

## UNITED STATES DEPARTMENT OF AGRICULTURE

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## PUBLIC HEARING

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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

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TUESDAY,  
JULY 21, 2015

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

BEFORE:

CLAY G. GUTHRIDGE  
Chief Administrative Law Judge  
Federal Maritime Commission

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KATY LOOFT, USDA  
MELISSA SCHMAEDICK, USDA  
JENNIE M. VARELA, USDA

## TABLE OF CONTENTS

Witness	Direct	Cross	Redirect	Recross
David Salopek	5	14	32	55
Jennifer Ivey	60	65	70	
Kevin Ivey	72	78	95	
G.L. Straley	107	114	128	132
John Heuler	136	144		
Albert Keck	176	180		
Jay Glover	198	205	218	
Ben King	224	231		
Erin Steidlmayer	247	252		
Eduardo Medina	258	266	287	
Dr. Randy Hudson	296	306	339	340

## Proponent

Exhibits	Marked	Rec'd
30 Testimony of David Salopek		13
31 Testimony of Jennifer Ivey	60	65
32 Testimony of Kevin Ivey	71	77
33 Testimony of G.L. Straley	106	114
34 Testimony of John Heuler	136	143
35 Testimony of Albert Keck	175	180
36 Testimony of Jay Glover	197	204
37 Testimony of Ben King	224	230
38 Testimony of Erin Steidlmayer	247	252
39 Testimony of Eduardo Medina	258	266

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

2 7:59 a.m.

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

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

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

14 One thing I forgot to mention  
15 yesterday or I should have mentioned yesterday  
16 and didn't -- I didn't forget about it. I hadn't  
17 thought about it -- is the representatives of the  
18 Department of Agriculture and myself also are  
19 prohibited from talking about the substance of  
20 this agreement with any interested party. If you  
21 approach one of the Department of Agriculture  
22 persons and they sort of give a you're-in-the-

1 headlight-sort of look about things, they're  
2 afraid that they're going to talk to them about  
3 what's going on here. They can talk about  
4 procedural matters such as what witnesses will  
5 testify or what order or things like that.

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

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

13 (PROPONENT WITNESS DAVID SALOPEK  
14 SWORN)

15 JUDGE GUTHRIDGE: All right. Proceed.

16 MR. QUIROS: Thank you.

17 DIRECT TESTIMONY

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

21 MR. SALOPEK: I have.

22 MR. QUIROS: Thank you. And you had

1 a chance to read that and review it.

2 MR. SALOPEK: I have.

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

7 MR. SALOPEK: I have.

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

10 MR. SALOPEK: Yes, I have.

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

14 MR. SALOPEK: Sure. Thank you. Good  
15 morning. My name is David Salopek. It is  
16 spelled D-A-V-I-D S-A-L-O-P-E-K. I live in Las  
17 Cruces, New Mexico. I am owner and manager of  
18 David Salopek Farms. A copy of my résumé is  
19 attached.

20 David Salopek Farms is a pecan farm in  
21 Las Cruces, New Mexico. WE have over 1700 acres  
22 of pecan currently in production. We also have

1 160 acres of new pecan trees that will be in  
2 production in another four to seven years.

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

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

15 MR. SALOPEK: Sure.

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

20 MR. SALOPEK: Yes, I am.

21 MR. QUIROS: I saw two pictures that  
22 were pointed out by one of our former witnesses,

1 Louis Salopek, on that. Can you kind of help tie  
2 that in for us? What were those? Who were in  
3 those pictures and when were those taken?

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

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

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

21 I had an uncle in El Paso, Texas who  
22 got sick. And my grandfather was asked to go



1 help him. And he stayed there and helped him  
2 there and our uncle in El Paso helped him buy  
3 some land which is now where the state line is.  
4 It's a restaurant in El Paso.

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

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

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

21 MR. SALOPEK: We are considered a  
22 large pecan grower under the Small Business

1 Administration guidelines. We have attended  
2 several meetings where representatives of the  
3 American Pecan Board spoke about the Federal  
4 Marketing Order.

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

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

17 Overall, I'm aware of the cost that a  
18 Federal marketing order may impose on my farm.  
19 And I do not believe those costs are unduly  
20 burdensome. Further, I believe that the benefits  
21 of a Federal marketing order to my farm will  
22 greatly outweigh any costs associated with it.

1           In recent years, I've seen a wide  
2 variation in prices I have received from my crop.  
3 When I sold my crop if I wasn't happy with the  
4 price no one had ever put a gun to my head and  
5 made me sell. With such a wide variation in  
6 pricing it makes it difficult to know if we are  
7 receiving a fair price every year and to plan for  
8 the future of our farm.

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

21           Increased price stability and more  
22 accurate market information would greatly benefit

1 my farm and others. I think my farm and the  
2 industry would also benefit in the future from  
3 uniform, updated grade, size, packaging, quality  
4 packaging, shipping protocols if found to be  
5 necessary and other handling requirements as we  
6 compete with other tree nuts for shelf space and  
7 consumer attention.

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

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

1 his farm.

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

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

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

12 MR. HILL: No objection.

13 JUDGE GUTHRIDGE: Any objection from  
14 anyone else?

15 (No verbal response)

16 Exhibit 30 is admitted.

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

22 Do you have any questions, Mr. Quiros?

1 MR. QUIROS: I'll reserve if there are  
2 any questions.

3 JUDGE GUTHRIDGE: Any questions from  
4 the Department of Agriculture?

5 CROSS EXAMINATION

6 MS. VARELA: Good morning.

7 MR. SALOPEK: Good morning.

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

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

16 (Laughter)

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

21 MR. SALOPEK: Yes.

22 MS. VARELA: Can you tell us a little

1 bit about the information that you have now and  
2 how the order might help you get better  
3 information in the future as you understand it?

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

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

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

21 He said, "If I see nuts on a tree  
22 driving 60 miles an hour, it's a pretty good

1 crop. If it's a 10 miles an hour crop, now we  
2 have a problem." This is the type of data that  
3 we have to make decisions with. It's just  
4 incredibly erratic.

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

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

19 MR. SALOPEK: Yes.

20 MS. VARELA: And you also have taken  
21 a look at Exhibit 1 which is the proposed order.  
22 Did you look at some of the language there



1 regarding warehousing and reporting crops stored  
2 in your warehouse?

3 MR. SALOPEK: Yes.

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

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

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

19 MS. VARELA: That got to part of it.  
20 Are you aware of -- To your knowledge in the  
21 industry, is most of that warehousing done by  
22 handlers or is there also some warehousing done

1 by growers?

2 MR. SALOPEK: I'd say most of it done  
3 by handlers.

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

6 MR. SALOPEK: Yes.

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

8 Thank you.

9 CROSS EXAMINATION (Cont'd)

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

12 MR. SALOPEK: Good morning.

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

17 MR. SALOPEK: Correct.

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

21 MR. SALOPEK: I did it for a few  
22 reasons. One primarily was for the marketing. I

1 harvest pecans and I immediately put them in the  
2 freezer. And they're held at zero degrees. And I  
3 will look at the market, talk to people.

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

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

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

22 MS. SCHMAEDICK: And you mentioned

1 that you warehouse the pecans 11 months. Is that  
2 correct?

3 MR. SALOPEK: Yes.

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

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

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

19 (Laughter)

20 MS. SCHMAEDICK: So the concept of  
21 warehousing carry in brings me to another  
22 component in the proposed program.

1 MR. SALOPEK: Yes.

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

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

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

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

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

17 MR. SALOPEK: I think so.

18 MS. SCHMAEDICK: Why is that August  
19 31st date important?

20 MR. SALOPEK: It's the transition just  
21 before the new crop arrives. We start harvesting  
22 pecans in the United States around the end of

1 September, the first of October. So that would  
2 allow the books to be cleaned up right before the  
3 start of the new season.

4 MS. SCHMAEDICK: So does that August  
5 31st reporting date tie into the overall  
6 understanding of the market and the product  
7 that's being warehoused or carried in?

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

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

16 MR. SALOPEK: Yes.

17 MS. SCHMAEDICK: So I'll read the  
18 statement here. It says "Only growers with more  
19 than 30 acres of pecans or more than 50,000  
20 pounds of the average production per year over  
21 the last four years will be allowed to vote."  
22 Why is that four years? What's the significance

1 of four years as opposed to --

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

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

17 MR. SALOPEK: Yes.

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

21 MR. SALOPEK: I believe I am.

22 MS. SCHMAEDICK: Is that something you

1 feel comfortable sharing your opinion on?

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

5 MS. SCHMAEDICK: Inner handler  
6 transfer.

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

10 MS. SCHMAEDICK: Correct. Yes.

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

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

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

18 MS. SCHMAEDICK: Referring to Exhibit  
19 1.

20 MR. SALOPEK: Yes.

21 MS. SCHMAEDICK: The inner handler  
22 transfer would allow the transfer of pecans from



1 one handler to another.

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

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

7 MS. SCHMAEDICK: Yes.

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

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

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

14 JUDGE GUTHRIDGE: And you say also  
15 986.25.

16 MR. HILL: Two five.

17 MS. SCHMAEDICK: Yes.

18 JUDGE GUTHRIDGE: That is the  
19 definition.

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

22 MS. SCHMAEDICK: Yes.

1 MR. QUIROS: Here's another definition  
2 for you.

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

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

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

20 MR. SALOPEK: Okay.

21 MS. SCHMAEDICK: As a grower in Mesila  
22 Valley, what are some of the challenges that you

1 face in terms of managing your farm?

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

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

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

17 And everything that is tied to  
18 agriculture is all fuel based. So our fuel  
19 costs, I used to buy nitrogen back a decade ago  
20 for about 11 cents a unit. The same unit of  
21 nitrogen today is almost 80 cents. So it's had a  
22 700 and some percent increase.

1           And I don't agree that there is no  
2           inflation in this country. I'm not quite sure  
3           what part of the country they're talking about.  
4           But where I live it's pretty high.

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

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

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

20          MS. SCHMAEDICK: Thank you. For my  
21          last question, you touched on pecans and how you  
22          can freeze them. Why do you freeze pecans?

1 MR. SALOPEK: To uphold the quality.

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

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

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

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

20 MS. SCHMAEDICK: So when that pecan  
21 produce is out of your cold storage and it is put  
22 into the stream of commerce --

1 MR. SALOPEK: Yes.

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

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

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

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

20 MR. SALOPEK: The one thing that would  
21 help a lot and I think this proposed marketing  
22 order could help would be to educate the people

1 who sell pecans at the grocery store level on how  
2 to maintain a top quality pecan. If they could  
3 be in some sort of refrigerator storage at the  
4 stores and I know that's basically expensive or  
5 keep them refrigerated and only put a limited  
6 supply out in the store instead of putting them  
7 all out there to sit on the shelves for three or  
8 four months.

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

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

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

21 MS. SCHMAEDICK: So would that  
22 consumer be likely to repeat purchases?

1 MR. SALOPEK: I think so.

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

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

6 MS. SCHMAEDICK: Thank you. No  
7 further questions.

8 MR. SALOPEK: Thank you.

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

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

15 MR. QUIROS: Yes sir.

16 REDIRECT EXAMINATION

17 MR. QUIROS: Mr. Salopek, I'm going to  
18 show you what is Section 986.14 of Exhibit 1. If  
19 you would take a minute to read the definition of  
20 fiscal year to yourself. I know you're familiar  
21 with this, but I wanted to show it to you before  
22 I ask you questions.



1           There was a question with regard to  
2 carry in inventory. Why is this important to you  
3 and when is that number important to you?

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

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

17          MR. SALOPEK: Yes.

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

21          MR. SALOPEK: It definitely has an  
22 impact on it.

1           MR. QUIROS: So understanding the  
2 carry in inventory is a critical component of  
3 understanding what might be a price set.

4           MR. SALOPEK: Correct.

5           MR. QUIROS: And having looked at the  
6 definition of fiscal year, it begins on October  
7 1st and ends on September 30th. Having that  
8 carry in inventory number as of August 31st is  
9 part of that equation that you need to know.

10          MR. SALOPEK: I believe so, yes.

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

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

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

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

1 those numbers.

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

14 MR. SALOPEK: Very much so.

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

22 MR. SALOPEK: Yes, I would agree with

1 that.

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

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

12 MR. QUIROS: Would it be helpful?

13 MR. SALOPEK: I think so.

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

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

19 MR. QUIROS: Thank you. Let's talk  
20 about the grocery stores. Again, I know that  
21 you're not a food scientist. We haven't  
22 qualified you as that type of expert. But from

1 your general knowledge of being in the pecan  
2 business all of your career, we haven't talked  
3 about sort of general degradation without  
4 freezing. Talk to us a little bit how long  
5 pecans can stay on a shelf without degradation.  
6 Or what are the stages of that degradation as you  
7 understand them?

