doesn't pay the assessment anyway. It's the
accumulators, handlers, shellers that will be
paying the assessment.

And for our growers they'll be paid
just like they've always been paid, and just for
the record, and I don't mind you saying it
because we pretty well disclose everything we do, we will not -- we'll continue to pay in cash. But we'll also pay the assessment.

MR. FULLER: Let's go now to standards, when you talk about the need for standards and such. I'm assuming in some cases it's going to bring about some of the transparency --

JUDGE GUTHRIDGE: For the record, let me -- what section is standards? Again, Mr. Fuller, when somebody's reading this, we want to make it as --

MR. FULLER: I understand.

JUDGE GUTHRIDGE: -- convenient for them as possible.

MS. SCHMAEDICK: It'd be 69.

MR. FULLER: Are we planning on coming up with --

JUDGE GUTHRIDGE: So it's .69?

MR. HILL: Yes, Your Honor.

MR. FULLER: Is the intent to come up with, in 69, a set of regulations that would --
that we could all live by? Because right now --

THE WITNESS: Mr. Fuller, you and I
live about 30 miles apart, and my kids and myself
and all my family are in the pecan business as a
pecan grower. We're not going to do anything to
hurt your ability to grow whatever you want to
grow and sell it. The standards we're talking
about will not affect your ability to pick your
pecans, take them to a buying point and sell
them.

MR. FULLER: All right. I'm hoping it
would help because right now standards are a big
mystery in this industry.

THE WITNESS: Absolutely.

MR. FULLER: And it goes to the fact
that whenever they do something in secrecy, then
they bring them back, for example, and you don't
know what went on back there.

(General laughter.)

THE WITNESS: Yes, sir.

MR. FULLER: We need something there.

There's
this one time I --

THE WITNESS: Well, I tell you what, you come to our back room, we'll let you walk right on back there.

(General laughter.)

MR. FULLER: Mr. Ellis lets you do that up there. He --

THE WITNESS: Yes, sir, he's a good man.

MR. FULLER: I notice another question, but I don't know what section it would come under except maybe warehousing. But still when they're -- they're calling warehousing here deals with assessments. No mention of cold storage standards or how -- I didn't see anything in here relating to cold storage.

THE WITNESS: Yes, sir, it's in there.

MR. FULLER: Okay.

THE WITNESS: And it's handled in several different locations, but both for grower and handler storage. But as a grower, if you carry cold storage then there would be a period
of time when the inventory would be counted, but
it would not be assessed, and that will be on
August 31. But you would not pay the assessment
as a grower until you move it to a handler.

MR. FULLER: Okay. Turn then -- what
section was that under, that was --

MALE VOICE: What page -- it's 61,
61(I), it's the very last section.

JUDGE GUTHRIDGE: No, he's -- that's
assessment.

MR. DAVIS: It says August 31.

MR. QUIRS: No, he's talking about --

THE WITNESS: No, it's term limits.

Term limits.

JUDGE GUTHRIDGE: Term limits is --

THE WITNESS: Eight-year terms, two
subsequent four-year terms.

MR. FULLER: Yeah, whatever section
that is.

MR. QUIRS: That's 50.

JUDGE GUTHRIDGE: It's 50(b).

MR. FULLER: How did you come up with
eight years?

THE WITNESS: It was just a number that was used as a point of discussion. You know, that's a commitment and, you know, it would require that a person who is truly dedicated to the pecan industry willingness to participate. And so we felt like that an eight-year term would require a real commitment by someone who has an interest.

MR. FULLER: No more questions.

JUDGE GUTHRIDGE: It's actually a four-year term limited to --

THE WITNESS: To eight years.

JUDGE GUTHRIDGE: -- two terms, so eight years, is how that would -- but a term would be four years.

MR. FULLER: All right. Thank you.

JUDGE GUTHRIDGE: All right.

MR. HILL: Thank you, Mr. Fuller.

JUDGE GUTHRIDGE: So does anyone else have any more questions for Dr. Fuller -- I mean Dr. Hudson?
MR. DAVIS: I do, Your Honor. I was going to follow up perhaps on Mr. Fuller's question.

BY MR. DAVIS:

Q The eight-year, was there -- there was a concern that you would have experienced people, people that you didn't want to just limit it to four years, because then you'd have to have a new board, you know, constantly turned over. But at the same time you didn't want to have an entrenched board, somebody that would just get on there and never leave. Is that --

A That's absolutely correct.

Q And you thought this was a fair compromise?

A That seemed to be a very fair compromise.

Q Okay. Thank you.

JUDGE GUTHRIDGE: Any more questions, Mr. Davis?

MR. DAVIS: No further questions.

JUDGE GUTHRIDGE: Any more questions
from the USDA?

(No response.)

JUDGE GUTHRIDGE: Does anyone else in the audience have any more questions for Dr. Hudson?

(No response.)

JUDGE GUTHRIDGE: Hearing none, Dr. Hudson, you're excused.

THE WITNESS: Thank you, sir.

JUDGE GUTHRIDGE: If you would check again with --

THE WITNESS: Okay.

JUDGE GUTHRIDGE: -- Ms. Thompson.

(Whereupon, the witness was excused.)

JUDGE GUTHRIDGE: So why don't we call our two witnesses who have volunteered, who have showed up and would like to present some evidence right now. Starting with Mr. Cobb. Come up here, please.

MR. QUIRS: Okay. Mr. Cobb, would you like a glass of water?

MR. COBB: I'm fine. Thank you.
MR. QUIR S: Okay. Yes, sir.

JUDGE GUTHRIDGE: Would you please raise your right hand.

Whereupon,

BILL COBB

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

JUDGE GUTHRIDGE: Okay. Could you please -- and I know you just did it, but do it again so it's in this part of the record -- state your name, your address and your occupation.

THE WITNESS: Okay. My name's Bill Cobb. I live at [redacted] in Dawson, Georgia, and I've been farming pecans full-time since 1975, part-time for about -- since I was 10 years old until I --

JUDGE GUTHRIDGE: I'm sorry, you said 15 acres?

THE WITNESS: No, I've got 300 acres.

JUDGE GUTHRIDGE: Oh, I thought you said 15 something. I'm sorry.
THE WITNESS: Okay. No, we've -- I
farm approximately 300 acres. I do
sharecropping, I've got some of my own, I've got
some I rent, a combination of a little bit of
everything.

JUDGE GUTHRIDGE: And just to show
some of the terms I've learned in the last week,
you have native trees mostly or --

THE WITNESS: Well, they're an
improved variety of what we call native seedling.
It's just a tree that died from a graph and comes
up and if it's got a big enough nut, we -- yeah,
you know, we keep it in the orchard. If it's
real small, I usually cut them down.

JUDGE GUTHRIDGE: Okay. All right.
Now I know you had from your questioning of Dr.
Hudson, you have some evidence that you would
like to present. Would you like to go ahead
and --

THE WITNESS: Well --

JUDGE GUTHRIDGE: -- state that?

THE WITNESS: -- one thing over the
years I've run in, it's been -- I've got seven
farmers that I'm representing that asked me to
come over here today, and I talked with some on
the phone, they had some questions they wanted me
to ask, and, you know -- but over the period of
years when you try to sell your pecans, and if
you'll look in the Pecan South, you'll get --
it'll be in a little page in the Alabama Pecan
Growers, Louisiana Pecan Growers, and then you
get to the National Pecan Shellers.

And National Pecan Shellers I
guarantee has always got the highest estimate of
crop. And what, you know, they're talking about,
we need a good estimate, you know, so that
everybody can determine what the crops size is.
I know there's two years ago that I sort of had
false information. I held on to my crop, and the
crop was bigger. And if I had known what I knew,
I would have sold it. But I lost money on it.

But you'll call -- a lot of times
you'll call a sheller and, you know, you think
you got this and they'll run the claims up 30,
40, 50 million more pounds, or they'll tell you about 100 million pounds produced out of Mexico, you know, that we don't really know about that may be coming across the border.

And one of my concerns is, how many pounds of US pecans go to Mexico to get shelled out and then they come back across the border, and then a sheller might claim, well, that's a Mexican pecan when it's actually being counted twice too.

So really understanding what the pecans in Mexico are, what's going down to Mexico, what may come back across the border as shelled pecans, and what's also produced in the United States. We need a good accurate figure to help us market our pecans, because I want to determine what my pecans are worth based on what's in cold storage, what's available and what's coming in out of Mexico. And if we don't have those figures, it's hard to market pecans.

And no -- you know, there's been years like in 2011 I think we got too much for them.
But I never had a sheller tell me he paid too little for them, I mean that he paid too much. He always says he paid too much. But we do need a fair market. But one thing, like Dr. Hudson was talking about, we need a good estimate, not where everybody's quoting different estimates of what the pecan crop is.

And, you know, and then another concern that some of the growers have asked me is, do we -- when pecans leave the United States and go to Mexico to get shelled out and then they come back, and they're showing all these pecans coming across the border from Mexico, are they counting those nuts twice so that they can inflate their figures to say there's more pecans than there actually is.

JUDGE GUTHRIDGE: All right. And you said you had a number of concerns, you had talked to seven farmers --

THE WITNESS: Well, I've --

JUDGE GUTHRIDGE: -- and do you have more concerns, or do they have more concerns?
THE WITNESS: Well, that one concern, one of the farmers asked me to ask you all,

JUDGE GUTHRIDGE: All right.

THE WITNESS: And I was talking to him during lunch and he was concerned about pecans that go across the border to Mexico to get shelled out, and then the shellers will say, Well, there's a 100 million pounds coming from Mexico.

But if we sent 60 million pounds down there to get shelled out, is that 60 million pounds being counted as American crop, and is that same 60 million pounds getting counted as Mexican crop that's coming back across the border as shelled pecans?

JUDGE GUTHRIDGE: Okay. Are there other concerns that you have?

THE WITNESS: That's the main concern. And one thing he, you know, he noted. I just got the notice, really hadn't had time, but the fact of, you know, we don't like it, we can vote it out in five years. Good news, you know.
JUDGE GUTHRIDGE: Okay. All right.

Now I'd like you to answer any questions that the Proponent Group and the USDA have, and maybe anybody in the audience might have. And since the Proponent Group, I think has the burden in this procedure, I think they should go first.

DIRECT EXAMINATION

BY MR. DAVIS:

Q And I would just thank you, Mr. Cobb, for coming forward and we hope we're going to address those concerns for you.

A Okay.

JUDGE GUTHRIDGE: Does the USDA have any questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Thank you, Mr. Cobb, for your testimony.

A All right.

Q Thank you for coming today. I'm just
wondering, have you been able to participate in any of the meetings that have been held over the last two years describing the process and --

A No. I really need to be out farming right now. I'm sort of like the rest of them; we don't have time to come up here. But I sort of got elected by some farmers to come over here. And neither -- most of your farmers, small farmers, we need to be out there spraying and doing our work, don't have time to do this. But I sort of got voted to come over here today. And so I haven't participated in anything else. This is my first time.

Q And so with 300 acres you consider yourself to be a small farmer?

A I consider myself probably a medium sized farmer.

Q Okay. Are you aware of the definition of grower in the proposed program?

A Uh-huh.

Q Okay. So just to recap briefly, it's minimum of 30 acres or 50,000 pounds. In your
opinion, if you were to describe a grower with 30 acres or 50,000 pounds, in your opinion are they a small business, are they commercially viable, are they a hobby farmer, what's your opinion there?

A Most growers I know in that category are hobby farmers. And I represent some of those. Like I said, I've been in it for a long time, and a lot of people come to me asking me for advice about how to grow pecans, how to plant, what kind of varieties, and I scout pecans for people. And they all got jobs, that they do something else, and they fool with pecans on the weekend or, you know, or they have me try to advise them on it.

But most -- I don't know of anybody that's growing pecans full-time with just 30 acres. It basically takes about 150 acres, you know, to support one man, you know, farming. And, but you -- to try to make a full-time living, you know -- if you've got the right varieties, you could do it, but for the old
varieties like Stuart and Schley and stuff, it takes about at least 150 acres for one man. But when you've got -- most of all your small growers are just doing it as a hobby farmer.

Q Thank you. And so in your opinion is this program designed to help farmers that are relying on their production as a livelihood?

A I think it's going to help all farmers, but a lot of them are concerned about, you know, how much money are they going to have to put out versus how much it's going to benefit them. And I think that's where the five-year period comes in, you know, when nobody's complained about China, you know, and it's been good for the pecan industry.

And if after five years we can see a benefit with this, I think it'll be voted in. But if a lot of farmers sit there and look at -- they're putting out 18- to $20,000 a year in assessment fees and don't feel like they're getting their money back, that's going to be a concern for a lot of farmers.
Q Thank you. And in your opinion would generic promotion of pecans in the United States would -- do you think that would be beneficial, do you think that would help consumption and demand for pecans increase?

A I hope it will. I mean if we're going to go put money in it, you know, it's all -- farming's a gamble. This program is going to be a gamble, you know, and nothing is going to be guaranteed, but I have one farmer said he hopes it does like pistachio farmers and almond farmers.