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

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

21 Now when you remove the shell from a  
22 pecan for whatever reason the degradation is a

1 little quicker. And Mother Nature has something  
2 figured out in there and it will degrade not as  
3 quickly as it is once the shell is removed.

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

6 MR. SALOPEK: Yes.

7 MR. QUIROS: And how are they  
8 packaged?

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

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

14 MR. SALOPEK: They're typically  
15 shelled.

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

19 MR. SALOPEK: I have.

20 MR. QUIROS: And do you have an  
21 opinion about those or is it a wide variety?  
22 Tell me what you think.

1 MR. SALOPEK: Well, it's a wide  
2 variety. Normally, this time of year they're  
3 probably a little darker in color.

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

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

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

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

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

22 MR. SALOPEK: It's just a wide price

1 range that I have been experienced to in the  
2 previous 30 years of my career. You know I've  
3 seen prices move from one week to the next as  
4 much as 25 cents a point which is like 15 cents a  
5 point. And when things get very erratic like  
6 that, my gut reaction now that I have a place to  
7 store them is to step off the starting line and  
8 let the dust settle.

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

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

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

18 MR. SALOPEK: It just varies. I've  
19 actually sold pecans, the whole crop, in January  
20 and delivered the pecans in September for the  
21 processors. We worked out a cold storage  
22 arrangement.



1           I have sold part of the crop up front  
2           and just sold pieces of it as we go throughout  
3           the year. So I don't really have a set marketing  
4           plan. I just wait as I get information and make  
5           a decision then.

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

8           MR. SALOPEK: Correct.

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

11          MR. SALOPEK: Yes.

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

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

19          MR. QUIROS: It's a good number.

20          MR. SALOPEK: If you're doing  
21          everything in writing, it might be a little  
22          higher. And if you're doing the absolute bare

1 minimum, it's going to be dramatically lower.

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

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

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

15 MR. SALOPEK: Very much so.

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

19 (Off record discussion)

20 Your Honor, I think I've changed that.  
21 I think I'd like to go to assessments please.  
22 I'm going to show you what are the sections in

1 Exhibit 1, (h) and (I). I'd like you to take a  
2 look at it before I ask you any questions. It's  
3 Exhibit 1, Section 986.61, Subsection (h).

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

11 So this says to us -- and I'm going to  
12 ask you this as a question -- doesn't this say  
13 that a handler that is holding pecans on August  
14 31st will be required to pay the assessment rate  
15 if the pecans are in their possession on that  
16 date?

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

19 MR. QUIROS: Thank you. Now I'd like  
20 to show you Section 986.61 of Exhibit 1,  
21 Subsection (I) and let you take a moment to read  
22 that.

1           Mr. Salopek, this is a little  
2 different. This is a section that relates to  
3 growers as opposed to handlers. And it says, "On  
4 August 31st of each year, all inventory's  
5 warehouse by growers from the current fiscal year  
6 shall cease to be eligible for inner handler  
7 transfer treatment."

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

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

19           MR. QUIROS: Thank you, Mr. Salopek.  
20 What it does say is inner handler treatment will  
21 not be available after August 31st to growers  
22 that pass this on to handlers. Is that true?

1                   MR. SALOPEK: That's my  
2 interpretation.

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

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

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

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

22                   MR. SALOPEK: Okay. I would say in

1 this area 95 percent or more is all flood area.  
2 When you start getting over into Arizona, there's  
3 a lot more drip and sprinkler type irrigation.  
4 Flood area irrigation has been established here  
5 prior to growing alfalfa, cotton, some of the  
6 other crops with all these flood areas. And that  
7 is the type of infrastructure that we have.

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

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

22 There will be a little wider spread in

1 the beginning of the season when it's still cool.  
2 We don't have -- The trees don't have a lot of  
3 foliage on them. When you get to the latter part  
4 of the season your irrigation cycle could be as  
5 short as seven to ten days. So there is a  
6 variation in there.

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

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

21 MR. SALOPEK: Well, the irrigation  
22 that we have, the river water is always the best

1 quality. But you don't have it all the time,  
2 especially over the last 15 years.

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

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

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

22 When you're irrigating with the wells,



1 depending on the depth that your well will sit at  
2 besides the horsepower and the motor that you  
3 have it ranges anywhere from \$25 to \$40 an acre  
4 foot on the cost of that. And it takes  
5 approximately five to six acre feet of water to  
6 grow a good pecan crop.

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

10 MR. SALOPEK: Say that again.

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

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

21 That water will travel through the  
22 canals. You place the order with the District

1 and if you're on a good part of the canal you'll  
2 get water within 24 to 48 hours. Where I happen  
3 to be at I've always been a drought because it  
4 could take up to 10 days to get the water even  
5 when the lake is full.

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

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

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

18 MR. SALOPEK: Most of them are gravity  
19 flow. I do have parts of my farm that have some  
20 lift pumps in them. And that was just to get  
21 better access to the water. So there is some  
22 energy cost obtaining that water.

1 MR. QUIROS: Now if you could put this  
2 in perspective. Of all the agricultural inputs  
3 to growing pecans, how important is water?

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

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

10 MR. SALOPEK: No.

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

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

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

1 really get in full production.

2 You're going to have all these  
3 capitalized costs that you'll have to deal with  
4 that you're going to pay for for the next 15 or  
5 20 years. When I was growing up when my father  
6 was transitioning our farms from row crop farms  
7 into a pecan farm, we pretty much starved from  
8 the '60s to the '70s.

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

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

20 The last year right before my father  
21 passed away we were going to have our best crop  
22 in 1978. And it was Memorial Day. A big dark

1 cloud came over and took the whole crop over all  
2 of the southwest. Not just our farm.

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

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

10 MR. SALOPEK: Yes.

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

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

1 MR. QUIROS: So the difference is  
2 water.

3 MR. SALOPEK: It's all water.

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

10 MR. SALOPEK: At least.

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

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

19 And then you're going to farm it, till  
20 it, take care of it for the next several years.  
21 You're going to have at least \$1,000 an acre to  
22 \$1500 an acre establishing that orchard. So it's

1 a very expensive proposition.

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

5 MR. SALOPEK: It does and life.

6 MR. QUIROS: Thank you very much.

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

9 JUDGE GUTHRIDGE: Does the USDA have  
10 any?

11 MR. HILL: Just a quick follow-up.

12 RECROSS EXAMINATION

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

16 MR. SALOPEK: Yes.

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

22 MR. SALOPEK: It would appear that way

1 from my past experience.

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

7 MR. SALOPEK: Dramatically.

8 RECROSS EXAMINATION (Cont'd)

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

16 MR. SALOPEK: Yes.

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

21 MR. SALOPEK: Sure. We were paid on  
22 the quality. So if you take a pound of pecans



1 and you separate the shell from the kernel and  
2 you come back and you weigh the kernels, you  
3 divide it into your original weight and you'll  
4 come up with a shell which is say 56 percent of  
5 shell out.

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

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

15 MR. SALOPEK: Yes.

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

21 MR. SALOPEK: I think with accurate  
22 data there would be the ability to predict. It's

1 a twofold prong and I'm not going to blame  
2 everything on cold storage. When we have  
3 inaccurate crop predictions, we've had crop  
4 predictions that have been 280 million pounds and  
5 then all of a sudden it's 360 million pounds.

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

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

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

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

21 MR. SALOPEK: It depends on the year.  
22 You know it could be up to 30 percent. We

1 experienced that as recent as 2012. From the  
2 price in September -- and I'm just going off  
3 memory -- it went down almost \$1.30 a point in a  
4 relatively few week period.

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

7 (No verbal response)

8 JUDGE GUTHRIDGE: Any questions from  
9 the audience?

10 (No verbal response)

11 Mr. Salopek, you're excused.

12 (Witness excused)

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

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

19 (Off record comments)

20 Any time you want to call your next  
21 witness.

22 MR. DAVIS: We call Ms. Jennifer Ivey.

1 Ms. Ivey, can you come to the front?

2 JUDGE GUTHRIDGE: Ms. Gonzalez, are  
3 you ready?

4 MS. GONZALEZ: Yes.

5 (Whereupon, the above-  
6 referred to document was  
7 marked as Proponent Exhibit  
8 31 for identification.)

9 JUDGE GUTHRIDGE: Please raise your  
10 right hand.

11 (Proponent Witness Jennifer Ivey  
12 Sworn)

13 Proceed with your case.

14 DIRECT TESTIMONY

15 MR. DAVIS: Good morning, Ms. Ivey.

16 MS. IVEY: Good morning.

17 MR. DAVIS: Thank you for being here.  
18 I understand you have prepared a statement you'd  
19 like to deliver.

20 MS. IVEY: Yes.

21 MR. DAVIS: Why don't you proceed.

22 MS. IVEY: My name is Jennifer Ivey.

1 That's J-E-N-N-I-F-E-R I-V-E-Y. I live in El  
2 Paso County, Texas. My husband and I farm 400  
3 acres of improved pecans in El Paso County. We  
4 would be classified as a large pecan grower under  
5 the Small Business Administration definition.

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

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

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

19 Third, the handling authorities on  
20 size, grade and packaging are important if we are  
21 going to sell more pecans to domestic consumers.  
22 And we need to work on these items in the future.

1           Finally, we need an organization where  
2 all industry stakeholders meet and figure out how  
3 to move our crops forward. Too much time and  
4 energy is wasted because of growers and handlers  
5 are not working together in response to the U.S.  
6 consumers.

7           I understand that the Federal proposed  
8 order states that only growers of more than  
9 50,000 pounds of average production per year over  
10 the last four years will be allowed to vote on  
11 the proposed order. In my opinion, this  
12 threshold is reasonable because the grower that  
13 does meet this threshold is not a commercial  
14 grower. Any grower that is smaller than the  
15 proposed order could not justify their costs in a  
16 hearing, it is such a small production and it is  
17 most probably a seller of pecans from old trees  
18 that happen to be on the property or a healthy  
19 farmer or one that does not plant all commercial  
20 plants on the farm.

21           I am not aware of anyone in my area  
22 that has a commercial farm that is smaller than

1 30 acres or produces less than 50,000 average  
2 pounds per year.

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

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

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

1 complimentary aspirations.

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

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

14 MR. DAVIS: Thank you, Ms. Ivey. Let  
15 me clarify for the record. The Economic Analysis  
16 Summary of Dr. Palma that you referred to I  
17 believe that appears in this record as Exhibit  
18 23.

19 And also I would note that your  
20 curriculum vitae is attached to your statement.  
21 Is that correct?

22 MS. IVEY: That's correct.



1 MR. DAVIS: Your Honor, we tender as  
2 Exhibit 31 the testimony of Ms. Ivey.

3 JUDGE GUTHRIDGE: Is there any  
4 objection?

5 MR. HILL: No objection, Your Honor.

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

8 (No verbal response)

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

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

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

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

20 CROSS EXAMINATION

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

1 MS. IVEY: Good morning.

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

5 MS. IVEY: That's correct.

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

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

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

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

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

22 MS. IVEY: Well, we have those issues

1 and we bring Dr. Lucero over to discuss different  
2 things about these bounds.

3 MS. SCHMAEDICK: Okay. Thank you.

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

7 MS. IVEY: Oh yes.

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

11 MS. IVEY: Yes, there is.

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

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

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

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

1 comfortable.

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

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

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

11 CROSS EXAMINATION (Cont'd)

12 MR. HINMAN: Good morning. Don Hinman  
13 USDA.

14 MS. IVEY: Good morning.

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

20 MS. IVEY: I particularly would like  
21 the health benefits to be made aware especially  
22 in our society where health is just the number

1 one issue for most people and quality of their  
2 food. In comparison to the other nuts that are  
3 out there, pecans are so much better. And  
4 without that research we can't back it up.

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

11 MS. IVEY: I don't know.

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

17 MS. IVEY: Well, of course, any data  
18 that's going to improve the price and the ability  
19 for us to know how much it's going to be worth  
20 for us to continue in the whole production. Just  
21 as it is with many other products, you want to  
22 know what your competition has and what you're up

1       against.  So just to help you become a more  
2       productive farmer.