And if it works, you know, nobody's going to be complaining about it, you know. But if a lot of farmers see money going out without an increase in price, I think, you know, that there's going to be some voting out in five years. But that's what -- you know, the fact that we have a say so every five years will be good.

Q Thank you. Do you have any other concerns that you would like USDA to be aware of?
A Get some good accurate figures.

(General laughter.)

BY MS. SCHMAEDICK:

Q Thank you. Thank you so much for your testimony.

A All right.

MS. SCHMAEDICK: I have no further questions.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: No? Does anyone in the audience have any questions for Mr. Cobb?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: No further question, Your Honor. Thank you.

JUDGE GUTHRIDGE: All right. Mr. Cobb, then you're excused. If you go over here and talk with Ms. Thompson and see if she needs anything clarified. And thank you for coming.

(Whereupon, the witness was excused.)
JUDGE GUTHRIDGE: And, Mr. Fuller, would you like to come testify?

MR. QUIRS: Mr. Fuller, would you like a glass of water?

THE WITNESS: Yeah. Thank you.

MR. QUIRS: Yes, sir.

(Pause.)

JUDGE GUTHRIDGE: Could you raise your right hand, please?

Whereupon,

BARRY FULLER

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

JUDGE GUTHRIDGE: All right. What would you like to tell us?

THE WITNESS: Well --

JUDGE GUTHRIDGE: -- starting with your -- and it's just to make sure it's on the record properly, if you'd spell your name and give your address and occupation again.

THE WITNESS: Again, Barry Fuller, F-
U-L-L-E-R. Address is Hahira, Georgia. You're not from here, are you?

JUDGE GUTHRIDGE: I'm sure not.


JUDGE GUTHRIDGE: If you're talking to me, no. Ms. Thompson may know.

MR. QUIRS: H-A-R-I --

THE WITNESS: H-A-H-I-R-A. Hahira, Georgia. And what was -- what else did you need?

JUDGE GUTHRIDGE: Your occupation.

THE WITNESS: I am recently retired, and I'm growing some nuts now.

JUDGE GUTHRIDGE: By nuts you mean pecans I take it.

THE WITNESS: Right.

JUDGE GUTHRIDGE: All right. Would you like to tell us about that operation and what your concerns are here?

THE WITNESS: Well, sure. According to the definition that you just pointed out, Madame, I think I've been disqualified because it says 30 acres or 50,000 pounds. Well, that kind
of knocks me out of the boat then. So -- and
there are a lot of us who have less than 50
acres, and according to this thing, we're going
to be unheard now. We don't exist anymore.

JUDGE GUTHRIDGE: How many acres do
you have?

THE WITNESS: Twenty.

JUDGE GUTHRIDGE: Twenty acres. And
are they native, Improved or --

THE WITNESS: They cultivars.

JUDGE GUTHRIDGE: Okay. And what's
your normal production approximately?

THE WITNESS: Well, you see I'm still
on the -- I'm still -- I have -- half of my trees
are just now starting to even produce, so -- and
I'm still, in fact, planting trees. So I'm, you
know -- I would say a good year for me right now
would be about $15,000, a good year.

JUDGE GUTHRIDGE: $15,000 or pounds?

THE WITNESS: Dollars. So I mean I'm
sure that makes me a hobby farmer or whatever.

JUDGE GUTHRIDGE: Well, the definition
talks about producing at least 50,000 pounds.

How many pounds would you -- approximately would you usually do?

THE WITNESS: If somebody could do the math. Right now you've been getting about 2,000 -- $2 a pound, so what's that, about seven -- yeah, 7500, thank you.

JUDGE GUTHRIDGE: About 7500 pounds?

THE WITNESS: Yeah.

JUDGE GUTHRIDGE: All right.

THE WITNESS: But that's going up each year, you know, as my production increases.

JUDGE GUTHRIDGE: Sure. And do you have a -- other than the fact that you would not be a voter, as I understand it, under this regulation, what is your -- do you have any other concerns about it, about the marketing order?

THE WITNESS: As I've gotten involved in this, and dealing with the local pecan community around there, it's a mysterious business, I'll tell you.

JUDGE GUTHRIDGE: Now are you talking
about now the pecan business itself or are you
talking about this proposal for the Federal
Marketing Order, or both?

THE WITNESS: Well, both, because I
would say everybody that I know for the most part
now is left out of this altogether.

JUDGE GUTHRIDGE: And by left out you
mean they do not meet --

THE WITNESS: We do not meet --

JUDGE GUTHRIDGE: -- the definition --

THE WITNESS: -- qualifications here.

JUDGE GUTHRIDGE: -- of grower. Okay.

THE WITNESS: And so I don't know
where that puts us now. That's my concern. We
no longer exist once this happens in reality.

JUDGE GUTHRIDGE: That's your
impression of what --

THE WITNESS: Right.

JUDGE GUTHRIDGE: -- what it is.

THE WITNESS: We can't vote, we just
will be assessed or whatever. And I know how the
way -- assessments, you know, one man's
assessment is another man’s taxing. Either you're going to pay the assessment or it's going to get passed on down to you, one way or the other it's going to -- you know, the guy at the bottom is going to do it. Like I said, we're paying an assessment now to the Georgia Pecan Growers at a certain acreage. I think it's 50 acres and on it, or something like that is the assessment.

JUDGE GUTHRIDGE: Okay. Do you have any other concerns that you would like to express at this time?

THE WITNESS: I just want to make sure that especially you guys understand the need for --

JUDGE GUTHRIDGE: By you guys are you --

THE WITNESS: USDA people.

JUDGE GUTHRIDGE: -- you're indicating USDA?

THE WITNESS: The needs in my opinion for standards on grading, you know, other --
almost all other agricultural crops have some
pretty good standards, and that none exist,
none -- we don't -- you know, you don't have
Grade A, Grade B, you know, Grade A large, or,
you know, like you grade beef.

None of that exists and I think it
would really help if everybody had to go by the
same rules on -- you know, the big guys, they
have the luxury, they can sell directly to the
end user, they can ship directly to China.
Everybody else has to go through the buyers out
there. And you just get what they give you.
Period.

And, you know, you say, Well, you can
shop around. What are you going to do, load
everything back up and then drive 200 miles down
the road and burn another tank of gas. Well,
that was a waste of time. So if there's anything
good that I see out of this, and there's probably
a lot of it, is the possibility of
standardization on the product coming about. We
really need it.
Let me start again with Mr. Davis or Mr. Quirós, do you have any questions?

MR. DAVIS: I just happened to have the microphone, so I'll ask a couple of questions.

DIRECT EXAMINATION

BY MR. DAVIS:

Q I'm really just kind of curious. When did you first plant your trees, Mr. Fuller?

A I bought some trees 10 years ago that were already planted. Those are -- that's where I'm getting most of my production. Then I started planting about two years. So basically somewhere around eight years ago I started growing this thing. In my -- in Cook County there's a lot of that small type orchards around there.

And it looked like a, you know, possible money making opportunity in retirement. But as I became more educated, now I have found out, you know, I need to shell out $100,000 in
equipment now.

Q     Okay. All right.

A     You know, harvesting, sprayers and

that kind of stuff. Well, at my age that's kind

of -- that's not a wise decision. I'd never

recover. So now I have to contract out most of

the spraying. And if you're dealing with

cultivars, you're going to spray --

Q     Sure.

A     -- and you're going to spend a lot of

money on it.

Q     I hear you. I hear you. And again,

so if I understand you, do you have a total 20

acres --

A     Yes.

Q     -- some of them are already mature

trees, some of them are coming along. Is that

right?

A     Right. I've got about 200 and I think

43 trees total.

Q     And if I also -- and again, if I

mischaracterize anything, I've got a feeling
you'll let me know, but if -- you're saying if
the industry had improved standards, that would
help you make more informed decisions on what's a
fair price for your product. Is that right?

A     In my opinion, yes --

Q     Okay.

A     -- that would.

Q     And if you had better, more accurate
information, I think you heard Mr. Cobb, we
really need to know more information on the crop
size, the real crop size. If that information
were accurate and were publicized, that would
help you make more informed decisions. Right?

A     I agree with everything he said.

Q     Okay. Good. And then again, if I'm
understanding you, if you've only got 20 acres of
pecans, it's really not worth your while to
invest in the equipment and all the stuffs that's
needed to keep a crop going. Is that right?

A     That is correct, unless, you know, and
I buy more land and -- you know, if you're going
to invest $100,000 in equipment, you need 100
acres in pecan production in my opinion.

Q     Okay. All right. Thank you.

MR. DAVIS: And we have no further

questions.

JUDGE GUTHRIDGE: Does the USDA have

any questions?

CROSS-EXAMINATION

BY MS. VARELA:

Q     I just have a quick one for you. Jan

Varela, USDA.

A     Keep it simple.

Q     I'm trying to. You mentioned that you

hire people to do some of those jobs for you

because you didn't want to invest in the

equipment. We've heard some testimony earlier

about custom harvesters and custom management.

Would you describe your situation as falling into

those definitions?

A     Well, I think almost anything except

sprayers is custom in this field. You take a

harvester and I think the most least expensive

Savage harvester out there is going to be $25,000
on up, and I don't think the harvester can be
used for anything other than pecans. Sprayers,
yes, they can be used in different type products.
And then you have the processors that you have to
also -- which does -- you know, blows out the
lightweights, and I saw the definition in there
of that, and that's another 20,000 on up piece of
equipment.

Q     And that would be for cleaning?
A     Right.

Q     Okay. And you mentioned that there
are a lot of small farms in your area. Cook
County I believe is what you said?
A     Right.

Q     Would you say that your operation is
kind of typical of what you see in your area?
A     Yes.

Q     Thank you. Those are all the
questions I have for you.

JUDGE GUTHRIDGE:  Are there any more
USDA questions?

MR. HILL:  Yes.
BY MR. HILL:

Q     Mr. Fuller, how are you doing?

A     I never knew I would be answering agriculture questions. Never in my life. My background's totally different.

Q     There has been some testimony that you probably didn't hear --

JUDGE GUTHRIDGE: That's Mr. Hill asking questions.

MR. HILL: Oh, sorry, Brian Hill.

BY MR. HILL:

Q     And that testimony basically said that there would be a projected average increase of 6.3 cents per in-shell pound if this order went through. Now you've had some complaints I guess that you might not be -- you will not be a voter.

JUDGE GUTHRIDGE: And let me interject, Mr. Hill is returning I think both to Exhibits 19 and the executive summary of Exhibit 19 that's in -- it's in Exhibit 23, and both those exhibits, as I understand it, can be found online at this point?
MR. HILL: Right. So --

JUDGE GUTHRIDGE: And if you could
tell him where they can be found online.

MS. SHARROW: Michelle Sharrow, USDA.
The exhibits are available on the Agricultural

THE WITNESS: Okay.

MR. HILL: Okay.

JUDGE GUTHRIDGE: Sorry for the
interruption, Mr. Hill.

MR. HILL: No problem.

BY MR. HILL:

Q There's a study by Dr. Marco Palma in
which it said -- in which he stated that if this
order went through, there'd be an increase of
approximately 6.3 cents per in-shell pound.

A Increase in return, increase in
cost --

Q In return.

A -- or increase in assessment or
increase in --

Q No, no, no, no, no assessments. In the
price, in the price that a farmer could receive
for his product.

A    Increasing six cents?

Q    6.3 cents.

A    That's nothing.

(General laughter.)

BY MR. HILL:

Q    I will say, is that something that --

is any increase something that a farmer would --
in your position or any other position, with
those that you know, smaller farmers, would it be
appreciated, would a raise of any type be
appreciated?

A    That would be appreciated more in
the -- with the big guys because the big guys
now, like we have one in Lowndes County, I mean
who use cold storage, one penny makes a
difference on his sale date, on penny per pound
will make a difference in his. But a small guy
like me, yeah, I'd like to have six cents, but it
really is not going to add up to much. I need a
dollar.
(General laughter.)

BY MR. HILL:

Q We all believe the same thing. Thank you.

JUDGE GUTHRIDGE: To put Mr. Hill's question in context, it's in the context that the amount of money that was contributed by assessments --

THE WITNESS: Right.

JUDGE GUTHRIDGE: -- per pound would be exceeded considerably by the amount of expected return on that.

THE WITNESS: Yeah, and it's probably true. I'm really surprised that the big guys aren't here to address that. You would think that they would --

JUDGE GUTHRIDGE: Well, we've had hearings in Las Cruces, New Mexico and in Dallas, Texas where Dr. Campo -- Dr. Palma, who wrote the study, spent quite a bit of time online. I think that also can be -- is that online also, that testimony is online now?
MS. VARELA: Yes.

MS. SCHMAEDICK: Yes, all the exhibits are online now.

JUDGE GUTHRIDGE: The exhibits and the transcript?

MS. SCHMAEDICK: Not the transcript, just the exhibits.

JUDGE GUTHRIDGE: Okay.

MR. DAVIS: And, Your Honor, we could also point out there's going to be two days of testimony here, Mr. Fuller, where there are going to be some large growers testifying also.

THE WITNESS: Okay.

JUDGE GUTHRIDGE: So any more USDA questions?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Mr. Davis?

REDIRECT EXAMINATION

BY MR. DAVIS:

Q Other than you've just peaked our curiosity. What did you do before you retired and became a pecan farmer?
I moved heavy metal around at very high speeds.

(General laughter.)

BY MR. DAVIS:

Q You were a truck driver?

A I was an airline pilot for United Airlines.

Q Oh, an airline pilot. You did carry some heavy -- all right. Thank you.

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

(No response.)

JUDGE GUTHRIDGE: No? Okay. Mr. Fuller, you're excused. If you'd go over and check with Ms. Thompson, see if she has any spellings or anything that she needs clarifying.

THE WITNESS: Thank you kindly.

JUDGE GUTHRIDGE: Thank you.

(Whereupon, the witness was excused.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIRÓS: Yes, sir, could we have a five minute break and let us reorganize our
witnesses and prepare for the rest of the afternoon's testimony?

JUDGE GUTHRIDGE: That's fine. Five minutes.

MR. QUIRS: Thank you.

JUDGE GUTHRIDGE: All right. It's 2:57, let's make it 3:05.

MR. QUIRS: Thank you, Your Honor.

MR. DAVIS: Thank you.

(Whereupon, a short recess was taken.)

JUDGE GUTHRIDGE: All right. Before you call your next witness, I have a request from Nick, the sound man, that when we're talking, get about four inches from the microphone and it's most effective for the court reporter and for the audience. So if we could all bear that in mind.

And if we don't do it, you let me know, including me. Okay.

All right. Call your next witness.

MR. QUIRS: Your Honor, we call Hilton Segler.

JUDGE GUTHRIDGE: Okay. Mr. Segler,
please raise your right hand.

Whereupon,

HILTON SEGLER

having been first duly sworn, was called as a

witness herein and was examined and testified as

follows:

JUDGE GUTHRIDGE: All right. Mr. Quirós.

DIRECT EXAMINATION

BY MR. QUIRÓS:

Q  Yes. What is your name?
A  The first name is Hilton, H-I-L-T-O-N,
the last name is Segler, S-E-G-L-E-R.

Q  And where do you live, Mr. Segler?
A  I live in Albany, Georgia.

Q  And tell us how you learned the farm

trade and the pecan business.

A  Kind of the hard way basically. I've
always been, as an adult, working in the
fertilizer and chemical business. And I happened
to have a job in 1961 with a company by the name
of Thompson Hayward Chemical Company with their
headquarters in Kansas City, Kansas. The parent company was Philips’ Lamp, and goes back to the Philips over in Holland.

In 1964 through their research program they came out with the first fungicide that was used on controlling scab on pecans with an EPA label. It was Triphenyltin hydroxide, don’t ask me how to spell it. I let you do that. They used the brand name Duter, D-U-T-E-R. The product is still available today sold under the brand name Super 10.

So this was labeled in 1964, so I had a chance to observe the product during its initiation into the marketplace. But being regional manager of Thompson–Hayward with my territory covering South Carolina, Georgia, Florida and Alabama, the very heart of the pecan industry, the company expected this to be a real factor and to move a lot of product to the pecan industry.

Up until that time, if land had pecans growing on them, it was considered a disadvantage
because grass wouldn't grow under it to feed the cows. So we didn't have anything to spray with to control disease. So it really brought the industry up-to-date in 1964.

We didn't have a pecan team, we did not have, as we have today, entomologists and pathologists, agronomists. I work with the department heads at the University of Georgia and the department heads over at Auburn to learn about pecans. And I pretty well found out that within our own company we didn't know a whole lot about growing pecans or controlling insects or disease.

With that in mind, I said the best way for me to do a job is to get into the pecan business. So I rented me 25 acres of pecans. And so everything that I've learned about pecans I've done it trial and error and working with these department heads over the years.

Later on, about 20 years ago, I bought a 500-acre farm, pecan farm, in Crisp County, Georgia, known as Gumcreek Farms on Highway 280.
up close to Lake Blackshear. During that same
time I rented a lot of acres in a couple of other
counties, and for a period of about seven, eight,
ten years I farmed 1900 acres of pecans and run
900 head of momma cows.

So over a long period of time I've
gathered a lot of knowledge pertaining to growing
and marketing pecans. In 2007 was the last year
that I gathered a crop and sold out. At that
time I had downsized my farms and I only had 350
acres. And believe me, sometimes always bigger
is not always better. So over a 40-year span
I've had an opportunity to learn the market.

I've sat under a pecan tree many times
during the course of those 40 years with 3- or
400,000 pounds of pecans and couldn't even get a
price on them, or if you sold them. You
definitely had to carry the deed to your farm,
prices were so low. I made myself a promise at
that time that if I ever had an opportunity to
improve our industry, I would do everything that
I could to do it.
During that 40 odd years from '64 to the present time, I've served on the Board of Directors for the Georgia Pecan Growers Association several times. It's a two-year term. In 2003 I was elected to the Board for a two-year term. I served that term and was elected vice president of the Georgia Pecan Growers Association, and that's a two-year term.

And then later after that was elected president, and they rewarded me after two years and elected me president for another two years. So I spent four years as president of the Georgia Pecan Growers Association.

With the number of acres of pecans in our state, it is of vital interest that this industry not only is recognized by the USDA and our Congressional leadership in Washington, but we do everything that we can to revive the industry. Our industry was dying when I became president of the organization. We were not recognized even as a farm by the USDA, compared to other crops such as peanuts or cotton or corn
and soy beans, et cetera. We had no price support, we had no crop insurance, it was just what everybody would pay you when it became due.

Over a 20-year period with the first meeting at one of my farms, we had a meeting with the RMA representatives and members of this industry.

Q What does RMA stand for, Mr. Segler?
A Risk Management Agency, it's the federal crop insurance under the USDA. About acquiring crop insurance for our industry. In 2003 we finally was granted crop insurance in Georgia, after a six-year pilot program in three counties.

I was attending the Alabama Pecan Growers Association meeting and was leaving when, at that time Congressman Sanford Bishop, who we had worked with so diligently in acquiring the insurance, that the Board had finally approved it for Georgia. This changed our industry, or started us on the change of our industry nationwide basically. Because -- excuse me.
Q  Mr. Segler, how did that change the industry, how did crop insurance change the industry for pecans?

A  Pecan growers, regardless of where they were located, was considered a bad credit risk because you had no insurance or anything else. Now if you had plenty of assets and plenty of money in the bank, didn't need the bank to operate, they might loan you money. Up until then you couldn't get it. When we became eligible for federal crop insurance, the banking industry took an entirely different view of it, because we were being insured based on a history of dollars earned for the past 10 years of production, so they had something to go on.

That would have pretty well stopped at that point, but I have -- I don't use the words that my good friend, Dr. Randy Hudson, used with the education that he's got, but I have a lot of passion for our industry. I would not accept the fact that in 2004 that we would not expand our insurance.
And so I was able to get crop insurance in Mobile and Bowen County, Alabama in 2004. That was the only two counties that was added nationwide. 2005 it became a nationwide program in all 15 commercial producing states that pecan growers can get insurance. If you remember, during the 2004-2005 hurricanes, that saved a lot of farmers. But it took 20 years, people, to get that.

Some of the other things that has happened, I think I was very instrumental in getting NRCS to recognize the pecan grower. For a long time grow crop people could participate in some of their programs, but pecan growers could not. They have a --

JUDGE GUTHRIDGE: Did you say NRCS?

THE WITNESS: NRCS, yes, sir.

JUDGE GUTHRIDGE: Has that been defined?

BY MR. QUIR S:

Q Yes, do you want to define that for us?
A     It's the -- gone.

MALE VOICE:  Natural Resources Conservation Service.

THE WITNESS:  Conservation Service.

I'm sorry, yeah.

JUDGE GUTHRIDGE:  In case that didn't make it to the record -- to the microphone --


JUDGE GUTHRIDGE:  Thank you.

THE WITNESS:  Under the USDA. One of the programs that they have is called the CEP program, it's the Conservation Stewardship Program. It was established I think back in probably 1978, I'm not sure on that date, but it was established a number of years ago for growers, that it would award them for using conservation practices on their farms.

Later they made some changes in the program and it not only awarded the farmers for using conservation programs, but it enticed them to add additional programs. And there's probably
100 different programs that could be used. It's a five-year program. A grower, per entity, can draw $40,000 a year, up to a maximum of $200,000. There are things like the Clover Program, planting a legume crop in there. They've got another program called the EQIP Program, that's the Environmental Quality Incentive Program. That's a program that covers -- it's a two-year program, it covers many things. For example, if a grower was irrigating his pecans and using a diesel engine, they would help subsidize the cost of electricity there to save energy.

Up until maybe four years ago we didn't qualify for any of these programs. Today we do. Many of our growers in the state of Georgia are taking advantage of both of those programs, which has been very beneficial.

BY MR. QUIRS:

Q Mr. Segler, for the benefit of the audience, would you explain why the clover and legumes program is important to pecan growers?
Well, it covers a lot of things, but the significant deal is that when you plant a legume, and in particular clover out there, you're generating a source of beneficial insects to help you control the insects in your trees.

You also have a biomass that disintegrates, goes back into the soil and generates anywhere from 100 to 150 pounds of actual nitrogen per acre, saving that grower something of about like a 100- to $150 an acre for the cost of nitrogen, so you're improving that. And also a good food source for beneficial insects.

So that program has been widely used here in the southeast, a lot more so than the west. But it's cleared nationwide, so it's a tremendous program.

Mr. Segler --

Yes, sir.

-- can I move you on your -- some of the highlights of your industry service include the -- achieving the federal crop insurance and
getting these conservation programs. Take us
into the MAP program into the US Pecan Council.
Would you explain your background in that and
your current title.

JUDGE GUTHRIDGE: Could you refresh my
recollection on the MAP program?

MR. QUIR S: Yes. In fact, I'll ask
Mr. Segler to.

THE WITNESS: The MAP program is
under --

JUDGE GUTHRIDGE: What does the --
what does MAP stand for?

THE WITNESS: Market Access Program.
It's under the Federal Agricultural Services of
the USDA. It's a way that funds that are
available, matching funds that are available to
agricultural industries to help balance the trade
and export. It's not a freebie, you have to
match the funding both with cash and in kind to
the point of 100 to 125 percent of the amount of
funds that you get.

We were able successfully to acquire
the first funds that came to Georgia in 2010, at a point in time I lived in Washington, just about, trying to get these programs available.

BY MR. QUIRS:

Q    Mr. Segler, when you say we do you mean the US Pecan Growers Council?

A    I'm talking about the US Pecan Growers Council.

Q    Thank you.

A    And --

Q    I hate to interrupt you again, but can you tell me what your position is with that group and then give us some of that history?

A    After my term was up as president of the Georgia Pecan Growers Association, the US Pecan Council asked me if I would take over the -- as Executive Director in charge of all the international marketing of pecans. And that's my present position to date.

Q    What's the goal of the US Pecan Council -- Pecan Growers Council, Mr. Segler?

A    Simply to increase the sale of pecans
overseas. We're the marketing arm of our industry in promoting pecans.

Q And what are the objectives of the proposed -- well, let me back up. Have you had a chance to review Exhibit 1, which is the notice that was sent out from the USDA that contains the proposed Federal Marketing Order for pecans?

A I not only had notice of it, I read it word-for-word.

Q That's terrific. And from your understanding of Exhibit 1 what are the objectives of the proposed Federal Marketing Order for pecans as you understand them?

A To unify our industry across this country in 15 commercial states, which I represent. But to increase the sale domestically of US pecans generically. When you move out of the 15 commercial states from North Carolina, around the Gulf Coast, as far north as Oklahoma, Missouri, Kansas, and Arizona and California and New Mexico, et cetera, Texas, when you move out of that area, and that's not where the population
is in this country, people -- there's no market.
They don't know where to buy them.

I hate to say this, Judge, but you
live in Virginia, I just asked you, I bet you
couldn't even pecans there, could you?

JUDGE GUTHRIDGE: I live in a pecan
deprieved area of the country.

(General laughter.)

THE WITNESS: Right. The --

MR. QUIRS: We're going to fix that,

Your Honor.

THE WITNESS: But the population is in
New York, is in Washington, Philly, it's in
Chicago, that's where the population of this
country -- and that's where people don't know
anything about the most healthiest nut and the
most nutritious nut period. I see you shaking
your head too. So, but the objective is to
increase -- that's our biggest customer. The
biggest customer is the United States.

BY MR. QUIRS:

Q From what you -- then you know of the
US Pecan Growers Council and its objectives and
what the proposed Federal Marketing Order for
pecans, its objectives are for the American Pecan
Council, in your opinion is there any conflict
between the goals of the US Pecan Growers Council
and the proposed American Pecan Council?

A Absolutely not. There's no conflict
at all. The fact is, we complement each other.
The job of the US Pecan Growers Council, which
I'm the Executive Director that handles
international, I'm looking forward to this
passing so that we can have some funds next year,
not 20 years from now. We should have done this
20 years ago. It's one of the greatest pieces of
legislation that we've ever had.