3                   MR. HINMAN:  Thank you.  No further  
4       questions.

5                   JUDGE GUTHRIDGE:  Any more questions?

6                   MR. HILL:  No.

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

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

11                                   REDIRECT EXAMINATION

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

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

21                   MR. DAVIS:  And do you believe that if  
22       there were uniform standards on the safety

1 concerns in handling that consumers might be more  
2 confident in buying a product that they know met  
3 certain standards and therefore they could be a  
4 little more confident in serving it to their  
5 family? Or they might be more likely to serve  
6 that product to their family.

7 MS. IVEY: Of course, definitely.

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

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

12 (No verbal response)

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

16 (Witness excused)

17 MR. QUIROS: Kevin Ivey please.

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

20 (Proponent Witness Kevin Ivey Sworn)

21 Okay. Proceed.

22 (Whereupon, the above-

1 referred to document was  
2 marked as Proponent Exhibit  
3 32 for identification.)

4 MR. QUIROS: Thank you, Your Honor.

5 DIRECT TESTIMONY

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

10 MR. IVEY: Yes sir, I have.

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

17 MR. IVEY: Yes, I have.

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

22 MR. IVEY: Okay. My name is Kevin



1 Ivey. It is spelled K-E-V-I-N I-V-E-Y. I live  
2 in El Paso County, Texas. My wife and I farm 400  
3 acres of improved pecans in El Paso County,  
4 Texas. We would be classified as a large pecan  
5 grower under the Small Business Administration  
6 definition.

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

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

20 The lack of accurate market  
21 information on the anticipated size of the pecan  
22 crop in any given year also makes it difficult

1 for us to negotiate a fair price for our crop and  
2 to make reasonable business decisions about the  
3 investments in our farm. Increased prices and  
4 more accurate market information would greatly  
5 benefit our farms.

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

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

19 Any grower that is smaller than the  
20 proposed threshold could not justify the cost  
21 inherent in such small production and is most  
22 probably a seller of pecans for older trees that

1 happen to be on his or her property, a hobby  
2 farmer, or one that does not plan to put in all  
3 the commercial inputs, fertilizer, water, etc. on  
4 his farm.

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

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

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

21 I am President of Western Pecan  
22 Growers Association and West Texas Pecan

1 Association. Both of these organizations focus  
2 on pecan grower issues. I'm also First Vice  
3 President of the U.S. Pecan Growers Council which  
4 focuses on marketing pecans internationally.

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

10 The American Pecan Board has kept our  
11 organization informed about its effort to the  
12 proposed Federal Marketing Order.

13 Representatives of the American Pecan Board  
14 regularly attend our growers' meetings to listen  
15 to us and answer our questions. I also know  
16 personally several members of the board of the  
17 American Pecan Board.

18 In conclusion, I fully support the  
19 proposed Federal Marketing Order for Pecans and  
20 urge the Secretary to implement the order  
21 proposed by the American Pecan Board. I will be  
22 happy to answer any questions.

1 MR. QUIROS: Your Honor, we tender  
2 this as Exhibit 32 for the record.

3 JUDGE GUTHRIDGE: Is there any  
4 objection from USDA?

5 MR. HILL: No objection.

6 JUDGE GUTHRIDGE: Is there any  
7 objection from the audience?

8 (No verbal response)

9 With no objection, Exhibit 32 is  
10 admitted.

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

16 Proceed, Mr. Davis.

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

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

21 MS. SCHMAEDICK: Yes. Melissa  
22 Schmaedick.

## 1 CROSS EXAMINATION

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

4 MR. IVEY: Thank you.

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

10 MR. IVEY: Okay. West Texas Pecan  
11 Association.

12 MS. SCHMAEDICK: Western Texas Pecan  
13 Growers Association.

14 MR. IVEY: Okay.

15 MS. SCHMAEDICK: Is that correct?

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

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

20 MS. SCHMAEDICK: My apologies.

21 MR. IVEY: Well, West Texas Pecan  
22 Association was set up in the late '60s. And I

1 believe it was set up as -- most of Texas is a  
2 weevil, quarantine area, pecan weevil which is a  
3 type of insect. But the five westward counties,  
4 far West Texas, are considered quarantine free.

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

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

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

20 So the work of the State Departments  
21 of Agriculture they keep an eye on this insect  
22 like they do any other insect. And as far as the

1 Texas Department of Agriculture is concerned they  
2 have Texas except for five westward counties in  
3 Texas as far as research with Texas A&M  
4 University.

5 There are a lot of places where the  
6 pecan weevil doesn't exist. However, it's an  
7 insect that -- it's a late season insect that  
8 emerges from the ground. They can -- After they  
9 come out, they chew into the nut and they deposit  
10 their egg and when the nut falls and the grub has  
11 that done they go down into the ground at 18 to  
12 20 inches where it will pupae for two to three  
13 years.

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

22 With the pecan weevil, it's very



1 difficult because they're not attracted to  
2 pheromones. The only way they could get them is  
3 to capture them.

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

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

12 MS. SCHMAEDICK: Yes.

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

22 However, education on the part of the

1 insect would be good. And we already have things  
2 in place for people to bring nuts from  
3 quarantiners to non-quarantiners. They have to  
4 have a requirement of chilling hours with that  
5 crop to make sure that the insect was present in  
6 the nuts. That would kill them.

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

13 MR. IVEY: I think any embracement  
14 could be involved in education. And the  
15 embracement would be to make sure that the  
16 shellers, the handlers, the first handlers, the  
17 second handlers, the third handlers which we have  
18 that the education and the knowledge of the  
19 insect and the vectors or the way it can be  
20 carried across to different parts of the United  
21 States would be the most effective way to treat  
22 and prevent the pecan weevil spreading.

1 MS. SCHMAEDICK: Thank you. Can you  
2 describe the pecan industry in West Texas? You  
3 mentioned that you have -- Is it 50 members?

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

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

12 CROSS EXAMINATION (Cont'd)

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

18 We've heard a lot of anecdotal  
19 evidence about new plantings coming on especially  
20 with crops or new trees that were planted in 2010  
21 or 2011 that there's not good data on those.  
22 Could you give us your view of about how much you

1 think was planted during that time period or the  
2 kind of trees you see coming on to the market in  
3 the next few years? Do you have a best guess of  
4 what type of increase in production we're looking  
5 at?

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

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

20 In the terms of new plantings, almost  
21 the things that I've seen. I myself count trees  
22 and I've been a lot of places and looked at the

1 new plantings. The amount of acreage that  
2 they've been planting in the last five years --  
3 I'll just take a wild guess -- in the Southwest  
4 it would be upwards of 15,000 acres, 20,000 acres  
5 possibly.

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

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

21 MS. VARELA: Thank you. And just to  
22 clarify a little when you refer to the Southwest

1 are you generally referring to West Texas and New  
2 Mexico or the entire southwestern region?

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

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

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

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

1                   JUDGE GUTHRIDGE: If I could follow up  
2 on one. The 15,000 to 20,000 acres you're  
3 talking about, is that nationwide or is that in  
4 the western region?

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

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

9                   CROSS EXAMINATION (Cont'd)

10                  MR. HINMAN: Don Hinman with USDA.  
11 You mentioned on page two that your farming  
12 industry would benefit from grade, size, quality,  
13 packaging, shipping protocols. If, for example,  
14 there were in the future a grade/size/quality  
15 standards developed through the Order, how do you  
16 think that would benefit the industry?

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

19                  MR. HINMAN: For example, if there  
20 were uniform grade/size/quality standards do you  
21 think that would increase consumer confidence in  
22 the market for pecans?

1 MR. IVEY: One of the things on the  
2 quality for sure is I believe pecans should be a  
3 refrigerated product. That's personal. And I  
4 agree with my constituents that testified earlier  
5 that, yes, they ought to be a cold kept food or  
6 kept to a period so they don't degrade.

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

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

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

22 MR. HINMAN: I would just refer to



1 that 1st paragraph where it's mentioned grade,  
2 size, quality, packaging and shipping.

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

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

17 So taken from that angle, I realized  
18 that we produce a smaller nut here in the west.  
19 And if you've commercially grown the stuff,  
20 there's a great quality issue that's being missed  
21 with the smaller nut. I think our oil content is  
22 far superior and the nut is really good.

1           So I think a grading system as far as  
2 size, quality and everything I've looked at from  
3 pecan and leading down to the oil content. So as  
4 far as the grade and the size, I think that there  
5 is the definition of the grading system so that  
6 we have everything in the same playing field.

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

9           CROSS EXAMINATION (Cont'd)

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

13          JUDGE GUTHRIDGE: Hold it farther  
14 away.

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

17          MR. IVEY: Pardon.

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

21          MR. IVEY: Yes.

22          MS. CHILUKURI: Just in terms of some

1 of the challenges that you face, are they similar  
2 to other growers in the central region? Or are  
3 they more akin to what people in the western  
4 region?

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

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

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

22 MS. CHILUKURI: Can you tell me a

1 little bit about your role as first vice  
2 president of the U.S. Pecan Growers Council and  
3 what you do?

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

10 MS. CHILUKURI: And what kinds of  
11 issues did you work on in that council?

12 MR. IVEY: Just the promotion of  
13 pecans.

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

21 MR. IVEY: Can you say that question  
22 again?

1 MS. CHILUKURI: Sure. Pages two  
2 through three of your statement, you state  
3 overall I'm aware of the costs the Federal  
4 Marketing Order may impose on my farm. And I do  
5 not believe those costs to be unduly burdensome.  
6 In referencing costs, can you tell me more about  
7 what those costs are?

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

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

20 It's a program that didn't work too  
21 well because when it's voluntary it's hard to get  
22 anybody to participate. You have people that

1 participate 100 percent. And you have people  
2 that don't participate at all.

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

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

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

22 MS. CHILUKURI: Thank you. No further

1 questions.

2 JUDGE GUTHRIDGE: Any more questions  
3 from the Agriculture?

4 (No verbal response)

5 Do you have any, Mr. Quiros?

6 MR. QUIROS: Yes sir.

7 REDIRECT EXAMINATION

8 MR. QUIROS: Thank you, Mr. Ivey, for  
9 your testimony. A couple of follow-up questions.  
10 The Western Pecan Growers Association and the  
11 West Texas Pecan Associations, those are both  
12 grower associations. Is that correct?

13 MR. IVEY: Yes sir.

14 MR. QUIROS: Thank you. I want to  
15 show you what is a portion of Exhibit 1, Section  
16 986.68, authority for research and promotion  
17 activities. I would like you to focus your  
18 attention with regard to the descriptions of  
19 research here. You testified that certain  
20 entomological issues you thought were better  
21 handled at the state level. Do you think it  
22 would be valuable for you as a grower and for the

1 industry as a whole to have studies of production  
2 research?

3 MR. IVEY: I don't know. I guess I  
4 have a level of multiple feelings on that. I  
5 think the production research is best left to the  
6 universities in the states. Of course, as far as  
7 in helping in terms of production research, it's  
8 hard to decide how much further we can go to --  
9 You heard what we have. Of course, I'm sure  
10 there were done in like the 1960s or the '70s or  
11 '80s as we go out into the future.

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

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

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

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

21 MR. IVEY: Yes, I do.

22 MR. QUIROS: Thank you. And then I'm



1 showing you the continuation of this section  
2 which talks about nutritional research. Do you  
3 think that would be helpful. There could be some  
4 industry wide management or establishment of  
5 research with regard to nutritional research in  
6 order to be able to promote pecans.

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

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

16 MR. IVEY: I think very important.  
17 Once America realizes just how good the pecan nut  
18 is I think it's really going to take off as far  
19 as getting the word out there. For the last 20  
20 years of my life, I've always had a shaking  
21 methods and have eight to ten ounces of pecans in  
22 there. And I get blood work done regularly. And

1 my good cholesterol and bad cholesterol are off  
2 the charts. They have to handwrite them in.  
3 They're not even on the numbers.

4 MR. QUIROS: High or low?

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

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

13 MR. IVEY: Yes, I do.

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

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

22 MR. QUIROS: I couldn't agree with you

1 more. You mentioned something in a discussion  
2 with regard to sizing and grading and what we  
3 call handling authorities under Section 986.69.  
4 Are you familiar or aware that the current  
5 industry sizing and grading requirements related  
6 to pecans were last promulgated in 1969 and 1986?

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

8 MR. QUIROS: And those are voluntary.

9 MR. IVEY: Pardon?

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

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

19 And of course in the upcoming Chinese  
20 market they like bigger pecans. So it's really  
21 pushed the direction and size wasn't important  
22 and now it's more important.

1           MR. QUIROS: Are you aware that there  
2 are any industry wide descriptions of sizing and  
3 grading -- let's just stick with those as an  
4 example -- that are not covered in the 1969 and  
5 1986 announcements?