And there's no way that you're going
to ask enough questions, or answer everything
that's going to come up in a complicated industry
in 15 states. I'm continuously talking to all
the state presidents and growers around. To fit
a market as diversified as ours it's going to
take a smart group of these 17 Board members to
work out the details, and they're not going to do it overnight.

Some of it would have to probably -- this is a good piece of work that was published in the Federal Register. Some of the details might have to be worked out by the Board themselves. But Mike and his Board, they've done a tireless, thankless job, and they've done something that I've been extremely interested in for the past 10 years.

Q    Mr. Segler, before we leave this, what is your opinion of the proposed Federal Marketing Order for pecans that you've read?

A    As I've stated before, I think it's the greatest thing that we've ever done. I'll tell you this, that over the last number of -- well, over the past year anyway, I've wrote over 600 emails out to growers. When the -- it was published in the Federal Register, I'll attached that and send it out to growers.

And I'm heavily involved in not only the United States but -- generically, but Georgia
itself. Last year when Georgia wanted to increase their assessment from a half cent to a cent, I personally talked to 900 growers myself pertaining to the need for this.

So this is good not only for the small hobby type growers, ones that are just retired. Remember six -- five or six years ago the average price for the big Improved variety of pecans was the gift pack trade early, prior to the holidays. A Desirable, which was the premium nut, you were lucky to get a dollar and a quarter to maybe a $1.35 a pound. Okay. Once that season was over, that price would probably drop down to somewhere between 80 cents to a dollar.

Now that same pecan today is anywhere from 2.75 to three-and-a-quarter. That same pecan today. One of the reasons that this has come about domestically, and we're looking at it so hard and it's needed so hard, is that our people in this country, they need to eat more nuts and in particular pecans. It is the most nutritious, healthiest nut on the market.
Period. No question.

We just need the operating funds to do it, and it doesn't matter if a grower has got one tree and he sells a nut off of that tree, and this other grower's got a million trees, he's getting advantage of the price increase from the sale of those nuts.

Q Mr. Segler.

MR. QUIR S: I think that's a good place for the Proponent Group to end its questioning, Your Honor.

JUDGE GUTHRIDGE: Does the USDA have any questions?

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Good afternoon, Mr. Segler.

A Good afternoon, Melissa.

Q Thank you for your testimony, and it's nice to see you again. So based on your testimony, you have a number of years being
involved with organizations, pecan industry related organizations. So a couple of my questions are going to be asking you about your opinion based on your experience.

So you also mentioned that you've read the notice, which has the proposed program. Correct?

JUDGE GUTHRIDGE: Exhibit 1 you mean?

MS. SCHMAEDICK: Exhibit 1. Thank you.

BY MS. SCHMAEDICK:

Q So in your opinion, when you read through that, did the proposal describe the framework for an organization that seemed reasonably well organized, solid, it had the components that are necessary for a program to function efficiently?

A When the American Pecan Board first started, and I was privileged to a lot of information other growers wasn't in the position I was in. There was a lot of work that had to be done. People in North Carolina think different
than people in Alabama. People in Oklahoma think differently than folks in Texas, and so forth.

To bring all of these ideas together was a monumental job. To describe our industry in as much detail as they have done, to have as many meetings across this country and many of them you've been involved in, has just been phenomenal.

I've raised a lot of questions, as you well know, pertaining to this Exhibit 1. A lot of people thought for a while that I was totally against it. I wasn't against it, I just wanted it right. And it's a good piece of work and these guys deserve a tremendous hand for bringing it together. They've spent time in Washington, but the undue hours that they have spent trying to get the USDA, as well as our growers and our handlers and our shellers to embrace and understand that we're one industry and we must work together is just outstanding. So I don't think you could make a single word of improvement to it.
Q    Thank you. I was very curious to hear
your description of the federal crop insurance,
and I believe you stated that federal crop
insurance is available now in 15 states. Is that
correct?

A    All commercial across the nation, yes.

Q    So then in your opinion is the
proposed production area also in sync with the
federal crop insurance definition of where
commercial pecans are being grown? Are the
two -- is the 15 states in the federal crop
insurance, are they the same states that are
being -- that would be covered in this program?

A    Yes.

Q    Thank you. And given your work with
the National Pecan Growers Association, which is
now the US --

A    Yes.

Q    -- Pecan Growers Council, what is
your opinion of the broad based understanding of
this proposal? I know you've said there's been a
lot of outreach done and a lot of listening, but
does that opinion also include sort of an
assessment of the understanding of the program,
how it will impact people, and are those impacts
generally accepted?

    A     I know of really no growers that
really are against the program. I think that all
growers, big or small, recognizes the fact that
with the economy being as it is today, each
industry is pretty well going to have to look
after themselves, and anything that we can do to
improve our cost of production or our market
potential and movement of the crop we produce is
going to make them money, and that's a very small
amount in order to do it.

    Q     Thank you. I believe you also
mentioned that you have some experience with the
Georgia Pecan Growers Association, as well as the
Georgia Pecan Commission?

    A     Commodity Commission.

    Q     Commodity Commission. Can you tell
me -- so under the Georgia Commodity Commission,
it's my understanding that there's an assessment
rate that is -- an assessment that is collected.
So is there a definition under that program of
sort of the minimum size of a farm that is
captured in that assessment?

A     Yes, ma'am.

Q     Could you tell us what that is?

A     A grower that has 30 acres or more is assessed at the first handler one cent a pound.

Q     Thank you.

A     Regardless of variety.

Q     So that 30 acres is similar to the 30 acres that is found in this proposal, is it not?

A     Yes, ma'am.

Q     So in your opinion is that a good benchmark, has it worked well for Georgia?

A     I think it's probably the best benchmark you could have.

Q     Thank you. My last question for you, and you actually just brought it up for me, you said 30 acres regardless of whether it's Improved or native. So in Georgia is there a different way to identify native pecan acres?
A We basically do not have any native or seedling varieties in the state. Now do we have some seedling? Sure we do. They're grown in people's yards or along the fence row. But to name -- we probably don't have but one or two growers that's 15 or 20 acres of nothing but seedlings in our whole state. They're all Improved varieties.

Q Okay. Thank you. So in other words, in previous testimony we've heard the term pecan acre as defined by the FSA, Farm Service Agency, but that's applicable to the state of Georgia in our opinion.

A Pardon me now? Oh, the --

Q Sure. The term pecan acre is not applicable to Georgia because you don't really have native production.

A Well, it's also reported that way, but more than -- in my opinion, when someone comes in with a grocery sack or a bag of pecans, they just dump them out there and they call them seedlings, and they may be Stuarts or something else. But
to have a -- a native grows in the Mississippi area where -- the Mississippi delta area where the trees were originally started at the beginning of time I guess.

The seedling over here is where we planted an Improved variety and maybe a freeze come or it broke off and it come up below the bud. Whatever nut you plant, when that nut breaks dormancy and comes up is a seedling, regardless of what variety. It has to be grafted or budded. Most of Georgia's are Improved varieties.

Q Okay. Thank you. That is it for my questions. Thank you for your testimony. Very helpful.

MS. VARELA: Jan Varela, USDA.

BY MS. VARELA:

Q Mr. Segler, I just wanted to follow up on part of your testimony where you were discussing some of the Risk Management crop insurance program. And are you comfortable answering a few more questions about that? I
figured you'd know --

A     Fire away.

Q     -- as much about it as anybody else.

A     Fire away.

Q     When that program was being developed

was there a process for determining who qualified

in terms of size, whether it was just the initial

Georgia program, or when you expanded it? Are

there any restrictions on who can apply for that

insurance, or is it done on a case-by-case basis?

A     If you've got one tree you can apply.

Q     Okay. I was curious.

A     You can apply.

Q     Thank you so much. That was my only

question for you.

A     Okay.

BY MR. HILL:

Q     Mr. Segler.

A     Yes, sir.

Q     Brian Hill. Do you sell any of your

crop outside of the state of Georgia?

A     The last crop that I sold was in 2007.
Okay.

Okay. So I don't grow pecans anymore.

Okay. So how much of your crop at that time do you think you were selling outside of the state of Georgia? Percentage-wise, just a rough estimate.

Probably the majority of it.

So can you tell me what states a lot of your crops were going to?

Most of it probably went in international trade.

But did some of that crop go presumably into other states in this country?

I'm sure it did because all the pecans basically that's produced is -- ends up through shellers that's going to shell the nuts. Our market here in the United States is not in shelled pecans.

Right.

They end up in the hands of shellers. Now they may go through several hands before they get there, but somebody's going to shell them.
Q     Right.

A     And they're going to sell them. I will tell you this, that in -- nationwide where we exported very little five or six years ago, we're now exporting probably 30 to 35 percent of our total market. Five or six years ago Georgia was exporting probably less than 2 percent and we're probably exporting close to 70 percent of our production now.

Q     So would you say that much of the crops all across the country, all across this proposed production area, is it moving outside of the states that it's produced in?

A     No, only probably about 35 percent. So on an average it's moving internationally at this point in time. Our biggest customer is domestic. And of course there's a lot of imports of pecans that come into this market. We've got to place this important crop that we produce, this healthy crop that we produce, we've got to place where the population is in the United States, and it's not in the south where it's
grown. We don't have to be -- we don't even have
to teach people how to pronounce it. It's pecan,
isn't it?

(General laughter.)

THE WITNESS: I mean we know what they
are. We've got to find folks that don't.

BY MR. HILL:

Q     And that's what I'm focused on.

Forgetting the exports, within the United States
is there movement in between the various states,
pecan movement you know, from Georgia to Ohio
or --

A     A lot of the shellers have -- we've
got three or four shellers here in Georgia,

there's a lot more in Texas than there are here.
Some of their offices is up north and they don't
even have a shelling plant up there. So I don't
really know how to answer that really.

Q     So there has been a lot of testimony
about breaking into other markets, mostly in the
northeast and the north in general. And I just
want to -- that part of the market, is that
something that you agree with?

Q    All right. And how is that important to this market -- to this industry?

A     In the last five years Georgia has planted over 25,000 brand new acres of pecans. And we're still planting them as we speak each year. Five years ago we had about 12 nurseries here in the state that was growing pecans in Improved varieties. This past year we had over 50.

In the next 10 years the southeast in particular, we're blessed with adequate water aquifers, more so than the west. In the next decade we're probably going to produce here in this state probably 200 to 250 million pounds of pecans. People, we've got to find somebody to eat them. It's just that simple.

Q    Thank you.

MS. SCHMAEDICK: Melissa Schmaedick, USDA.

BY MS. SCHMAEDICK:
Q First of all, Mr. Segler, is it -- I want to make sure we're getting the spelling of your name correctly, as well as the pronunciation. Is the spelling S-E-G-L-E-R?

A Right.

Q Okay. So it's not S-E-I?

A No I.

JUDGE GUTHRIDGE: The witness indicates yes.

MS. SCHMAEDICK: Okay.

THE WITNESS: When my family moved over here from Germany some of them spelled it this way, some dropped the I.

MS. SCHMAEDICK: Okay.

THE WITNESS: I was with the poor group, we dropped it.

(General laughter.)

BY MS. SCHMAEDICK:

Q All right. I just want to make sure that we have that correct for the record, and that we pronounce your name correctly. So, Mr. Segler, I want to kind of follow up on what I
think Mr. Hill was trying to ask.

So right now I'm going to give you an example. I live in Utah, and if I go to the grocery store, I can find pecans on my shelf. I don't -- before I started working with this industry, I would not buy those pecans because the experience I had wasn't that great. But there are pecans from the south that are making it to the states across the country at this point in time. Is that correct?

A Probably in some sections, but --

Q Okay.

A -- not widely used.

Q But through this marketing order and through the promotion activities that it would authorize, the intent is to push more pecans that hopefully are packaged and displayed properly and of a good quality that then develops a consumer base out in all of those other states where pecans don't grow. Is that correct?

A I would -- yes.

Q Okay. And as a result of that
increased movement in pecans in the market, and
increased consumer demand, the hope and the
expectation is that consumers will be happy,
demand will increase and prices will increase.
Is that correct?

A    Prices should increase, consumers
should be educated and knowing what he's doing,
the dealer or wholesaler's going to be making a
profit, the shellers are going to be making a
profit and the growers are going to be making a
profit.

Q    So in sum we can say that the
activities of this proposed program will have an
impact on the commerce occurring in the domestic
market as well as the commerce that's occurring
in the international market. And I know maybe
that sounds --

A    Well --

Q    -- does that sound like a strange
question?

A    Well, it sounded more like a statement
than a question. But they will complement each
other. The things that through research programs
that are conducted and utilized by this program
certainly would be available to us, and we can
use it internationally as well, which I think is
very important.

We have found that -- I've worked in
this business a long time. To reach this point
in our history of uniting our industry that was
so far apart working for each other, truly some
growers and some of the shellers had to die
before we could get together. But I ain't too
sure a few more don't need to.

(General laughter.)

THE WITNESS: But we -- Mike and his
group has done the impossible. They have just
created an element there that you're going to see
the same percentage occur in pecans over the next
decade or two that's occurred with pistachios and
almonds and things like that. We just need the
funds in order to do it.

MS. SCHMAEDICK: Okay. Thank you.

No further questions.
JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. DAVIS: No further questions from the Proponent Group, but we do want to publicly thank you for your testimony and for all of your service to the industry, Mr. Segler.

THE WITNESS: Thank you.

JUDGE GUTHRIDGE: Are there any --

THE WITNESS: Oh, excuse me.

JUDGE GUTHRIDGE: Are there any questions from the audience?

(No response.)

JUDGE GUTHRIDGE: No questions from the audience. Before you go though, when I sent my daughter my itinerary, she sent back an email -- and saying exactly what the hearing was about -- she sent me an email that said, You know you're going to have to make and stick to a decision for how to pronounce P-E-C-A-N. I've been saying pecan this whole time and now you're
telling me I'm wrong I think.

   (General laughter.)

MR. DAVIS: Pecan is right, Your Honor, I just --

   (General laughter.)

THE WITNESS: If you're growing them, it's a pecan.

   (General laughter.)

JUDGE GUTHRIDGE: If you'd check with Ms. Thompson over here about whether she has any pronunciations.

   (Whereupon, the witness was excused.)

MR. DAVIS: Your Honor, the Proponent Group calls as its next witness Mr. Tom Harmon.

   (Pause.)

JUDGE GUTHRIDGE: Why don't you have a seat. And while they're handling that paperwork, if you would raise your right hand.

THE WITNESS: Okay.

JUDGE GUTHRIDGE: Wait a minute. Wait a minute. Let me wait for the court reporter.

Let me wait for the court reporter. I'm going to
wait for the court reporting to get --

THE WITNESS: I'm sorry.

(Pause.)

JUDGE GUTHRIDGE: Okay. Now if you'd please raise your right hand?

Whereupon,

TOM HARMON

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

JUDGE GUTHRIDGE: All right. Mr. Davis.

MR. DAVIS: Thank you so much.

DIRECT EXAMINATION

BY MR. DAVIS:

Q And you have some water, Mr. Harmon?

A Yes. Thank you.

Q Thank you so much for being here today. In fact, for the record where do you live, Mr. Harmon?

A I live at Gilbert, South Carolina.
Q And again for the benefit of everybody in the audience, how far did you have to travel to be here today for today's hearing?
A About 300 miles.
Q Well, we really appreciate you driving down. We hope we'll get you on the road home.
A I appreciate the opportunity to be here.
Q Thank you, sir. Just in case a question comes up on this, let me hand you Exhibit 23 and Exhibit 1.
A Okay. I've got them.
Q Have you had an opportunity to review those two documents?
A Yes, I have.
Q It's my understanding you have a prepared statement you'd like to give, Mr. Harmon?
A I do.
Q Could you please begin?
A Okay. Again, thank you for the opportunity for being here, for the opportunity
to appear. My name is Tom Harmon. It is spelled T-O-M H-A-R-M-O-N. I live in Gilbert, South Carolina. I have been in the pecan industry for over 50 years beginning in 1964, when I became manager of Nilo Plantation in Albany.

JUDGE GUTHRIDGE: That's Albany, Georgia?

THE WITNESS: Yes, sir. I'm sorry. That's Albany, Georgia. I have attached my resume. My wife Nancy and I own and operate Harmony Hills Farm in Lexington County, South Carolina. We have over 35 acres of pecans currently in production. A few years ago we planted 50 acres of new pecan trees that will not be in commercial production for another four to seven years. On our farm we grow Improved variety pecans.

Under the Small Business Administration we would be considered a small business, less than fifty-seven hundred and fifty thousand dollars a year -- that's less than 750,000 a year. I have reviewed the economic
analysis summary prepared by Dr. Marco Palma,
specifically the projected price increase from
promotion of 6.3 cents per in-shell pound versus
the 2.56 per pound in-shell cost, that is for
$2.56 we invest, we get back $6.36.

Overall I am aware of the cost that a
Federal Marketing Order may impose on my farm,
and I do not believe those costs are unduly
burdensome. And I like to think of it as an
investment. But I believe that the benefits --
it went out of order -- the benefits of the
Federal Marketing Order to our farm will greatly
outweigh any cost associated with it.

In recent years we have seen wide
variation in the prices we have received from our
pecan crop. Such wide variation in pricing makes
it extremely difficult to plan for the future
operation of our farm. Our prices for pecans go
up and down dramatically from year-to-year. Our
cost of production has steadily increased. Cost
to fertilize, insecticides and equipment have all
increased in recent years regardless of the price
we received for the crop.

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

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

I also understand that the proposed
order only growers with more than 30 acres of
pecans or more than 50,000 pounds of average
production per year over the last four years will
be allowed to vote on the proposed order. In my
opinion, this threshold is reasonable because if
a grower does not meet this threshold, he's
probably not a commercial grower.
Any grower that is smaller than the
proposed threshold will find it difficult to
justify the cost inherent in a small production
operation, and is maybe merely a seller a pecans
from older trees that happened to be on his or
her property, a hobby farmer, or one that does
not plan to put all commercial inputs, i.e.
fertilizer, water, insecticides on his farm.

I am currently coordinator of the
South Carolina Pecan Growers and Director of the
Southeast Pecan Growers Association. The
American Pecan Board has kept us informed about
its efforts to propose the Federal Marketing
Order.

I have attended several meetings where
the Federal Marketing Order was being discussed.
In the spring Mike Adams came to the annual
meeting of the Southeastern Pecan Growers
Association to discuss the Federal Marketing
Order. I feel like I have been informed about
the process and have been given ample opportunity
to persist -- given ample 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 will be glad to answer any questions anyone may have.

BY MR. DAVIS:

Q Thank you, Mr. Harmon. If I could just ask quickly, when you said that you had reviewed the economic analysis summary, is that Exhibit 23 that you have before you here?

A Yes. Yes, it is.

Q All right.

MR. DAVIS: Your Honor, with that clarification, I tender Exhibit 63.

JUDGE GUTHRIDGE: Any objection from the USDA?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Any objection from the audience?

(No response.)

JUDGE GUTHRIDGE: I would point out
that his statement added something to the exhibit
that we already have on page 3. And also there's
some PII for USDA in the resume. With no
objection, Exhibit 63 is admitted.

(The document referred to was marked
for identification as Exhibit 63 and
received into evidence.)

MR. DAVIS: Yes, and we'll work out
with the USDA to remove your birth date from
the -- just so that's not published.

THE WITNESS: All right.

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: No further questions, Your
Honor.

JUDGE GUTHRIDGE: Does the USDA have
any questions?

MS. SCHMAEDICK: Melissa Schmaedick,
USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Good afternoon, Mr. Harmon.

A Good afternoon. Nice to see you
again.

Q   Thank you for joining us --
A   Yes, ma'am.
Q   -- all the way from South Carolina.

So you mentioned that you're involved with two different organizations, the South Carolina Pecan Growers and the Southeastern Pecan Association.

A   That's correct.

Q   So I want to ask you about the South Carolina Pecan Growers. Can you tell me how large is your organization, how many members do you have roughly?

A   Well, we have a fairly informal organization because we don't have a lot of commercial producers in the state of South Carolina. Most of our industry is based on kind of acreages less than 30 acres. So we have a meeting in the spring, which is a classroom type meeting, and then we have a meeting in the fall where we visit an orchard. And we usually have from around 30 or 35 attendees at each one of those meetings.
Q And so I believe you just said that most of your farmers have less than 30 acres. Is that correct?

A That's correct.

Q Okay. So out of those 35, again, just to clarify, most of those 35 have less than 30 acres?

A Probably less than 35, probably six or eight have --

Q Okay.

A -- less than 30 acres.

Q Okay. And based on your statement it seems like most of what you do is maybe sort of an educational type of -- it is an educational organization?

A That's correct.

Q So you don't do any promotion or anything like that?

A We are affiliating ourselves with the South Carolina Specialty Crops Association, and one reason for that is they have the administrative abilities, they also can help us
with some of our bookkeeping, and they also have
the ability to apply for specialty crops grants
through the South Carolina Department of
Agriculture. So actually we're in the process of
being organized as the Pecan Committee of the
South Carolina Specialty Crops Association which
is under the auspices of the South Carolina
Department of Agriculture.

Q     Wow. Interesting. Thank you. That's
helpful information. So given that -- it looks
like based on your testimony the majority of
pecan producers in South Carolina are very, very
small. You said below that 30-acre threshold.
Even though they may not be able to
participate as a voter in the program, is there
any sense of whether or not your group would
benefit from this program? I know you mentioned
that in your statement, but, you know, have you
had discussions with your members and is this
something that you're all looking forward to?

A     Yes, in the spring when we had our
classroom setting type meeting, Mike Adams with
the American Pecan Board came out and talked with
our group and asked for questions. And we have a
couple of growers in the area that are less than
30 acres, but they do some direct marketing, and
they had some questions of Mike, and we
appreciate Mike coming. And the general
consensus at that meeting was that they were in
favor of it because we feel like that a rising
tide floats all boats.

Q    Thank you for that statement. That's

the second time I've heard that in this hearing
procedure, so I think it's perhaps a fitting
description of the anticipated program and its
benefits.

A    Yes, ma'am.

Q    So thank you very much.

MS. SCHMAEDICK: No further questions.

THE WITNESS: Thank you.

JUDGE GUTHRIDGE: Are there any more

USDA questions?

MS. VARELA: Jan Varela, USDA.

BY MS. VARELA:
Mr. Harmon, I just have one question for you. I won't keep you too much longer. Are there any particular challenges to growing pecans in South Carolina that we might not have heard of yet? We've heard a lot about scab in the east. Do you face some of those same challenges where you are, or is the growing region just a little different since you're further north?

Basically our challenges are about the same as Georgia. In fact, I'm also a member of the Georgia Pecan Growers Association, and I try to attend their meetings, and I have quite a few friends in Georgia, and of course as I said in my testimony, I worked in Albany back years ago. And so our challenges are pretty much the same. I think probably we have challenges similar to central Georgia because we are almost due east of Atlanta. Our farm is actually 60 miles -- 60, 65 miles east of Augusta, Georgia on -- just north of Interstate 20. So, and I guess we probably have more animal predation, squirrels and crows -- well, squirrels aren't
animals but -- I mean squirrels are animals, crows aren't. I'll get it right.

(General laughter.)

THE WITNESS: But we probably have more predation because of the smaller orchards and they're scattered and everything. But our challenges are quite similar.

I think one of the challenges we've had, we've done some direct marketing, we had a produce operation some years ago, and we grew sweet corn and blueberries and peaches and those things and sold them direct to the consumer.

And even in a market where the consumers are willing to pay a good market price for those commodities, it was a tough sell with pecans to get what they were worth because they were used to buying pecans from the backyard trees. And so I guess that may be one of the bigger challenges we have is actually getting market price from a direct marketing set up in South Carolina.

BY MS. VARELA:
Q    Thank you very much.
A    Thank you.

MS. VARELA: No further questions from me.

JUDGE GUTHRIDGE: Are there any more USDA questions? Mr. Hinman.

BY MR. HINMAN:

Q    Okay. Good afternoon. Don Hinman, USDA.
A    Yes, sir.

Q    I did notice on your resume that you actually have a 20-year period in which you were very involved in pecans in your operation group. And you started out as a farm manager, and then you added 250 acres, which grew to 600 acres, from the '60s to the '80s.

Could you tell us a bit more about your -- what conditions were like then and what your reasons were for getting out of pecans in the '80s.

A    Well, I got caught in the farm crunch of the 1980s and -- because of some of my
decisions. And also I was into row crops. And like I say, I got caught in the farm crunch of the '80s and I could no longer -- I was heavily leveraged, and I could no longer get the funds that I needed from Farm Credit to service my obligations.

So I sold the farm and taught school for 10 years, which was -- I've been very fortunate in life. I've had quite a few experiences, and growing pecans is probably one of the most challenging.

Q Thank you.

MR. HINMAN: No further questions.

THE WITNESS: Yes, sir.

JUDGE GUTHRIDGE: Are there any more USDA questions?

(No response.)

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: Your Honor, just one thing for clarification.

REDIRECT EXAMINATION

BY MR. DAVIS:
Q  Although I understood your testimony that you think on just kind of a head count basis in South Carolina there may be a lot of farmers that are less than 30 acres, but when you say -- when people attend the meetings, if I understood you correctly, you say you'd have about 35 people attend the meetings, and only six or eight of those would be less than 30 acres. Was that right?

A  No, sir. Only six or eight of those would be more than 30 acres.

Q  All right. Okay. I didn't --

A  The majority -- quite a few of them have interest in the business, some of them are thinking about planting some trees, but most of them have less than 30 acres.

Q  We've had testimony like -- in this regard in the other regions, but so I'll ask in South Carolina, but if a farmer has less than 30 acres, that farmer must have some other form of income or something, he's not a commercial pecan farmer. Is that correct?
A Lately with the export market and everything, we've been able to pretty well suffice with the 30 acres as the principal source of income. However, prior to that time we did direct marketing and we did some commercial -- well, we produced commercial vegetables and corn and fruits and sold them direct. But I think to just have pecans as an income, I think at less than 30 acres it won't justify it because of equipment cost and those kind of things.