6           MR. IVEY: Not to my knowledge.

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

12          MR. IVEY: Yes sir, it is.

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

18          MR. IVEY: Yes sir.

19          MR. QUIROS: I just wanted to know if  
20 you thought there might be other terms that are  
21 being used for sizing and grading that are  
22 locally or colloquial that farmers know what they

1 mean but they may not in fact be reflected in the  
2 current sizing and grading requirements?

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

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

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

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

19 MR. IVEY: That is correct.

20 MR. QUIROS: And you are aware that  
21 this is a domestic Federal Marketing Order. It's  
22 focused on the domestic market.

1 MR. IVEY: Yes sir.

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

4 MR. IVEY: No sir.

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

13 MR. IVEY: Yes sir.

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

1 MR. IVEY: Could you restate that?

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

15 MR. IVEY: No, it wasn't. I guess I  
16 used that term loosely. However, the originators  
17 could not have any of the assessment made or  
18 putting payments into that unless it was pecans.  
19 And it's kind of the story of the chicken and the  
20 egg. All new wealth, our new wealth, that you  
21 can take something or take nothing and make  
22 something into, that's borrowing.

1           The gold miner, the person that  
2           collects gold from the earth, that mines gold  
3           from the earth, they're just taking value out of  
4           what it already exists. It's been there forever.  
5           The farmer is actually creating new value. And  
6           so I completely understand with the crop that as  
7           we go on I'm sure that there will be payment  
8           assessments. If it wasn't for pecan existing,  
9           then an assessment wouldn't be paid.

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

14           MR. IVEY: Yes, I know that.

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

18           JUDGE GUTHRIDGE: Anything else from  
19           Agriculture?

20           (No verbal response)

21           Anyone in the audience have a question  
22           for Mr. Ivey?



1 (No verbal response)

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

5 (Witness excused)

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

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

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

17 JUDGE GUTHRIDGE: Let me ask is Sammie  
18 Singh here.

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

21 JUDGE GUTHRIDGE: Oh, I'm not asking  
22 you to testify. I just wanted to know if you

1 were here right now.

2 MR. SINGH: Yes, I'm here.

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

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

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

11 MR. SINGH: Yes.

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

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

18 Is Mr. Straley present?

19 (Whereupon, the above-  
20 referred to document was  
21 marked as Proponent Exhibit  
22 33 for identification.)

1 JUDGE GUTHRIDGE: Mr. Straley, could  
2 please raise your right hand?

3 (Proponent Witness G.L. Straley sworn)

4 JUDGE GUTHRIDGE: Mr. Davis.

5 MR. QUIROS: Yes Your Honor.

6 DIRECT TESTIMONY

7 MR. DAVIS: Good morning, Mr. Straley.

8 MR. STRALEY: Good morning.

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

13 MR. STRALEY: That is correct.

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

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

21 Before Chase Farms, I spent 32 years  
22 with Farm Credit of New Mexico in various

1 capacities with a focus on agriculture lending.

2 My résumé is attached.

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

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

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

21 I have reviewed the economic analysis  
22 summary prepared by Dr. Marco Palma,

1 specifically, the projected average price  
2 increase from promotion of 6.3 cents per in shell  
3 pound versus the average 2.5 cents per in shell  
4 pound cost.

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

8 MR. STRALEY: That is correct.

9 MR. DAVIS: Thank you.

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

18 I especially have two concerns that  
19 the proposed Federal Marketing Order addresses.  
20 First, we need to market to increase demand and  
21 help stabilize prices. Next, we need to continue  
22 researching the benefits of pecans. The American

1 Pecan Council is our best hope of doing both of  
2 these.

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

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

21 I think the pecan industry would also  
22 benefit in the future from grade, size, quality,

1 packaging, shipping protocols and other handling  
2 requirements as we compete with other tree nuts  
3 for shelf space and consumer attention.

4 I understand that under the proposed  
5 order any grower with more than 30 acres or more  
6 than 50,0900 pounds of average production per  
7 year over the last four years will be allowed to  
8 vote on the proposed order. In my opinion, this  
9 threshold is reasonable because a grower that  
10 does not meet this threshold is not considered a  
11 commercial grower.

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

20 I also understand that only shellers  
21 that handle more than one million pounds of in  
22 shell pecans per year will be eligible to

1 nominate and to be elected to the sheller seats  
2 on the Council. I believe this is also a fair  
3 threshold.

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

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

13 MR. STRALEY: Yes. That is.

14 MR. DAVIS: That is a commercial.

15 MR. STRALEY: Sorry. I misspoke.

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

21 The American Pecan Board has kept our  
22 team well informed about its efforts through its



1 website and personal meetings. In fact, Mr. Mike  
2 Adams met with Richard Chase, one of our owners,  
3 and Richard gave Mike some counsel on how to  
4 specifically handle substandard pecans which  
5 eventually was made part of the proposed Federal  
6 Marketing Order. I can say that the American  
7 Pecan Board has really reached out to all  
8 segments of the pecan industry over the last two  
9 years.

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

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

19 JUDGE GUTHRIDGE: Any objection from  
20 Agriculture?

21 MR. HILL: No objection, Your Honor.

22 JUDGE GUTHRIDGE: Any objection from

1 anyone in the audience?

2 (No verbal response)

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

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

10 MR. DAVIS: I'll reserve questions.

11 JUDGE GUTHRIDGE: Does the Department  
12 have any questions?

13 MS. SCHMAEDICK: Melissa Schmaedick,  
14 USDA.

15 CROSS EXAMINATION

16 MS. SCHMAEDICK: Good morning, Mr.  
17 Straley.

18 MR. STRALEY: Good morning.

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

21 MR. STRALEY: Yes ma'am.

22 MS. SCHMAEDICK: Thank you for your

1 testimony. Just a couple. One quick clarifying  
2 question. On the first page of your testimony  
3 you said that you have over 7,000 acres planted  
4 and over 4,000 acres currently in production. So  
5 is that 4,000 out of the 7,000 or is it 7,000 in  
6 addition to 4,000?

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

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

20 MR. STRALEY: Correct.

21 MS. SCHMAEDICK: And then you go on to  
22 say you do not believe that the costs of the

1 proposed program are unduly burdensome. And then  
2 later on also you said that same comment in  
3 reference to your shelling operation.

4 MR. STRALEY: Correct.

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

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

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

18 MR. STRALEY: Chief financial officer.

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

22 MR. STRALEY: Correct. In addition to

1 my years with Chase Farms, I was also 32 years as  
2 an agricultural layman.

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

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

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

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

10 MS. SCHMAEDICK: Exhibit 1 please.

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

13 (Off record comments)

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

17 MR. STRALEY: Correct.

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

22 MR. STRALEY: And again I'm having

1 trouble hearing exactly what you're saying.

2 MS. SCHMAEDICK: Sections 52, Council  
3 expenses.

4 MR. STRALEY: Sixty-two.

5 MR. DAVIS: Fifty-two.

6 MS. SCHMAEDICK: Fifty-two.

7 MR. STRALEY: Okay.

8 MS. SCHMAEDICK: Through 55 which is  
9 procedure.

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

12 JUDGE GUTHRIDGE: 38028.

13 MS. SCHMAEDICK: Yes.

14 MR. STRALEY: Yes, okay.

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

18 MR. STRALEY: Okay.

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

21 MS. SCHMAEDICK: Yes.

22 JUDGE GUTHRIDGE: Actually, I

1 misinformed you. 986.52 is on 38027. It starts  
2 at the bottom of the page and then she 52, 53,  
3 54, and 55. Okay.

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

6 MR. STRALEY: Okay.

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

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

21 MS. SCHMAEDICK: Thank you. And we'll  
22 move on to Section 53. Section 53 includes the

1 authority to create bylaws, make recommendations  
2 and receive important information to USDA. Are  
3 these fairly typical activities of an  
4 administrative type of committee or board?

5 MR. STRALEY: Yes, I would say so.

6 Yes, that would be exactly what it's set up to do  
7 which is to make recommendations.

8 MS. SCHMAEDICK: What is the  
9 importance of bylaws?

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

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

17 MR. STRALEY: Yes, I would agree. And  
18 again I think it's very important because it  
19 provides very good transparency for what the  
20 Council does and what they're involved with so  
21 that there is no chance for misappropriation of  
22 funds. It's clearly above board. Everyone can



1 see how we process it and what they're doing to  
2 it.

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

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

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

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

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

20 MR. STRALEY: Yes ma'am.

21 MS. SCHMAEDICK: It's a shelling  
22 operation. Is that correct?

1 MR. STRALEY: Yes, ma'am.

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

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

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

12 MR. STRALEY: Yes.

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

16 MR. STRALEY: I think some of the  
17 concerns they had were that they were not  
18 represented equally with the growers. However, I  
19 think that was overcome when they realized that  
20 the importance of having the product there and it  
21 takes the product in order to assess it. And  
22 they are just processing that product.

1           Although the growers will not pay  
2 directly the assessment, primarily the shellers  
3 will collect and pay that by reducing the costs  
4 that would be paid to the grower. So I think  
5 with that understanding they were willing to  
6 accept, yes, less representation. But, yes,  
7 there was initially some concern that the growers  
8 were larger represented on the Council than the  
9 shellers.

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

16           MR. STRALEY: It could, yes.

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

21           MR. STRALEY: Correct.

22           MS. SCHMAEDICK: To the grower.

1 MR. STRALEY: Correct.

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

8 MR. STRALEY: Yes.

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

14 MR. STRALEY: That is correct.

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

17 MR. STRALEY: One of our original  
18 concerns was reading through the proposed Order  
19 where there was a category for improved and  
20 native nuts. But as a grower of improved variety  
21 at any given year we will produce from a low of  
22 two percent to a high of 18 percent that are

1 considered substandard nuts. They would be of  
2 lesser quality, cracks, stick types (phonetic)  
3 that normally would not go through the shelling  
4 process of commercial shelling. And as such we  
5 would receive a lesser value.

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

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

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

19 MR. STRALEY: Correct. Yes, we did not  
20 think those were addressed with the two varieties  
21 of improve and native. We felt there needed to  
22 be an additional category of substandard.

1 MS. SCHMAEDICK: And just to clarify,  
2 substandard pecans, could that include both  
3 native and improved pecans?

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

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

15 MR. STRALEY: Yes, I am.

16 MS. SCHMAEDICK: Thank you.

17 JUDGE GUTHRIDGE: Mr. Hinman.

18 CROSS EXAMINATION (Cont'd)

19 MR. HINMAN: Don Hinman, USDA. Good  
20 morning. In your shelling out version, do you  
21 also acquire from other farms in shell and sell  
22 them into the market?

1           MR. STRALEY: Yes, we do. Currently,  
2 we provide on any given year about 15 percent of  
3 the total that we would shell and we would  
4 purchase 85 percent from other growers.

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

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

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

1 through their marketing.

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

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

10 MR. HINMAN: Thank you. No further  
11 questions.

12 JUDGE GUTHRIDGE: Any other questions  
13 from Agriculture?

14 (No verbal response)

15 Mr. Davis.

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

19 REDIRECT EXAMINATION

20 MR. DAVIS: Unfortunately, I cannot  
21 put up the entire Section 986.55 procedures  
22 simply because it's too long. But I want you to



1 know that's the section I'm referring to. You  
2 may want to follow along.

3 I'm not going to put up Section  
4 986.55(c)(1). It has the relatively innocuous  
5 pile of quorum. And you can read along with me  
6 here. It says "A quorum of the Council may be  
7 meaning 12 of the members. The voting of a  
8 majority of members present at the meeting which  
9 there is a quorum shall constitute the act of the  
10 Council provided that" -- and this is the  
11 important part -- "one action to Council with  
12 respect to the following issues shall require a  
13 two-thirds vote."

14 And then there's a long laundry list  
15 of items in subparagraph (i)(1) and these require  
16 the super majority, the two-thirds vote, not the  
17 60 percent. And I won't read all of them. Let's  
18 look at establish bylaws, appointment of  
19 administrative issues, budgets, assessments,  
20 compliance and audit. And the list goes on down  
21 to ten. But in looking at those, first would you  
22 agree and as your experience as a CFO that those

1 are the most significant and important issues  
2 that a board would have to consider?

3 MR. STRALEY: Yes.

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

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

8 MR. STRALEY: Correct.

9 MR. QUIROS: And it requires the super  
10 majority. And you are aware that the board will  
11 consist of 17 members, nine of which are growers,  
12 six of which will be handlers and then of course  
13 the two independent. And because of this  
14 requirement of the super majority, that would be  
15 12 votes.