Q Okay. Thank you.

MR. DAVIS: Those are all my questions, Your Honor.

JUDGE GUTHRIDGE: Any more questions from the USDA?

(No response.)

JUDGE GUTHRIDGE: Are there any questions from the audience for Mr. Harmon?

(No response.)

JUDGE GUTHRIDGE: No? So, Mr. Harmon, you're excused.

THE WITNESS: Thank you.
JUDGE GUTHRIDGE: Go speak with Ms. Thompson here.

(Whereupon, the witness was excused.)

(Pause.)

MR. QUIRS: Your Honor, we call Jeb Barrow.

JUDGE GUTHRIDGE: All right.

(Pause.)

JUDGE GUTHRIDGE: Mr. Barrow, while they're taking care of that, let me swear you in, if I could.

Whereupon,

JEB BARROW

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

(Pause.)

DIRECT EXAMINATION

BY MR. QUIRS:

Q    Jeb, thank you for coming here today. Before we start let me ask you a couple of questions. Did you receive a copy of what's been
marked Exhibit 1 in these hearings, which is a notice which -- from the USDA which was published in the Federal Register, which included the proposed Federal Marketing Order for pecans?

A     I did.

Q     Thank you. And did you also receive what's been marked Exhibit 23, which was an executive summary of the economic analysis that was prepared by Dr. Marco Palma?

A     I did.

Q     Thank you. I understand that you have testimony you'd like to give in this matter today. If you would like to begin that testimony, that --

A     Sure.

Q     -- will be fine.

A     My name is Jeb Barrow. That's spelled J-E-B B-A-R-R-O-W, or Barrow as in wheelbarrow. And in -- I guess in the interest of complete accuracy and since I am under oath, I'll add that Jeb is not actually my given name, but rather is an acronym, it's my initials, the J-E-B.
I live on my farm near Matthews,
Georgia, which is the east central part of the
state, not far from Augusta, and I'm sure you
golfers there will know Augusta. And I farm 1000
acres of Improved variety pecans in Jefferson and
Burke Counties, and those are both Georgia
counties, something over half of which are now
producing. A copy of resume, meager though it
may be, is attached.

Under the Small Business
Administration definition, my farm is
characterized a large grower, meaning in excess
of $750,000 in gross revenue from pecans. I've
been in this business since 1974, 41 years. It
seems kind of amazing actually. For much of that
time the industry has been moribund.

Production has been static, or by some
measures, declining. Prices are varied from
season-to-season, sometimes profitable, sometimes
not. Budgeting, financial planning have just
been exercises in guesswork. And of course,
while prices for pecans have gone up and down
from year-to-year, cost of production has done
nothing but increase. And with the cost of
fertilizers, insecticides, fuel, labor, equipment
they've all risen over the years regardless of
the price I receive for my crop.

But -- and that's the plight of all
farmers. But perhaps most concerning, many of
our young people have not seen this industry as a
viable option and have been going elsewhere and
they've been absolutely right to do so. There
has been progress in some areas, most notably
things related to growing techniques, varieties,
pest control, equipment, things of that nature.

But marketing, no. Marketing methods
and scope have remained more or less unchanged
for 50 years. Aggressive marketing in this
industry is placing a sign on the side of a
highway. Consequently, until the advent of the
China trade, demand had not grown for 50 years.
International marketing, generic or otherwise,
well, that's just -- that's a novel concept never
tried with pecans.
But things are changing and there is new optimism. It started relatively recently with the eligibility of pecans for the USDA's Market Access Program, funds, as I'm sure most of you in this room know, that are used to promote international, but not domestic sales. Support from MAP funds, combined with more aggressive industry leadership, and the pioneering export efforts of some individual handlers has led to the China trade that we have today.

The effect has been startling, at least for growers of the large nuts favored by the Chinese. Orchards are being planted, equipment's being purchased, people are being hired and trained, and this is in an industry that's been stagnant since the 1960s, if not before. In some cases our sons and daughters returning to the family business.

What we need to do now is figure out some way to keep it going. But there are problems and there are challenges. For one, we've gotten ourselves into a position where we
are very vulnerable to any interruption in the China market. And as we all know, that could happen at any time for any of a number of reasons, political, bureaucratic or financial, the rising dollar, or this crack down on terrorists that they have going over in China as we speak.

The way to mitigate the China risk --

the way to mitigate the China risk is by growing domestic demand. Exactly what we expect this proposed marketing order to do.

A second challenge, the pecan market is bifurcated. There is strong demand with good prices for large, high quality nuts, the nuts favored by gift packers and Chinese customers. But there's weaker demand with lower prices for smaller nuts, especially natives.

It is true that there has always been bifurcation in the pecan industry with gift pack quality nuts bringing more than commercial nuts. But the additional demand for large nuts from China has exacerbated the differential. It is
argued correctly that any nut sold offshore will
reduce the supply of nuts available for domestic
use and thereby support domestic prices. But
even so, this price bifurcation has become
accentuated to a degree that it is divisive for
the industry.

I recently attended the Texas Pecan
Growers Association annual conference, and the
price bifurcation issue was the subject of more
than one let's say vigorous discussion. This is
an issue that can be successfully addressed by
the proposed marketing order.

Perhaps a little out in left field,
but -- let me start that over. Perhaps a little
out in left field, but recently in conversation
with another grower, and I'm not going to call
that growers name, but his initials are Mike
Adams.

(General laughter.)

THE WITNESS: He speculated about
promoting natives as essentially a separate
commodity. Can you imagine a promotional
campaign where native pecans are described as
what they are, wild pecans growing naturally in
the river bottoms of the American heartland,
prized by American Indians for thousands of
years, naturally nutritious and packed with
antioxidants. Can you imagine what a good
marketer could do with that?

   Now I can't sell anything. I couldn't
sell $20 bills for $10. But I think I could sell
that story. Who knows, maybe with the right
promotion native pecans could someday bring more
than Improved nuts. Now this is just one idea,
and maybe a cockeyed one at that, but pecan price
bifurcation, it is a concern, and it's certainly
something that could be reduced in a number of
ways with appropriate marketing.

   Third, we're challenged by the lack of
industry-wide grading and packaging standards.
Our product varies so much from variety-to-
variety, from grower-to-grower, from one area of
the country to another, that uniform standards
are a must to ever gain consumer confidence.
Everyone knows and trusts beef grades. The top grade prime will be the best and it'll cost the most. Lesser grades will not be quite as good, but they'll cost less.

Pecans have to be the same way. But that's far from the situation we have today. We've all seen pecans in grocery stores labeled Select or Fancy or USDA 1. They were anything but. A marketing order will resolve that.

There's a fourth challenged. There's now a lack of reliable information. Mr. Cobb made this point better than I can. The crop size estimate is not much more than a guess and there's widespread distrust of the inventory reports.

This is information I and other growers and handlers need to make rational pricing and investment decisions, and now it just simply does not exist. As things now stand, the insiders in the industry, and by insider I mean the larger growers, the larger accumulators and the shellers tend to have much better information
than the smaller growers, thereby disadvantaging small growers. Reliable information will level the field. Again, this will be addressed by the marketing order.

These challenges that I've described, all four of them, are well known, have been discussed here all day. And they're inter-related. And together they engender what I see as the fundamental problem facing the industry.

I was formerly in the manufacturing business, and from that background know that a manufacturer, a processor, a user of any raw material needs that raw material to have two economic characteristics, one, there needs to be reliable supply, and two, the price needs to be predictable.

It does not matter whether the raw material is pecans or steel, if you cannot get it when you need it, or if the price is so unpredictable that you cannot budget or price your product, then that's a problem. Pecans meet neither of these criteria.
Every grower knows how threatening it is when pecan prices crater. But a few years ago I saw through the eyes of one of my customers just how existentially disruptive it can be when prices spike, something growers generally view as a good thing. This customer was in the gift pack business. His products had been priced, catalogues mailed, orders taken, then the price of his principal raw material, pecans, increased by half and more.

He had to go back to his customers, re-price all of his products, and as you might imagine, this was not popular with his customers. He lost some, he irritated all of them I'm sure. That kind of situation destroys demand and is not good for anyone, grower or handler.

The proposed marketing order does not address this problem of unpredictable supply and price directly as it expressly prohibits any form of volume regulation. But the marketing order will result in better information on the anticipated size of the pecan crop and will grow
I believe those things, better information and growing demand, coupled with increasing supplies from new plantings already in the ground will lead to improved balance between supply and demand, and that will result in significant price stabilization beneficial to both grower and handler.

On another subject, one that's been discussed several times, namely who is defined a grower, under the proposed order only growers with more than 30 acres of pecans or more than 50,000 pounds average production per year over the last four years will be allowed to vote on the proposed order.

And the purpose of that is to distinguish between commercial growers and others. The problem is how to define a commercial grower. I tried to Google commercial grower, I thought you could Google anything, or commercial farmer, and found no consensus as to what the terms mean. So any line drawn can and
likely will be criticized as arbitrary.

What I'm going to do is give it my own
definition. I'm going to define a commercial
grower as someone who derives all or most of his
livelihood from growing pecans. By that
definition I saw this threshold is entirely
reasonable.

Any grower smaller than the proposed
threshold cannot justify the cost inherent in
such a small operation, and is most probably
merely a seller of pecans, likely from older
trees that happened to be on his or her property.
Or the hobby farmer that's been mentioned
earlier, or just simply a farmer that is not
going to put all of the inputs required,
fertilizer, irrigation, et cetera into his
orchards. I'm not aware of a commercial pecan
grower in my area by my definition, mind you,
that's smaller than 30 acres or produces less
than 50,000 pounds per year.

I have reviewed the economic analysis
summary prepared by Dr. Marco Palma, specifically
the projected 6.3 cents average price increase
for promotion versus the average 2-1/2 cent per
in-shell assessment cost. Now I have no idea
whether his analysis will prove right or wrong,
and meaning no disrespect to Dr. Palma, it is
said that God made economist so weathermen would
look good.

(General laughter.)

THE WITNESS: If anything, I suspect
his analysis understates the potential. After
all, the incremental increase in demand from
China resulted in increased prices well beyond
what the Palma analysis would suggest. I
strongly believe that promotion is near certain
to stabilize and/or increase pecan prices.

Advertising works in every other
industry, it will work here as well. I'm fully
aware of the cost that the Federal Marketing
Order will impose on my farm, and I do not
believe those cost unnecessarily burdensome.
Further, I believe the benefits of the Federal
Marketing Order to my farm, and the industry as a
whole, will greatly outweigh any cost associated with it.

The American Pecan Board had done an excellent job keeping me informed about its efforts to develop the proposed Federal Marketing Order. Their website, articles in Pecan South, in The Georgia Pecan Grower, and visits from representatives of the American Pecan Board to our growers meetings have helped.

In addition, they've conducted numerous meetings with small groups of growers and handlers, they've been available for one-on-one conversation, they've solicited input from everyone. Anyone who's wanted to have a say in this has had ample opportunity. Not only that, but a member of our grower organization is also a member of the American Pecan Board.

As a Board member of the Georgia Pecan Growers, I talk with a number of growers in Georgia and elsewhere. Most support the marketing order effort. A few have reservations, mostly concerning inviting the federal government
into the pecan industry. Now I imagine that most
of us in this room can sympathize with that.

But my answer, what I tell them is
that I see the proposed Federal Marketing Order
as an exercise in self-government. The pecan
industry is undertaking to govern itself under
the umbrella of the Agricultural Marketing
Agreement Act of 1937. It will be a very limited
government with specific authorities defined by
the marketing order.

As with all efforts to self-govern, it
will involve giving up some measure of individual
sovereignty in exchange for what we trust will be
a greater good. I think it's a good trade. But
maybe the best thing about this particular
government is that every five years you get the
opportunity to vote it out. Not just vote out
the bums running it and replacing them with
different bums, but do away with it altogether.
Sudden death accountability. And I find that
really reassuring.

In conclusion, I support the proposed
Federal Marketing Order for pecans. The pecan industry has historically been characterized by adversarial relationships between the various factions, the western growers in competition with the east, all the growers versus the shellers. And for sure in any one year the pecan business tends to be a zero sum gain where what I've gained in price, my customer loses in cost.

That's not going to change whether we have a marketing order or not. But viewed from a big picture, macro perspective we are all, growers and handlers, in the same boat, and if that boat is taking on water, we all risk drowning. The American Pecan Board has managed, maybe miraculously, to get all the stakeholders in the industry to see the industry from that big picture, all in the same boat perspective.

The bickering of the past has been put aside and the industry is now united, with growers, processors in support of this marketing order. I encourage the Secretary to implement the order as proposed by the American Pecan
Thank you. I appreciate your time. Any questions?

MR. QUIRÓS: Your Honor, we have no questions at this time, but we would like to tender this as Exhibit 64.

JUDGE GUTHRIDGE: Does the USDA have any objection?

MS. SCHMAEDICK: No objection, Your Honor.

JUDGE GUTHRIDGE: Does anyone in the audience have an objection?

(No response.)

JUDGE GUTHRIDGE: Hearing no objection, Exhibit 64 is admitted into the record.

(The document referred to was marked for identification as Exhibit 64, and received in evidence.)

JUDGE GUTHRIDGE: Mr. Quirós?

MR. QUIRÓS: No questions at this time.

JUDGE GUTHRIDGE: Does the USDA have
any questions?

MS. SCHMAEDICK: Yes, Your Honor.

Melissa Schmaedick, USDA.

CROSS-EXAMINATION

BY MS. SCHMAEDICK:

Q Thank you, Mr. Barrow, for your testimony. It was really a very delightful and interesting statement. Thank you.

A Thank you.

Q And you brought up two -- sort of two themes that I'd like to maybe expand on a little bit. You mentioned this idea of price bifurcation, which I understand to be sort of two price tiers, one for native and one for Improved. Is that what you were saying?

A Well, that's the extreme ends of it. I mean the Improved nuts that go in the gift pack trade or the China market on one end of the scale and the natives on the other end of the scale. But there are nuts in between that don't go all the way to the extremes. But, yes, that's the most extreme example of it right there.
Q: So based on your experience is there any price bifurcation between prices in the international market versus prices in the domestic market?

A: No, because -- not currently. I mean from my view as a grower, the Chinese have pretty much set what the price is. What they come in and offer in August or whenever the gift pack does. Now bear in mind I sell all -- everything I produce is something that would go China or go to a gift packer.

And when the Chinese -- when the price kind of gets determined in the China market, which is usually very early in the season, usually in August, then the gift packers have pretty much got the mass of that. So I don't think there's any bifurcation there, if that's where your question's going.

Q: So would it be more accurate to say that there's actually a correlation, so if --

A: Yes.

Q: -- China prices are higher, that's
going to lead to higher prices in the domestic market.

A     It's the incremental demand that drives prices, as in all commodities.

Q     Okay. Thank you. Towards the end of your testimony you made some comments about what I would look at as maybe compliance, having -- I think you stated the US government looking into your business. Do you remember those -- that part of your testimony?

A     Oh, I remember it well. It's one of my concerns as well.

Q     Okay. So I listened to that statement and then I looked at your resume and I see that you have some pretty impressive experience here as the Director and Treasurer of Alliance Petroleum --

A     That's correct.

Q     -- Corporation, as well as the majority owner and the Chief Operating Officer of Jebco, which I believe you told us was a manufacturing company.
A     That's correct.

Q     Right. So in answer to my next questions, if you could for just a moment take off your pecan grower hat and put your Director hat on or you CEO -- or your COO hat on. Can you tell me how important is it to have an internal compliance plan, how important is it to make sure that you're able to check your records and make sure that everything is in check?

A     Extremely.

Q     So would you say that having a compliance component --

A     Define a little bit what you mean by compliance plan. I'm not really sure I'm with you on this one.

Q     Oh, my apologies. That's a term that we use in USDA for --

A     To comply with what?

Q     -- for existing marketing orders. Most often there are committees or boards that are required to have a compliance plan that basically causes sort of an internal auditing
system, and then also that coordinates that
information check with reports that are coming in
from the handlers in the industry so that there
is sort of a continuous accurate accounting of
assessments and production and then the internal
business operations of the committee, or in this
case it would be the council.

A     I would say it is absolutely critical.

Q     Okay. So thank you for -- my next
question is do you think it's important and, in
fact, would you consider it perhaps to be an
essential component of running a good business?

A     Yes.

Q     Thank you.

A     Without compliance, I mean
demonstrated compliance, you just lose
credibility.

Q     Thank you.

MS. SCHMAEDICK: I have no further
questions.

JUDGE GUTHRIDGE: Are there any more
USDA questions?
(No response.)

JUDGE GUTHRIDGE: No?

MR. QUIRS: No further questions,

Your Honor.

JUDGE GUTHRIDGE: Does anyone in the

audience have a question for Mr. Barrow?

(No response.)

JUDGE GUTHRIDGE: None? Okay. Mr.

Barrow, you're excused.

THE WITNESS: All right.

JUDGE GUTHRIDGE: If you would check

over here with Ms. Thompson to see --

THE WITNESS: Sure.

JUDGE GUTHRIDGE: -- if she has any

spellings or anything that she needs help with.

THE WITNESS: Okay.

(Whereupon, the witness was excused.)

MR. DAVIS: Your Honor, the Proponent

Group calls as its next witness Mr. R.G. Lamar.

I believe Mr. Lamar's here.

(Pause.)

JUDGE GUTHRIDGE: While they're
handling that, could you please raise your right hand?

Whereupon,

R.G. LAMAR

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. Lamar.

A     Good afternoon.

Q     Do you have -- well, first, in case I missed in the shuffle here, have you stated your full name for the record?

A     I have not.

Q     Could you spell that -- state your full name and spell it for us, please.

A     My name's R.G. Lamar, first name is spelled R-G, last name is spelled L-A-M-A-R.

Q     And do you have in front of you Exhibit 1 to these proceedings, and also Exhibit 23 I believe --
A     I do.
Q     -- the economic analysis thing. And
have you had an opportunity to review those in
preparation for your testimony today?
A     I have.
Q     Okay. I understand you've prepared a
statement you'd like to deliver?
A     That's right.
Q     Could you do that for us?
A     My name is R.G. Lamar, it is spelled
My father, brother and I farm 2,300 acres of
Improved pecans in six counties in the middle of
Georgia. A copy of my resume is attached.
Q     I have to interrupt you here just for
a second. And I'll say we've been amazed at
the -- some of the witnesses that we've had and
their experiences and their life experiences.
But I do believe you're first witness who has had
experience with the United States State
Department, as I look on your resume. There has
to be a story there, so why don't you tell us,
what got you into that work and exactly what you did.

A Sure. Yeah, shortly after I graduated from college I went to Washington to work as an advisor for the Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs, the State Department. The Bureau has programs in about 140 countries that administer programs dealing with narcotics and law enforcement.

I spent most of my time focusing on programs that train police in Afghanistan, and also trying to encourage Afghan farmers to grow illicit crops.

Q As part of that did you actually travel to Afghanistan and meet with --

A I did, I went to Afghanistan three times. I had a chance to go to 23 countries during the time I was there. Of course, NATO was involved in security in Afghanistan, so we coordinated a lot of our programs there with all the countries in NATO.
Q  Okay. Terrific. Thank you. Thank you for your service.

A  You're welcome. The Small Business Administration classifies our business as a large pecan growers since we have more than $750,000 in gross pecan revenues each year.

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

    Cost of fertilizer, pesticides and equipment have all increased in recent years regardless of the prices we receive for our crop. Increased price stability would help our farm earn profits each year and put an end to the complex planning that erratic income requires.

    Further crop -- current crop estimates are often inaccurate and we have little reliable information about consumption. Without an
accurate market picture it's difficult for me to formulate a marketing strategy or to make reasonable business decisions about investments on our farm. More accurate market information would be a great help to strategic decision making.

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

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

Any grower that is smaller than the proposed threshold could not justify the cost inherent in such a small production. I'm not
aware of a single pecan farmer in my area who has a commercial farm that is smaller than 30 acres or produces less than 50,000 average pounds per year.

I've reviewed the economic analysis summary prepared by Dr. Marco Palma, specifically the projected average price increase from promotion of 6.3 cents per in-shell pound versus the average 2.5 cents per in-shell cost. I agree that promotion will increase prices. I'm aware of the cost the Federal Marketing Order may impose on my farm. I do not believe those costs are unduly burdensome. Rather, the benefits of the Federal Marketing Order to my farm will greatly outweigh its cost.

I'm on the Board of Directors of the Georgia Pecan Growers Association. In this capacity I speak with a number of growers from all regions of the state, and I have not heard one grower oppose the proposed marketing order. Instead there seems to be a consensus that we could all benefit from the authorities in the
proposed Federal Marketing Order for research, promotion, future handling regulations and information we could gain from the proposed marketing policy, data gathering.

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

In conclusion, I fully support the proposed Federal Marketing Order for pecans and 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 65 to these proceedings.

JUDGE GUTHRIDGE: Any objection from the USDA?

MS. SCHMAEDICK: No objection.
JUDGE GUTHRIDGE: Any objection from the audience?

(No response.)

JUDGE GUTHRIDGE: Hearing no objection, Exhibit 65 is aerated into the record.

(The document referred to was marked for identification as Exhibit 65, and received in evidence.)

JUDGE GUTHRIDGE: Mr. Davis?

MR. DAVIS: We have no questions at this time, Your Honor.

JUDGE GUTHRIDGE: Does the USDA have any questions?

MS. VARELA: Yes. Thank you.

CROSS-EXAMINATION

BY MS. VARELA:

Q Good morning -- or good afternoon now, Mr. Lamar. I known you've been with us for a little while today, so --

A Good afternoon.

Q -- given that you've been here to
hear some of the earlier testimony, I wanted to
ask you a few questions about some of the things
that you read in Exhibit 1, and I've heard some
testimony on.

First I'm going to look at Section 986.65, marketing policy. And you mentioned that
some of this information could be important to
the industry. Can you just give that list of
estimates and data a look over and maybe just
give us a couple of examples of how some of these
pieces of information would help your business on
a day-to-day level.

A Yeah. We -- I mentioned in my
testimony that strategic planning is difficult
right now. Part of that is not having accurate
information about the size of the crop from the
previous year that's left in stocks, also not
having a very accurate crop estimate for the
coming year.

So it's difficult to make informed
predictions of what the market situation might be
for the coming year, which means what our
revenues are going to be for our farm, for our business. If we had these estimates that are in the order, we could do a lot better job of predicting what our revenues are going to be I believe.

Q     And in your opinion is it helpful not just to have the overall picture, but maybe something broken down, like you see paragraph (c) there, breaking down into the different categories, the Improved, native and substandard pecans. Is that level of detail also important to the industry?

A     It could be important. It's not as important in my opinion as the whole picture.

Q     Thank you very much. After that I would like to move down just a little bit here to some of the authorities regulating handling. That's Section 986.69.

A     Okay.

Q     And in your experience what does the industry have to gain by having the ability to set some of these standards? I'm looking at
paragraph (a)(3) here where there's a wide range
of options, fixing the size, capacity, weight,
dimensions, the pack. I think you mentioned that
you do some exporting?

A We do, yeah.

Q How beneficial would those types of
authorities be to the industry overall in setting
some standards?

A Yeah, so you specifically mentioned
(a)(3) there. One risk we have in exporting is
spoilage of the product on the way. Everything
we -- well, not -- we ship to South America and
China. In both cases spoilage is the main risk
in my opinion, more so than default or any other
problems. Standardized packaging that works
would minimize the risk of spoilage. It would
also put everyone on an equal playing field as
far as the cost of that aspect of sales.

Outside of that particular section, I
believe -- and (a)(2) mentions requires for
minimum tolerances for particular grade, size or
qualities. It's already been mentioned today
that the current USDA standards that we have are
inadequate. A US Number 1 pecan could be a
really good pecan, or it could be just an average
pecan. We don't know a lot when say that.

So I think having standards about
grades could help us market pecans, in a way that
almonds and pistachios have done really well I
think, where the consumer can expect a product
that's a certain quality.

And as far as the packaging goes along
the marketing lines, I think someone mentioned
earlier as well we really do have a problem in
the industry with pecan kernels that are
available in the grocery store, sometimes you can
get good quality pecans, oftentimes they're
rancid. And it's been mentioned already today,
but a consumer who buys a rancid bag of pecan
kernels is not likely to go back.

Melissa, you mentioned in Utah you've
had pecans and had a bad experience, and I'm sure
its for that reason.

But the biggest problem that's causing
that problem is packaging. Oftentimes there's no nitrogen flushing in the packing, or it's with packing materials that allow a lot of oxygen to pass through the material and a lot of light. There are ways, as an industry, I believe we could really improve the standard of all the products that we're offering the consumer that would be a great help to us.

Q  Okay. And right just then you brought up something that we haven't heard a lot of year in terms of advances in different types of packaging. Is that type of research something that you think the order as proposed might look into, that would make that available to grower and --

A  I'm sure there are advances we could make in that area through research that would be funded by the order. But frankly I've talked to some experts at the University of Georgia about this and most of the research has been done. It's not that we don't know how to package pecans in a way that preserves them well, it's just that
we're not doing it.

Q    Thank you. That's very helpful.

A    Yeah.

MS. VARELA: No other questions from me. No further question from the USDA.

JUDGE GUTHRIDGE: No further questions from the USDA? I was waiting for somebody to speak up.

(General laughter.)

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

JUDGE GUTHRIDGE: Does anyone in the audience have a question?

(No response.)

JUDGE GUTHRIDGE: No? Mr. Lamar, you're excused. If you'd check over here with Ms. Thompson.

(Whereupon, the witness was excused.)

MR. DAVIS: Your Honor, I believe that that is the Proponent's last witness for the day.