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

20 MR. STRALEY: That would be correct.

21 MR. DAVIS: And earlier Ms. Schmaedick  
22 had asked you about concerns that the handlers

1 may have had. Does the fact that this super  
2 majority was put into the quorum give the  
3 shellers some comfort that even though they did  
4 not have numerical quality of voting that at  
5 least their voice would always have to be shared  
6 in making these important decisions that are set  
7 forth here?

8 MR. STRALEY: Yes.

9 (Off record discussion)

10 MR. DAVIS: My co-counsel here says  
11 there's one other section which I'll point out to  
12 you in that regard and that is in terms of  
13 986.65, the marketing policy. And of course the  
14 marketing policy is going to be the board's  
15 effort to estimate the crop size and make  
16 announcements and give information to the  
17 community on that estimated crop size.

18 And do you see here in 986.65 that  
19 once again before a decision can be made on the  
20 estimated market size of the crop that has to be  
21 passed by two-thirds of the Council members,  
22 correct?

1 MR. STRALEY: Correct.

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

6 MR. STRALEY: Correct.

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

10 MR. STRALEY: Yes, I do.

11 (Off record discussion)

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

14 JUDGE GUTHRIDGE: Follow up from  
15 Agriculture.

16 RECROSS EXAMINATION

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

21 MR. STRALEY: Yes.

22 MS. VARELA: So I wanted to draw your

1 attention to some of the language we have on  
2 voting for nominees. Are you familiar with that  
3 aspect there?

4 MR. STRALEY: Yes.

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

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

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

15 PARTICIPANT: What section?

16 MS. VARELA: I believe it's Section  
17 986.46, council nominations and voting.

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

20 MS. VARELA: But the concept there  
21 that I want to ask you about is that language  
22 that is in here in more than one region you would

1 nominate in the region with the largest volume of  
2 production. Does that seem fair and equitable  
3 to you? Are you comfortable with that  
4 determination?

5 MR. STRALEY: Yes.

6 MS. VARELA: Okay. Thank you.

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

12 MS. VARELA: Thank you.

13 JUDGE GUTHRIDGE: Anything else from  
14 USDA?

15 (No verbal response)

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

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

20 (No verbal response)

21 Hearing none, Mr. Straley, you're  
22 excused. If you would check with Ms. Gonzalez

1 over there and see if she has anything to  
2 clarify. Thank you.

3 (Witness excused)

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

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

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

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

16 JUDGE GUTHRIDGE: Okay.

17 MR. SINGH: Thank you.

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

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

22 JUDGE GUTHRIDGE: 10:28 a.m. and right

1 now it's 10:18 a.m. Off the record.

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

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

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

9 (Whereupon, the above-  
10 referred to document was  
11 marked as Proponent Exhibit  
12 34 for identification.)

13 JUDGE GUTHRIDGE: Please raise your  
14 right hand.

15 (Proponent Witness John Heuler Sworn)  
16 Mr. Quiros.

17 DIRECT EXAMINATION

18 MR. QUIROS: Yes. Thank you, Mr.  
19 Heuler, for joining us today. I wanted to ask  
20 you a couple of foundational questions. The  
21 first is received a copy of the notice that was  
22 published in the Federal Register that includes



1 the proposed Federal Marketing Order for Pecans  
2 which has been listed as Exhibit 1 in this  
3 hearing.

4 MR. HEULER: Yes.

5 MR. QUIROS: Is your microphone on?

6 MR. HEULER: Check.

7 MR. QUIROS: Thank you. Secondly, I  
8 want to ask you if you have received and had an  
9 opportunity to review the executive summary of  
10 economic analysis of the implementation of a  
11 Federal Marketing Order for Pecans prepared by  
12 Dr. Marco Palma that has been listed as Exhibit  
13 23 in this hearing.

14 MR. HEULER: Yes.

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

18 MR. HEULER: My name is John Heuler.  
19 It is spelled J-O-H-N H-E-U-L-E-R. I live in  
20 Yorba Linda, California. I am one of the owners  
21 of A&P Ranch as well as personally owning a 55  
22 acre pecan ranch.

1           A&P Ranch and its affiliates have been  
2 involved as growers in almonds, pistachios and  
3 pecans. I have been active as a tree nut grower  
4 for 30 years and as a pecan grower for four  
5 years. A copy of my résumé is attached to this  
6 testimony.

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

17           I and a number of my partners decided  
18 to re-enter the pecan market about five years  
19 ago. A&P Ranch purchased an existing orchard and  
20 I personally purchased another existing orchard.  
21 I see the potential of real growth in this market  
22 as it has the smallest amount of production for

1 the major U.S. tree nuts in the United States.

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

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

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

20 I have also reviewed the economic  
21 analysis summary prepared by Dr. Marco Palma,  
22 specifically, the projected average price

1 increase from promotion of 6.3 cents per pound  
2 versus the 2.5 cents per pound in shell cost. I  
3 believe this number to be very conservative and  
4 is more likely to be closer to \$1.00 per pound in  
5 the future. I base this on my knowledge of the  
6 FMO for pistachios.

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

17 As a board member on the  
18 Administrative Committee for Pistachios, I  
19 completely understand the benefits of a Federal  
20 marketing order. A&P Ranch believes in marketing  
21 and promotion as a way to increase crop prices.  
22 All of our tree nut investments now and in the

1 past, almonds and pistachios, either had the  
2 advantage of generic marketing promotion through  
3 a Federal marketing order or through a state  
4 check-off program.

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

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

22           We think our farm and the industry

1 would also benefit in the future from grade, size  
2 quality, packaging, shipping protocols, and other  
3 handling requirements as we compete with other  
4 tree nuts for shelf space and consumer attention.

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

22 As an owner of A&P Ranch, I am

1       testifying on behalf of the ranch in support of a  
2       Federal marketing order for pecans. I am also  
3       testifying in my individual capacity as a pecan  
4       grower in support of the Federal marketing order  
5       for pecans.

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

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

13                JUDGE GUTHRIDGE: Any objections from  
14      Agriculture?

15                MR. HILL: No objection.

16                JUDGE GUTHRIDGE: Any objection from  
17      anyone in the audience?

18                (No verbal response)

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

21                               (Whereupon, the above-  
22                               referred to document marked

1 for identification as  
2 Proponent Exhibit 34 was  
3 received into evidence.)

4 Mr. Quiros.

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

7 JUDGE GUTHRIDGE: Does Department of  
8 Agriculture have any questions?

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

11 CROSS EXAMINATION

12 MR. HILL: Could you please go to the  
13 last paragraph? The sentence as far as the  
14 first sentence, "I also have reviewed the  
15 economic analysis..." I thought I heard you say  
16 2.8 cents per cost.

17 MR. STRALEY: I misspoke if I said  
18 2.8.

19 MR. HILL: Okay. It would be 2.5.

20 MR. STRALEY: Correct.

21 MR. HILL: All right.

22 JUDGE GUTHRIDGE: Any more questions



1 from the Agriculture?

2 CROSS EXAMINATION (Cont'd)

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

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

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

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

18 MS. SCHMAEDICK: Great. Good. I was  
19 going to ask you that. So thank you for  
20 answering that question in advance. Under this  
21 American Pistachio order is there authority for  
22 promotion?

1 MR. HEULER: Did you say American  
2 Pistachios?

3 MS. SCHMAEDICK: Yes, American  
4 Pistachios.

5 MR. HEULER: Yes.

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

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

13 MS. SCHMAEDICK: Okay.

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

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

22 MR. HEULER: No, I was actually on the

1 administrative committee for pistachios, which if  
2 you google my name I come up, that's the history.

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

6 MR. HEULER: I do.

7 MS. SCHMAEDICK: Thank you.

8 (Off record discussion)

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

12 MR. HEULER: 986.3.

13 MS. SCHMAEDICK: Yes, correct.

14 MR. HEULER: Yes.

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

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

22 MS. SCHMAEDICK: 986.3 is affiliation.

1 MR. HEULER: 986.3.

2 MR. QUIROS: Mr. Heuler, I have it on  
3 the overhead screen.

4 MR. HEULER: I'm sorry.

5 MR. QUIROS: Mr. Heuler, if it would  
6 help I have it on the overhead screen.

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

9 MS. SCHMAEDICK: I'm wondering if you  
10 are aware of a common element in the pistachio  
11 program.

12 MR. HEULER: It's been so long since  
13 I've actually read that. I don't want to comment  
14 on it.

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

17 CROSS EXAMINATION (Cont'd)

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

1 MR. HEULER: Okay.

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

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

10 MS. VARELA: Okay. Thank you.

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

13 MS. VARELA: Yes.

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

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

18 CROSS EXAMINATION (Cont'd)

19 MR. HINMAN: Don Hinman with USDA.  
20 Good morning. On that same point regarding  
21 dollar per pound, you have a much more -- a  
22 stronger view of the impact of promotion than in

1 this study. Is that correct?

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

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

10 MR. HEULER: Yes.

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

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

20 I sold my pistachio crop for \$3.65 a  
21 pound and this year we're looking at almond  
22 prices at \$4 a pound. And that's nut meats.

1 That's not shell.

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

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

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

16 JUDGE GUTHRIDGE: What is the APG?

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

21 In the almond industry, you know we've  
22 all seen the old ads. Advertising a quality

1 product is a great idea. Not advertising a  
2 quality product is a bad business decision. Pure  
3 and simple.

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

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

12 MR. HEULER: Yes.

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

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

22 In the pistachio industry, pretty much



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

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

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

14 CROSS EXAMINATION (Cont'd)

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

20 MR. HEULER: Very specific data.

21 MS. SCHMAEDICK: Does that present a  
22 burden to you? Is it cumbersome?

1 MR. HEULER: It's data we accumulate  
2 anyway. It's literally an email.

3 MS. SCHMAEDICK: Are you comfortable  
4 sharing that data?

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

8 (Off record discussion)

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

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

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

20 MR. HEULER: The reporting data is not  
21 very confidential. I don't see a need for it.  
22 If you're talking about going to the local coffee

1 shop and compare numbers whether it's over coffee  
2 that's one point. But as far as sharing  
3 important data, I mean that's really what  
4 cooperation means. And withholding that is --

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

12 MR. HEULER: That's very correct.

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

18 MR. HEULER: I would hope it would.

19 MS. SCHMAEDICK: Can you explain what  
20 your comfort level is in the way the pistachio  
21 and almond programs work? Why do you think they  
22 are working well?

1 MR. HEULER: That's an hour. Let me  
2 see if I can summarize it quickly.

3 MS. SCHMAEDICK: Okay.

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

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

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

20 You get your report. You understand  
21 what the problems are. And you support the  
22 industry. And in the end you see the example of

1       how successful that is.

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

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

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

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

17                      MR. HEULER: When I was a lot younger  
18       and had less gray hair, we were getting between  
19       90 cents a dollar a pound. Last year I got  
20       \$3.65.

21                      And without that marketing order, you  
22       just wouldn't have the promotion. There's

1 basically one company in the pistachio industry  
2 that can do their own promotions. The rest of us  
3 have to get together to do them. And it's been  
4 very successful.

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

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

19 MS. SCHMAEDICK: So would it be  
20 accurate to describe or to sum up pages described  
21 as sort of cohesive, collective action that  
22 you're seeing in pistachios and almonds and that

1 you would hope that that would also happen in the  
2 pecan industry as a result of the marketing  
3 order? Would that be a correct summary?

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

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

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

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

22 MS. SCHMAEDICK: So my question is

1 would the existence of a Federal marketing order  
2 increase your confidence in the future stability  
3 of the pecan industry.

4 MR. HEULER: Absolutely. Without any  
5 question.

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

8 CROSS EXAMINATION (Cont'd)

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

12 MR. HEULER: Yes.

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

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

22 What I do know about it is you've got



1 to have the proper water supply and high quality  
2 water. And you have to have proper chilling  
3 hours. At the elevation that we're at, that's  
4 absolutely the case. It's a relatively narrow  
5 band.

6 MS. VARELA: Thank you very much.

7 CROSS EXAMINATION (Cont'd)

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

10 MR. HEULER: 986.63, contributions.

11 MR. HILL: Right.

12 MR. HEULER: Yes.

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

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

18 MR. HILL: Okay. Read this. You  
19 talked about service and industrial marketing and  
20 so forth. Can you tell what you feel about this  
21 particular part here? You support this or not  
22 and why.

1           MR. HEULER: A&P Ranch and I have both  
2           contributed -- I'm sorry. A&P and I personally  
3           have both contributed time and money towards  
4           this. I think as the industry standard I think  
5           it's something that absolutely you should  
6           support.

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

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

15                    CROSS EXAMINATION (Cont'd)

16          MR. HINMAN: Don Hinman, USDA. Good  
17          morning. You were commenting about the pistachio  
18          and almond industries and you're involved in  
19          that. On the bottom of page 3 of your testimony,  
20          you mentioned benefits from future grades, size,  
21          quality, packaging, shipping protocols and other  
22          handling requirements.

1           I wonder if you could comment from  
2 your perspective from pistachio and almond  
3 industries how you think those benefits with  
4 those uniform standards along those lines from  
5 the almond and pistachio industries that would  
6 improve the market for pecans?

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

14           In the pecan industry I can't speak  
15 about any of this. I can't do that. I would  
16 assume that we would use the exact same type of  
17 sorting that we use currently in pistachios and  
18 almonds. Where we think that's a huge benefit is  
19 it eliminates a lot of people who do really  
20 terrible job. There's a lot of dust involved in  
21 that. There's a lot of handling involved and  
22 it's not our job.

1           But the flip side of it is every time  
2 you make a sort positive or negative, every time,  
3 you have more and more and more products, size,  
4 stain, insect. Instead of having good or bad  
5 product, you'll start having more and more  
6 products.

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

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

16           CROSS EXAMINATION (Cont'd)

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

1 to the marketing order?

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

8 MS. CHILUKURI: Thank you.

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

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

21 MR. HEULER: Oh I know for a fact in  
22 the pistachio there was a whole series of people

1 that were very afraid. Oh my gosh, this is going  
2 to cost us money. Absolutely. It's the fear of  
3 the unknown.

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

6 MS. CHILUKURI: Thank you.

7 JUDGE GUTHRIDGE: Any more questions?

8 CROSS EXAMINATION (Cont'd)

9 MS. SCHMAEDICK: Melissa Schmaedick,  
10 USDA. I wanted to go back again to your  
11 experience serving on the pistachio committee.  
12 And I wanted to ask you about your opinion on the  
13 importance of diversity on the committee. Is it  
14 in your opinion important to have fair  
15 representation of all the different grower and  
16 handler communities with members on that  
17 committee?

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

20 MS. SCHMAEDICK: Sure. In your  
21 opinion does having a fair representation of  
22 grower and handler entities on your committee

1 important in terms of representing your industry?

2 MR. HEULER: Definitely. I believe  
3 that the committee I served on there were four  
4 people from District 1. Their names I can't  
5 remember. There were two from District 2 and two  
6 from District 3 and two from District 4. District  
7 4 was Arizona and New Mexico.

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

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

17 Pecans that are on the tree, they're  
18 not very time sensitive. Pistachios can be  
19 harvested. It has to be hulled and dried within  
20 24 hours or you have seen major costs,  
21 potentially millions of dollars. Once they're  
22 dried, they're relatively stable.

1           The problem is we see plants in pecans  
2 as something -- it's a process you go through.  
3 It's not time sensitive. In the pistachio  
4 industry, there's 400,000 acres of pistachios  
5 that all have to be hulled in five weeks. When  
6 they come off that tree, you're hulling.

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

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

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

20           MR. HEULER: It was pretty helpful.  
21 There are people who really raise pistachios.  
22 They are very isolated and independent from



1 everybody else. There are only two hulling  
2 facilities in all the State of Arizona. A&P and  
3 there's a smaller one across the valley from us.

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

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

11 MR. HEULER: Two years.

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

16 MR. HEULER: We have term limits.

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

21 MR. HEULER: I'm going to give you an  
22 opinion.

1 MS. SCHMAEDICK: Please.

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

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

17 The technology he brings to our  
18 business is phenomenal, but he doesn't know  
19 anything about history. He doesn't know anything  
20 about what's been tried. He doesn't know  
21 anything of the monumental failures these  
22 industries have. That's just time.

1           So to answer your questions I'd say  
2           it's a combination of both. You have to have  
3           some people who are smart enough to know what's  
4           happening the past. You have to have new people  
5           that comes in and brings new technology.

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

8           MR. HEULER: What's that?

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

11          MR. HEULER: Go for it.

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

16          (Off record discussion)

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

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

22          MR. HEULER: That's the pistachio.

1 You can do two terms.

2 MS. SCHMAEDICK: So for the record,  
3 the first sentence in paragraph (b) of Section  
4 986.50 says "Council members and alternates may  
5 serve up to two conservative four year terms of  
6 office." My question is based on your experience  
7 with pistachios in your opinion essentially a  
8 person can sit for eight years. Is that a  
9 reasonable time for a person to share their  
10 expertise and learn about the industry?

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

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

1 good thing.

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

5 MR. HEULER: Yes. There are two.

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

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

11 MS. SCHMAEDICK: Okay.

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

21 How it actually worked out the time I  
22 was there I don't think I heard a single word

1 from either one.

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

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

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

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

22 MS. SCHMAEDICK: Yes, thank you.

1 Thank you so much. That concludes my questions.

2 JUDGE GUTHRIDGE: Anything else from  
3 Agriculture?

4 (No verbal response)

5 Mr. Quiros.

6 MR. QUIROS: No questions, Your Honor.

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

9 (No verbal response)

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

13 (Witness excused)

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

16 (Whereupon, the above-  
17 referred to document was  
18 marked as Proponent Exhibit  
19 35 for identification.)

20 JUDGE GUTHRIDGE: And while he's  
21 handing out papers let's go ahead and swear you  
22 in.

1 (Proponent Witness Albert Keck Sworn)

2 Mr. Davis.

3 DIRECT TESTIMONY

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

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

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

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

19 MR. KECK: Yes, I have.

20 MR. DAVIS: Please proceed.

21 MR. KECK: My name is Albert Keck.  
22 It's spelled A-L-B-E-R-T K-E-C-K. I live in



1 Bermuda Dunes, California. The written testimony  
2 says Thermal. But I live in Bermuda Dunes  
3 California.

4 My family owns Alamo Ranch Company.  
5 Alamo Ranch Company is a pecan farm in Cochise  
6 County, Arizona. I have over 150 acres of pecans  
7 currently in production. Last year we produced  
8 166,483 pounds of pecans. Those are improved  
9 varieties.

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

15 Alamo Ranch Company has less than  
16 \$750,000 in annual gross revenue from pecans.  
17 And therefore, under the Small Business  
18 Administration guidelines, we are classified as a  
19 small pecan farm.

20 I feel like I have been informed about  
21 the process of securing a federal marketing order  
22 and have been given an opportunity to participate

1 in this process. I have talked with board  
2 members of the American Pecan Board numerous  
3 times to share my thoughts.

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

9 MR. DAVIS: If I can interrupt you.  
10 That's Exhibit 23 you have in front of you.

11 MR. KECK: Yes.

12 MR. DAVIS: Yes. Thank you.

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

20 My family and our business interests  
21 also include domestic dates. Domestic dates are  
22 included in a separate federal marketing order

1 established in 1955. I have been heavily  
2 involved in the California Date Administrative  
3 Committee overseeing domestic dates and currently  
4 serve as chairperson.

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

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

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

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

20 MS. CHILUKURI: No objection.

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

1 (No verbal response)

2 Hearing none, Exhibit 35 is admitted  
3 into the record.

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

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

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

13 CROSS EXAMINATION

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

16 MR. KECK: Good morning.

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

22 MR. KECK: I'm seated on the board as

1 a handler member, but we are a large grower, too.

2 MS. SCHMAEDICK: If you don't mind I  
3 want to draw on your experience in the date  
4 program and try to relate that to the proposal  
5 for pecans. Would that be okay?

6 MR. KECK: Sure.

7 MS. SCHMAEDICK: Thank you. In your  
8 experience as a chairperson, how are the  
9 activities of the California date program funded?  
10 Where do you get your money from?

11 MS. SCHMAEDICK: The date history  
12 through the marketing order is regulated by grade  
13 and size standards. And every lot of dates that  
14 actually gets released from the market needs to  
15 pass federal inspection. And it has to be done  
16 under USDA. It used to be the Process Products  
17 Inspection Service and then they merged. But  
18 it's the USDA Inspection Service.

19 The inspectors will come into the  
20 plant when a load is presented for inspection.  
21 They will draw samples, basically review those  
22 samples to see if that lot passes under the grade

1 standards for the marketing order. If it does,  
2 they certify it. And then that information gets  
3 shared with the date committee management.

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

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

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

21 MR. KECK: Yes, it's incumbent on the  
22 handlers to pay assessment.

1 MS. SCHMAEDICK: Correct. Thank you.  
2 In your industry, how do the handlers feel about  
3 paying assessments?

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

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

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

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

20 MS. SCHMAEDICK: In your opinion, is  
21 there a sense of ownership in terms of the  
22 portion to be treated in the form of an

1 assessment to the budget? I'm not sure that  
2 makes sense.

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

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

12 MR. KECK: Yes.

13 MS. SCHMAEDICK: If you turn to page  
14 38023 of the Federal Register Notice. It is the  
15 page that has the index of the sections.

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

17 MR. DAVIS: It's the index.

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

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

22 MS. SCHMAEDICK: Yes. Thank you.



1 Before I go any further with questioning, I'm  
2 assuming you had time to read the date marketing  
3 order.

4 MR. KECK: Yes. Occasionally over the  
5 years.

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

8 MR. KECK: Generally.

9 MS. SCHMAEDICK: So what I would like  
10 to do is spend some time talking about the  
11 proposed sections following the administrative  
12 body. And I would like to look at Sections 52,  
13 53, 54 and 55.

14 MR. KECK: Okay.

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

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

19 MR. KECK: Yes. We are allowed to  
20 submit for reimbursement of expenses associated  
21 with our duties as members of the committee.  
22 Generally speaking, I co-sign the checks for the

1 vice chairman. I have yet to see any members  
2 submit expense reports.

3 So we basically do this voluntarily.  
4 We cover our checks.

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

7 MR. KECK: It does.

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

11 MR. KECK: Yes, it is.

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

16 MR. KECK: Yes.

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

20 MR. KECK: It's essential for it. It  
21 really describes what the committee does or the  
22 council in this case.

1 MS. SCHMAEDICK: And if you could look  
2 at Section 54, duties.

3 MR. KECK: Yes.

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

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

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

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

22 And basically it allows the committee

1 or the council to function with legitimacy and  
2 confidence.

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

6 MR. KECK: Yes, very essential.

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

10 MR. KECK: Yes.

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

16 MR. KECK: Yes.

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

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

22 MS. SCHMAEDICK: And are you allowed

1 to take any actions or make decisions without a  
2 quorum?

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

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

20 And we do. We'll start to call around  
21 and say, "You have to have somebody there or an  
22 alternate. It's an important meeting." It's not

1 so easy to get together a group of industry  
2 members in a specific place and time. So it's  
3 important that you have a representation there.  
4 You don't want to come back for another meeting.

5 MS. SCHMAEDICK: Right. I understand.  
6 So you brought up two really important points.  
7 One is you mentioned an alternate. Can you  
8 explain what you mean by an alternate and the  
9 function of an alternate?

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

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

21 MS. SCHMAEDICK: In your opinion, is  
22 it important to have alternates?

1 MR. KECK: It's very important if you  
2 want to establish quorums, especially the two-  
3 thirds threshold. Those are the important ones.

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

10 MR. KECK: Okay.

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

20 MR. KECK: We've currently -- You know  
21 our order is 70 years old. So it was written  
22 before a lot of technology. Recently, we had

1 amendments to our language that includes some of  
2 this new technology.

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

7 MS. SCHMAEDICK: How important is  
8 that?

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

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

16 MR. KECK: Well, I think the  
17 procedures you established here are just as  
18 critical and even more so when you're talking  
19 about the geographic area that pecans industry  
20 has. And to meet with a board at a specific  
21 point in time is a big deal. I can see having  
22 situations where you might have one short of a



1 quorum with alternates and members and you can  
2 achieve a functional meeting with that language  
3 there.

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

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

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

19 MR. KECK: It's important in the sense  
20 that it's a formal program that has assessment  
21 authority. And if you don't maintain compliance,  
22 then you lose -- you basically start to lose

1 legitimacy and authority within the industry.

2 And you're basically not administering -- If you  
3 don't effect compliance, then that means you  
4 administer arbitrarily.