JUDGE GUTHRIDGE: Ms. Wray, have we --

MS. WRAY: No.
JUDGE GUTHRIDGE: -- had anyone sign up?

MS. WRAY: No --

JUDGE GUTHRIDGE: How disappointing.

(General laughter.)

MR. DAVIS: It's five o'clock.

MR. QUIR S: A lot of people quit work at five o'clock, Your Honor.

MR. DAVIS: Shall we reconvene?

JUDGE GUTHRIDGE: I think then in that case -- USDA, do you have anything else today?

No?

MR. HILL: No, Your Honor.

JUDGE GUTHRIDGE: Well, we'll recess till eight o'clock tomorrow morning then.

MR. DAVIS: Thank you, Your Honor.

(Whereupon, at 4:52 p.m., the was recessed, to resume at 8:00 a.m., Tuesday, July 28, 2015.)
showed 289:17
showing 294:12

situations 81:1 120:11
232:4
six 89:13 131:16 201:9
228:10 240:11 316:3
316:20 338:7 349:4
349:6 367:8 374:7,10
401:13
six-year 326:13
Sixty 172:12
size 35:9 65:16 66:3
70:7 71:13 16,20 72:3
72:6 73:5 85:7 87:17
90:8 95:19 96:1,11,18
109:15 114:10 115:17
117:6 127:11 201:12
205:22 226:6 243:11
295:11 311:11
343:4 347:7 362:3,11
384:12 386:2 404:9
408:16 410:2,21
sized 103:16 243:13,19
297:17
sizes 199:8 201:6
sizing 72:13 200:9
skipped 166:22 185:16
skipping 218:14
slow 258:21
slightly 265:21 266:1
slowly 15:2 175:17
small 14:19 16:12 18:5
19:12 47:13 60:2 63:3
67:5,10 69:5 75:9
77:19 114:4,16,17
115:5,8,8 116:3,9,9
116:12,13,16 117:4
125:11 147:12 160:1
160:6,7 178:6 183:6
190:9 204:11 225:1
226:21 242:18 243:3
243:13,19 271:2
272:3 277:4 291:14
297:8,15 298:3 299:3
309:17 313:12 316:19
338:5 343:7,13
360:18 19 363:3
368:13 378:10 385:2
388:10 390:11 403:3
404:22
small/large 125:5
smaller 47:9 60:6 62:21
68:16 114:5 116:3
125:7 194:15 201:7
204:15 212:1,2
216:11 363:1 371:5
381:17 385:1 388:8
388:19 404:20 405:2
smart 183:13 336:22
Smith 16:1
Smith-Lever 180:16

smoothie 186:17
snack 183:1
so-called 270:5
social 17.7 184:2
soil 331:7
sold 60:19 92:16 96:21
96:22 184:2 193:22
210:9 292:19 322:10
324:9,17 347:22
371:12 373:7 375:7
382:1
solicit 79:1 141:21
solicited 390:13
solid 340:15
solution 153:3
somebody 44:21 45:14
47:11 120:14,20
142:12 146:11 147:20
203:5 210:20 270:12
270:18 275:21
278:21 279:15 288:11
305:4 351:17 413:7
somebody's 283:11
348:22
someday 383:11
somewhat 50:1 239:21
240:3
son 13:14 182:20
sons 380:17
soon 278:6,8
sorry 19:17 46:6 49:2
54:6 61:19 65:10 76:3
76:6 78:11 102:3,15
104:4 111:22 112:6,6
131:15,19 132:5,6,7
135:11,17 137:4
160:3 207:14 220:16
244:5 246:12 253:9
269:5 276:20 290:18
290:22 314:10 315:9
329:5 358:2 360:8
sort 29:12,20 97:17
99:1 110:14 113:6
159:10 161:9 189:9
190:13 202:1 241:19
248:16 250:21 292:16
297:5,6,11 343:1
344:3 367:13 394:10
394:13 397:22 398:4
sound 192:11 225:11
320:13 354:19
sounded 354:21
sounding 272:8
sounds 113:18 115:11
271:16 354:17
source 14:4 331:4,12
375:3
sources 103:13 107:4
south 1:7 2:5 12:18
451
165:13 170:13 177:19
182:13 183:4 194:19
195:6 198:16 200:16
201:22 212:6 217:14
218:11 219:12 237:5
248:21 250:13 274:12
277:16,21 278:12
285:1 286:1 288:10
295:20 297:6,10,13
298:9 307:12 308:18
317:20 322:21 324:2
324:6,10,20 325:2
326:17 328:13 333:2
341:15 346:4 348:4
349:16 353:10 355:7
356:22 369:11 375:4
378:16 381:3 393:1,4
393:21 402:11,19
407:12
timely 38:7,11
times 20:16 81:11 82:9
129:18 130:3 155:15
163:15 165:14 201:11
202:8 203:20 209:10
223:13 225:13 270:21
292:20 324:14 325:4
387:10 402:18
timing 44:20
tireless 337:8
title 170:9 332:4
toasted 17:1
toasting 16:19 132:21
133:8
today 5:6 14:8 24:16
150:7,21 152:19
154:9,11 187:11
213:8 292:3 296:22
297:11 322:10 323:6
330:15 338:15,17
343:8 358:19 359:3
376:20 377:13 380:10
384:6 401:4 407:20
410:22 411:16 414:11
today's 359:3
token 154:21 155:21
176:5 178:21
told 9:3 13:8 396:21
tolerances 410:21
Tom 3:7 357:14 358:7
360:1
tomorrow 414:15
tool 172:18,20 190:8,8
tools 172:20 173:2
top 129:9 187:3,7,17
384:1
topic 205:18 263:21
torture 97:5
total 32:4 106:8 107:10
108:2 216:1 257:5,6

(202) 234-4433

310:13,20 349:6
totally 314:5 341:11
touch 218:16
touched 184:7 259:14
262:4
tough 371:15
tour 159:21 162:11,12
town 226:9 240:4
track 46:5 51:22
tracking 38:16 50:21
51:13
trade 20:5 33:19 91:15
94:14,16 95:2,2,7
96:4,13 100:4,13
107:11 108:1 203:15
226:22 232:19 321:17
332:17 338:9 348:11
379:19 380:10 391:14
394:18
traditionally 89:19
trail 224:12
train 402:12
trained 380:15
transaction 222:19
224:13
transactions 40:11
transcript 278:22 318:5
318:6
transfer 32:17 40:7
52:8,9 60:12,17,21
65:2,19 67:9,22 69:4
69:10,19 221:10,13
221:16,19,19 222:13
223:5
transferred 221:12
236:19
transferring 66:9
transfers 59:15,18 61:5
61:8 66:10
transparency 81:15
283:8
transport 133:5
trash 17:17
travel 359:2 402:16
Treasurer 396:16
treatment 86:13,16
tree 110:17 130:15
291:11 324:14 339:4
339:4 347:11 362:14
404:11
trees 12:6 13:19 14:1
19:4,6,6 75:15 291:8
304:14,16 309:10,11
310:17,20 331:5
339:5 346:3 360:14
363:5 371:18 374:15
388:12
tremendous 235:18
331:17 341:14

trencher 18:1
trial 323:18
tried 47:19 64:3 105:12
147:7 156:5,15 215:2
379:22 387:19
Trinity 11:17
Triphenyltin 322:7
trips 150:17
trouble 64:3
truck 16:10 319:5
true 68:19 122:10 149:2
178:4 245:10 273:3
275:17 317:14 381:18
truly 178:2 187:22
287:5 355:9
trumps 117:6
trust 157:18 158:10
391:13
trusted 157:16
trustee 82:6
trusts 384:1
try 16:3 28:22 34:10
41:8 71:4 73:11 107:6
115:7,9 136:1 137:13
139:10 141:2 150:10
154:13 155:4 158:17
184:8 190:3 198:17
205:14 217:7,10
254:7 259:2 269:21
278:5 292:6 298:14
298:20 370:11
trying 14:2 21:8 29:9
30:9 41:11 48:8 63:1
66:8 72:20 84:16 90:7
97:22 102:22 103:7
103:17 114:12,13
139:7 148:7 151:15
153:4 157:15,21
158:11 159:1,14,20
164:7 166:18 174:20
178:18,21 179:5
183:4 184:21 205:4
214:16 215:14 221:4
254:13 262:16 263:10
269:20 271:17 277:8
312:12 333:3 341:16
353:1 402:13
Tuesday 6:1,5 414:18
turn 4:12 79:11 83:14
107:17 113:1 121:3
122:2 152:13 241:17
244:1 247:22 286:5
turned 16:1 129:5
158:22 288:9
Tuskegee 180:18,19,20
180:21
Twenty 304:7,8
twice 293:10 294:14
two 11:6 13:12 15:3

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16:10 23:10 42:4
43:21 50:22 90:13
102:15 103:18 155:15
176:2 177:9 183:19
201:9 224:4 225:14
225:14 228:21 235:6
242:3,9 244:22 245:6
245:7,9,11 246:8,8,11
246:12 249:20 250:4
251:22 252:7,10
254:1 255:22 256:2,6
257:7,18,21 258:14
258:18 270:7,8,9
286:16 287:14 289:16
292:16 297:3 309:14
318:10 325:10,11
328:3 342:11 345:5
355:18 359:14 366:5
385:13,15 394:10,10
394:13
two-and-a-half 126:18
two-thirds 89:5,10
93:10 136:12,15
137:1
two-year 246:8 325:4,5
325:8 330:9
type 29:5 56:2 88:12
103:8 110:6,19
168:10 197:18 200:11
201:17 204:17 224:11
264:4 282:2 309:17
313:3 316:12 338:6
366:18 367:14 368:22
412:12
types 34:15 102:15,16
171:16 197:15 222:17
245:19 410:6 412:11
typical 313:16
U
U-L-L-E-R 303:1
U.S 2:3,8
Uh-huh 118:22 297:20
Uh-oh 48:21
ultimate 6:14
ultimately 26:15 104:5
170:16
umbrella 391:7
un-assessed 52:15,17
53:1,3,13 54:8,16
91:10 233:12,18
unable 9:13 113:10
unanimity 155:22 216:1
unanimous 158:15
218:2,3
unchanged 379:15
unclear 228:15
underestimated 194:9

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| 338:14 |
| 80s 18:8 175:15 372:16 |
| 372:20 373:3 |
| 9 |
| 90 18:18 |
| 900 324:5 338:3 |
| 90s 18:8 21:9 |
| 961 32:15 |
| 980 19:4 |
| 986 27:10 121:5,9 228:9 |
| 259:11 |
| 986.1 121:4 |
| 986.12 97:8 |
| 986.14 122:9 |
| 986.19 132:13,15 |
| 986.26 95:9,9,20 216:17 |
| 217:20 |
| 986.32 144:4 265:10 |
| 266:8 |
| 986.32(b) 143:12 |
| 265:16 |
| 986.33 265:21 |
| 986.38 94:15 95:2 |
| 986.41 54:3,4 |
| 986.42 90:1 |
| 986.45(c) 143:6 265:22 |
| 266:8 |
| 986.46 241:17 249:9 |
| 986.47 113:1 244:1 |
| 986.47(c) 118:13 |
| 986.49 139:19 |
| 986.50 244:12 |
| 986.51 262:17 |
| 986.54(g) 212:18 |
| 986.55 136:8 169:16 |
| 986.55(c) 89:15 93:9 |
| 986.58 143:16 265:18 |
| 986.60 25:3,5 26:14 |
| 28:13 |
| 986.61 31:10,11 40:20 |
| 77:3 |
| 986.61(a) 32:16 |
| 986.61(b) 33:7 |
| 986.61(c) 33:21 |
| 986.61(d) 35:1 |
| 986.61(e) 36:11 |
| 986.61(f) 37:5 |
| 986.61(g) 38:4 |
| 986.61(h) 38:14 40:8 |
| 61:18 123:18 142:19 |
| 986.61(l) 39:9 40:14 |
| 61:18,22 144:5 |
| 986.62 32:18 59:13,17 |
| 61:16,21 67:22 69:4 |
| 986.63 74:2 78:14 |
| 141:14 |
| 986.64 79:12 82:21 |
| 83:15 |

986.64(a) 80:4
986.64(b) 80:16
986.64(c) 81:4,14
986.64(d) 81:16
986.64(e) 82:5
986.65 25:4 58:7 87:6
  87:14 88:12,15 89:3
  94:8 99:12 122:2,12
  166:20 167:12 408:6
986.65(a) 90:4
986.65(b) 90:9
986.65(c) 90:18
986.65(d) 91:4
986.65(e) 91:9
986.65(f) 91:15
986.65(g) 91:21
986.65(h) 92:7
986.65(l) 92:14
986.65(j) 92:21
986.67 130:13 170:8
  172:10,13
986.68 127:18 173:22
986.69 69:15 95:13
  198:14 213:21 214:4
  217:2 220:15 232:2
  409:18
986.70 231:8 237:17
986.71 237:10
986.72 238:9
99 259:12
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: USDA

Date: 07-27-2015

Place: Tifton, Georgia

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

______________________________
Court Reporter

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