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

12 MS. SCHMAEDICK: Thank you. So in  
13 your opinion would compliance be important for  
14 the proposed pecan order?

15 MR. KECK: Yes, it's essential that  
16 the committee have the ability to effect  
17 compliance.

18 MS. SCHMAEDICK: Thank you. And my  
19 last question for you is on continuous  
20 referendums. Let me point for the section  
21 proposed for review. If you turn to Section  
22 96.94, entitled termination.

1 MR. KECK: Okay.

2 MS. SCHMAEDICK: Can you look at  
3 paragraph (d) please?

4 MR. KECK: Okay.

5 MS. SCHMAEDICK: For the record, I'll  
6 read it. It says, "The Secretary shall conduct a  
7 referendum within every five year period from the  
8 implementation of this part to ascertain whether  
9 a continuance of the provisions of this part..."  
10 Then it goes on to say they are by two votes. In  
11 your opinion, is this a helpful practice? Would  
12 it be a helpful practice?

13 MR. KECK: I think that it's helpful.  
14 Every five years is a little short, personally,  
15 just with the effort that it takes to get to this  
16 point with marketing. If it were not to pass  
17 referendum and then to get it started again, it's  
18 just a steep hill to climb.

19 One thing that always concerns us with  
20 referendums are accurate rosters. And those may  
21 take some time to develop, as well, because  
22 people drop out of industries and fall in and

1 out. So it's a big effort. But it does again  
2 reinforce the legitimacy of the program.

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

5 JUDGE GUTHRIDGE: Any other questions  
6 from Agriculture?

7 (No verbal response)

8 Mr. Davis.

9 MR. DAVIS: Proponents have no  
10 questions. Thank you so much.

11 MR. KECK: Thank you.

12 JUDGE GUTHRIDGE: Does anyone in the  
13 audience have any questions for Mr. Keck?

14 (No verbal response)

15 Hearing none, you are excused. If you  
16 would check with Ms. Gonzalez over there and see  
17 if she has any problems with anything.

18 (Witness excused)

19 JUDGE GUTHRIDGE: Ms. Wray, has anyone  
20 signed up to testify?

21 MS. WRAY: No.

22 MR. DAVIS: Your Honor, could we take

1 lunch?

2 JUDGE GUTHRIDGE: Do you want to call  
3 your next witness?

4 MR. DAVIS: Yes, Your Honor, unless  
5 you want to take lunch.

6 JUDGE GUTHRIDGE: It's 11:43 a.m.  
7 right now. Should we go on one more? I expect  
8 there will be comparable time to have one more  
9 witness.

10 MR. QUIROS: That will be fine, Your  
11 Honor. I call Mr. Jay Glover. Please have a  
12 seat. The Judge will swear you in, Jay.

13 MR. GLOVER: Okay.

14 JUDGE GUTHRIDGE: Would you raise your  
15 right hand please?

16 (Proponent Witness Jay Glover Sworn)

17 Mr. Quiros.

18 MR. QUIROS: One moment, Your Honor.

19 (Whereupon, the above-  
20 referred to document was  
21 marked as Proponent Exhibit  
22 36 for identification.)

## 1 DIRECT TESTIMONY

2 MR. QUIROS: Mr. Glover, thank you for  
3 coming here today. First of all, had you had an  
4 opportunity to read Exhibit 1 to this hearing  
5 which is the notice that contains the proposed  
6 federal marketing order for pecans?

7 MR. GLOVER: I have.

8 MR. QUIROS: Secondly, to build a  
9 foundation, I'm asking you if you've had an  
10 opportunity to receive and review Exhibit 23  
11 entitled executive summary which is an economic  
12 analysis of the implementation of the federal  
13 marketing order for pecans which was prepared by  
14 Dr. Marco Palma?

15 MR. GLOVER: I have.

16 MR. QUIROS: Thank you. I understand  
17 you have prepared testimony. If you would like  
18 to read that, that would be appropriate.

19 MR. GLOVER: Okay. My name is Jay  
20 Glover. It's spelled J-A-Y G-L-O-V-E-R. I live  
21 in Tularosa, New Mexico. I'm the owner of Glover  
22 Farms.

1           Glover Farms is a family pecan farm in  
2 New Mexico. I have over 280 acres of pecans  
3 currently in production. Last year we produced  
4 700,000 pounds of pecans. I have 200 additional  
5 acres on which I intend to plant pecan trees and  
6 once planted the new pecan trees will be in  
7 production after seven years. On our farm, we  
8 grow improved varieties. A copy of my résumé is  
9 attached.

10           Glover Farms has more than \$750,000 in  
11 annual gross revenue from pecans. And therefore,  
12 under the Small Business Administration  
13 guidelines, we would be considered a large grower  
14 business.

15           I have had multiple opportunities to  
16 be informed about the federal marketing order.  
17 So I feel as though I have been informed about  
18 the process of securing a federal marketing order  
19 and have been given an opportunity to participate  
20 in this process.

21           I have reviewed the economic analysis  
22 summary prepared by Dr. Marco Palma,

1 specifically, the projected average price  
2 increase from promotion of 6.3 cents per in shall  
3 pound versus the average 2.5 cents per in shall  
4 pound cost. Overall, I am aware of the costs  
5 that a federal marketing order may impose on my  
6 farm. And I do not believe these costs are  
7 unduly burdensome. Further, I believe the  
8 benefits of the federal marketing order to my  
9 farm will greatly outweigh any costs associated  
10 with it.

11 In recent years, I have seen a wide  
12 variation in the prices I have received from my  
13 pecan crop. Such wide variation in pricing makes  
14 it extremely difficult to plan for the future  
15 operation of my farm. While prices for pecans go  
16 up and down dramatically from year to year, my  
17 cost of production have steadily increased. Cost  
18 of fertilize and equipment have all increase in  
19 recent years regardless of the price I receive  
20 for my crop.

21 Additionally, the lack of accurate  
22 market information on the anticipated size of the



1        pecan crop in any given year also makes it  
2        difficult for me to negotiate a fair price for my  
3        crop and to make reasonable business decisions  
4        about future investments. Increased price  
5        stability and more accurate market information  
6        would greatly benefit my farm.

7                    I think my farm and the industry would  
8        also benefit in the future from grade, size,  
9        quality, packaging, shipping protocols and other  
10       handling requirements as we compete with other  
11       tree nuts for consumer's attention.

12                   I also understand that under the  
13       proposed order, only growers with more than 30  
14       acres of pecans or more than 50,000 pounds of  
15       average production per year over the last four  
16       years will be allowed to vote on the proposed  
17       order. In my opinion, this threshold is  
18       reasonable because a grower that does not meet  
19       this threshold is not a commercial grower. Any  
20       grower that is smaller than the proposed  
21       threshold could not justify the cost inherent in  
22       such a small operation.

1           Until July 12 of this year, I served  
2           as President of the U.S. Pecan Growers Council.  
3           Our focus has been on expanding sales of pecans  
4           internationally through MAP funding and state  
5           funding. I am aware that the federal marketing  
6           order for pecans is a domestic program.

7           And I think that the goals and future  
8           work of the American Pecan Board and the National  
9           Pecan Growers Council have several goals that  
10          work that are complimentary. One is focused on  
11          international and one is focused on domestic. I  
12          have been authorized by the board of U.S. Pecan  
13          Growers Council to testify on its behalf in  
14          support of a federal marketing order for pecans  
15          and have written a letter on behalf of my  
16          organization to the Secretary of Agriculture  
17          supporting the proposed federal marketing order.  
18          And you also have a copy of that.

19          I am also testifying in my individual  
20          capacity in support of the federal marketing  
21          order for pecans.

22          In conclusion, I fully support the

1 proposed federal marketing order for pecans and  
2 encourage the Secretary to implement the order as  
3 proposed by the American Pecan Board. If you  
4 have any questions, I'll take them.

5 MR. QUIROS: Your Honor, I'm tendering  
6 this as Exhibit 36.

7 JUDGE GUTHRIDGE: Let me clarify one  
8 thing, Mr. Glover. I think on page three you  
9 testified at one point you said United States  
10 Pecan Growers.

11 MR. GLOVER: United States Pecan  
12 Growers Council, sir.

13 JUDGE GUTHRIDGE: It's written here as  
14 National Pecan Growers Council.

15 MR. GLOVER: The organization voted in  
16 our meeting in Texas last week to change the name  
17 of the organization.

18 (Laughter)

19 JUDGE GUTHRIDGE: Thank you. So  
20 that's the new name.

21 MR. GLOVER: Yes, sir. It's changing  
22 from the National Pecan Growers Council to the

1 U.S. Pecan Growers Council.

2 JUDGE GUTHRIDGE: So on July 12th you  
3 were president of the National Pecan Growers  
4 Council.

5 MR. GLOVER: Actually, we voted to  
6 change the name before I relinquished the seat.

7 JUDGE GUTHRIDGE: Okay. So references  
8 in here should now be United States Pecan Growers  
9 Council.

10 MR. GLOVER: Yes, sir.

11 JUDGE GUTHRIDGE: Okay. U.S.  
12 Department of Agriculture, do you have any  
13 objections?

14 MR. HILL: No objections. My office  
15 exchanged testimony, as precedent, before with  
16 this organization.

17 JUDGE GUTHRIDGE: Does anyone in the  
18 audience have any objections?

19 (No verbal response)

20 Hearing no objection, Exhibit 36 is  
21 admitted into the record.

22 (Whereupon, the above-

1 referred to document marked  
2 for identification as  
3 Proponent Exhibit 36 was  
4 received into evidence.)

5 Mr. Quiros.

6 MR. QUIROS: Reserve questions, Your  
7 Honor.

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

10 CROSS EXAMINATION

11 MS. SCHMAEDICK: Hello, Mr. Glover.  
12 This is Melissa Schmaedick, USDA. Thank you for  
13 your testimony. You mentioned that you have over  
14 280 acres of pecans. Is that correct?

15 MR. GLOVER: Yes.

16 MS. SCHMAEDICK: How long have you  
17 been farming?

18 MR. GLOVER: My family's had that  
19 operation since 1969.

20 MS. SCHMAEDICK: So it's a couple of  
21 generations then involved.

22 MR. GLOVER: Yes.

1 MS. SCHMAEDICK: I would like to talk  
2 to you about your experience with the U.S. Pecan  
3 Growers Council formerly known as the National  
4 Pecan Growers Council.

5 MR. GLOVER: Yes, ma'am.

6 MS. SCHMAEDICK: Thank you.

7 (Off record discussion)

8 So who are your constituents?

9 MR. GLOVER: The constituents of the  
10 U.S. Pecan Growers Council are regional  
11 organizations such as Eastern Pecan Growers,  
12 Western Pecan Growers, New Mexico, Louisiana.  
13 All of the states except I believe North  
14 Carolina but they may have come in without my  
15 knowledge.

16 MS. SCHMAEDICK: And these  
17 associations represent growers within their  
18 state. Is that correct?

19 MR. GLOVER: Yes.

20 MS. SCHMAEDICK: And I think you  
21 mentioned that the U.S. Pecan Growers Council  
22 focuses its activities on international

1 marketing. Is that correct?

2 MR. GLOVER: Yes, ma'am. Working with  
3 the USDA through the MAP, the Market Access  
4 Program.

5 MS. SCHMAEDICK: What types of  
6 activities have you conducted?

7 MR. GLOVER: Well, we have several  
8 target markets, our biggest being China, India,  
9 Turkey, UAE, UK.

10 MS. SCHMAEDICK: So do you do  
11 tradeshow in these countries? Or what do you?

12 MR. GLOVER: We do tradeshow  
13 primarily. We also do in-store promotions,  
14 educational programs. When we first got into  
15 China, they didn't know what a pecan was, did  
16 have a room for it. Now they do. And there  
17 initially it was very much focused on education.  
18 And now it's more promotion and helping the  
19 roaster community there to make profit and  
20 working hand and hand with them on distribution  
21 and education.

22 MS. SCHMAEDICK: How long has the U.S.

1 Pecan Growers Council been operating with MAP  
2 funds?

3 MR. GLOVER: I do not know the  
4 specifics. I believe it's been four years, but I  
5 do not know everything.

6 MS. SCHMAEDICK: Four years. I'm  
7 guessing you made quite a bit of progress in  
8 those four years overseas.

9 MR. GLOVER: Absolutely we have. I  
10 believe the statistics indicate that over half of  
11 last year's pecan crop out of Georgia went  
12 overseas.

13 MS. SCHMAEDICK: And has that  
14 benefitted the industry?

15 MR. GLOVER: I'm sorry, Ms.  
16 Schmaedick. I didn't understand you.

17 MS. SCHMAEDICK: Has that benefitted  
18 the growth of the industry? Has that benefitted  
19 growers?

20 MR. GLOVER: Absolutely. I believe  
21 that even growers that do not directly ship  
22 overseas see an increase by price for their crop



1 because as those other pecans leave the country  
2 there's less pecans available to be consumed  
3 domestically.

4 MS. SCHMAEDICK: Correct. So in your  
5 opinion, the proposed program, is its focus on  
6 the domestic market?

7 MR. GLOVER: Are you referring to the  
8 marketing order?

9 MS. SCHMAEDICK: Yes.

10 MR. GLOVER: Yes. As I said in my  
11 testimony, ma'am, the proposed federal marketing  
12 order and the American Pecan Board in my mind I  
13 see a focus on domestic marketing, packaging and  
14 the U.S. Pecan Growers Council continuing to be  
15 with the main focus on the international market.

16 MS. SCHMAEDICK: I believe in your  
17 testimony you said that you felt that could be a  
18 cooperative relationship and there wouldn't be  
19 duplicity and overlapping functions. Is that  
20 correct?

21 (Off record discussion)

22 MR. GLOVER: I believe that they are

1 handling global organizations. There is plenty  
2 of work for all of us to do. You know we're  
3 using the Market Access Program to obtain funding  
4 for the international marketing. There are other  
5 government programs that can help us with the  
6 marketing that we're not even tapping. So there  
7 are possibilities for the domestic marketing plus  
8 continued growth on the international side, too.

9 MS. SCHMAEDICK: So would you say in  
10 general that the U.S. Pecan Growers Council is  
11 supportive of the proposed federal marketing  
12 order?

13 MR. GLOVER: Absolutely. And as I  
14 believe a copy of our letter of support is  
15 attached to my testimony.

16 MS. SCHMAEDICK: Were there any  
17 concerns on the idea when it was first  
18 approached, concerns from the U.S. Pecan Growers  
19 Council about the proposed anywhere?

20 MR. GLOVER: Not to my knowledge.

21 MS. SCHMAEDICK: Given the success of  
22 the MAP program in four years, what are your

1 hopes or expectations for the federal marketing  
2 order and its impact on the domestic market? Do  
3 you hope to see a similar result?

4 MR. GLOVER: I hope to see increased  
5 demand resulting in higher prices. The only real  
6 numbers I've seen as the projections of that  
7 increase were in the study.

8 MS. SCHMAEDICK: And who makes up the  
9 Pecan Growers Council? You mentioned the whole  
10 list of states that are participants in that  
11 program. In your opinion, was the cooperation of  
12 the states together? Were you able to achieve  
13 more together than you would have individually as  
14 states?

15 MR. GLOVER: Absolutely. The Market  
16 Access Program requires whatever commodity that  
17 is being promoted internationally to be promoted  
18 as a generic product. So for the Georgia Pecan  
19 Growers Association, for example, to go try and  
20 get MAP funding, the USDA is not going to do that  
21 because they're going to be trying to promote  
22 Georgia pecans and the same could be said for the

1 west. So without the combined operation through  
2 the U.S. Pecan Growers Council, then we would not  
3 have the mechanisms to use MAP funding for the  
4 international market.

5 MS. SCHMAEDICK: In your opinion,  
6 would that same type of benefits through  
7 collaboration under the federal marketing order  
8 allow folks that couldn't, let's say, funnel  
9 their product or conduct research due to lack of  
10 resources? Would the federal marketing order  
11 facilitate those type of activities?

12 MR. GLOVER: Absolutely. The amount  
13 of funding that's required to do some of the  
14 things you just mentioned requires us an industry  
15 nationwide to come up with those funds. So I  
16 think it's the only way in this case.

17 MS. SCHMAEDICK: Thank you. That  
18 concludes my questions.

19 CROSS EXAMINATION (Cont'd)

20 MS. VARELA: Jennie Varela, USDA. I  
21 want to draw a little on your expertise since  
22 you've worked with the Council on a national MAP.

1 And I have a little more understanding of some of  
2 the regional groups.

3 I want to draw your attention to  
4 Sections 986.30 and 986.32. That's the  
5 production area.

6 MR. GLOVER: You said .30 and what?

7 MS. VARELA: .30 and .32.

8 MR. QUIROS: Jay, I'm also going to  
9 put them up here so you can see them.

10 MR. GLOVER: Okay. I was wondering.

11 MR. QUIROS: Yes.

12 MR. GLOVER: Yes, ma'am.

13 MS. VARELA: Now given that you've had  
14 substantial experience dealing with pecan growers  
15 across the country, first looking at the  
16 production area, does that definition in your  
17 opinion cover all of the areas in the country  
18 that receive pecans commercially?

19 MR. GLOVER: To my knowledge, yes.

20 MS. VARELA: Do you have knowledge of  
21 any production outside of that area?

22 MR. GLOVER: I do not.

1 MS. VARELA: And then looking down to  
2 the second definition there, regions, you can see  
3 we have three regions defined there. Do those  
4 seems reasonable to you in terms of how pecans  
5 are grown and the distribution of production in  
6 the country?

7 MR. GLOVER: That seems reasonable on  
8 three fronts to me, geographically, in terms of  
9 tonnage it's divided pretty evenly, and in terms  
10 of the number of growers it's divided pretty  
11 evenly.

12 MS. VARELA: Thank you very much.

13 CROSS EXAMINATION (Cont'd)

14 MR. HINMAN: Don Hinman, USDA. Good  
15 afternoon.

16 MR. GLOVER: Thank you.

17 MR. HINMAN: On page one, you  
18 mentioned that you are intending to plant 200  
19 additional acres of pecans, correct?

20 MR. GLOVER: Yes, sir.

21 MR. HINMAN: Can you tell me what some  
22 of the factors you are considering in that

1 decisions to plant additional acres?

2 MR. GLOVER: Absolutely. I'm waiting  
3 on the results of the vote on this proposal.

4 MR. HINMAN: So the fact that the  
5 benefits of this order are influencing your  
6 decision to plant future acreage.

7 MR. GLOVER: Yes, sir. And on some  
8 level it's influencing my decision on whether to  
9 put my farm up for sale or not.

10 MR. HINMAN: On the bottom of page  
11 two, I'm asking two questions about your comments  
12 on the benefits of the proposed order. And at  
13 the bottom of page two you mention one of the  
14 benefits of the proposed order would be more  
15 accurate marketing information. If you could  
16 comment please on your views on how that more  
17 accurate market information would benefit your  
18 farming operation.

19 MR. GLOVER: Well, you know the two  
20 main factors that dictate what a crop is worth is  
21 what the projected production is for that year.  
22 And I'm talking in North America all across the

1 United States and Mexico and what the carryover  
2 is from the previous year. What I'm talking  
3 about here is getting really good cold storage  
4 information, more carry in information.

5 We have several people in our growing  
6 community that go around and predict what they  
7 think the crop is going to be. And then we don't  
8 have that good information on what the carry in  
9 is. So I think with better carry in numbers I'm  
10 in a better position to negotiate with the buyer  
11 on what price my crop should be.

12 MR. HINMAN: Thank you. On the top of  
13 page three of your testimony, you mention the  
14 benefits that would come from grade, size,  
15 quality, packaging, shipping protocols and other  
16 handling requirements. So if the order brought  
17 about more uniform grade, size, quality standards  
18 for example, how would those benefit your farming  
19 operation?

20 MR. GLOVER: I also have a retail  
21 operation. And through that retail operation, I  
22 know what the benefit of good-looking,



1 standardized packaging brings to me. They sell  
2 better. They sell better if it's standard enough  
3 to different size packaging for example.

4 Another thing that comes to my mind  
5 out of this portion is trying to address  
6 rancidity. Pecans sometimes before they reached  
7 the shelves are not handled correctly. And they  
8 need to be refrigerated and they're not. And so  
9 a lot of people don't know what a good fresh  
10 pecan tastes like because they can't get their  
11 hands on them. So I would like this to be  
12 addressed under the proposed federal marketing  
13 order.

14 MR. HINMAN: Thank you. Those are all  
15 my questions.

16 JUDGE GUTHRIDGE: Okay. Follow up on  
17 just one thing to clarify. You used the term  
18 carrying number. Is that what you mean?

19 MR. GLOVER: Carry in.

20 JUDGE GUTHRIDGE: Carry in number.

21 MR. GLOVER: Yes.

22 JUDGE GUTHRIDGE: And how would you

1 define that?

2 MR. GLOVER: It is the number of  
3 pecans from the previous production year that  
4 haven't been consumed and are available to enter  
5 the product stream.

6 JUDGE GUTHRIDGE: Thank you.

7 Any more questions from the Department  
8 of Agriculture?

9 MR. HILL: No.

10 JUDGE GUTHRIDGE: Mr. Quiros.

11 REDIRECT EXAMINATION

12 MR. QUIROS: Yes. Thank you, Mr.  
13 Glover. I'm going to ask you to turn to Exhibit  
14 1, Section 986.65 as a follow-up to the Judge's  
15 question. It's 985.65 and I'm looking at  
16 Subsection (d), estimate of the handler inventory  
17 on August 31st of in shell and shelled pecans.  
18 Is that part of what you believe to be the carry  
19 in inventory, Mr. Glover?

20 MR. GLOVER: That's the bulk of the  
21 carry in. There might be some product that  
22 growers have in their private cold storage. But

1 that is the majority of it.

2 MR. QUIROS: That's correct. You  
3 mentioned a lot about it would be very helpful  
4 for you to have an estimate of that number. Is  
5 that because it factors into the price that you  
6 would be paid for the next year's crop?

7 MR. GLOVER: As I said, the estimated  
8 size of the current year crop plus what's  
9 leftover from the previous year's crop handler  
10 inventory as it's referred to here --

11 MR. QUIROS: Right.

12 MR. GLOVER: -- are the two main  
13 factors that will settle the price of my product.

14 MR. QUIROS: Right. So it is helpful  
15 then to know what the projected crop is for the  
16 next year.

17 MR. GLOVER: It's essential.

18 MR. QUIROS: And right now in the  
19 pecan business how is that determined?

20 MR. GLOVER: We typically work off of  
21 the USDA's number.

22 MR. QUIROS: Okay. Are the numbers

1 that you work off or that you see every year  
2 reliable in your estimation?

3 MR. GLOVER: Not in my opinion.

4 MR. QUIROS: I understand that  
5 historically in the pecan industry there have  
6 been two or three individuals that made their  
7 respective prognostications with regard to the  
8 future crop in a particular year. Are you  
9 familiar with those?

10 MR. GLOVER: I am.

11 MR. QUIROS: And what sort of  
12 confidence do you have in those numbers?

13 MR. GLOVER: They're as accurate as  
14 they can be without a standardized process.

15 MR. QUIROS: Do you think they're  
16 scientifically based?

17 MR. GLOVER: I do not.

18 MR. QUIROS: Okay. They're just the  
19 experience of those three individuals with regard  
20 to crops.

21 MR. GLOVER: Yes.

22 MR. QUIROS: Have you ever seen that

1 they've been wrong?

2 MR. GLOVER: Yes.

3 MR. QUIROS: Has that caused  
4 fluctuation in the price of pecans?

5 MR. GLOVER: Yes.

6 MR. QUIROS: Thank you, Mr. Glover.

7 Are you familiar with the release of several  
8 weeks ago by the California Almonds of the  
9 projected crop for the next year?

10 MR. GLOVER: I have not seen that.

11 MR. QUIROS: Thank you. As the last  
12 matter, could you turn please to the letter that  
13 you wrote while you were president of the  
14 National Pecan Growers Council, now the U.S.  
15 Pecan Growers Council and would you be able to  
16 read that into the record please?

17 MR. GLOVER: As you can see, that's  
18 not my strong suit. But I'll have to borrow your  
19 copy.

20 MR. QUIROS: Yes, sir. It's attached  
21 as a copy to your testimony.

22 (Aside) You can put it on the

1 overhead.

2 The testimony that you have.

3 MR. GLOVER: That copy that you gave  
4 me.

5 This letter is dated 6/15/15 and is  
6 addressed to The Honorable Tom Vilsack, Secretary  
7 of Agriculture.

8 "Dear Secretary Vilsack, The National  
9 Pecan Growers Council is writing you in support  
10 of the federal marketing order for pecans  
11 currently being promulgated by the American Pecan  
12 Board. Our industry has and continues to face  
13 issues of price and supply instability in the  
14 market. This situation inhibits our effort to  
15 provide a constant quality supply of pecans for  
16 domestic consumers at a price that supports a  
17 profit to be returned to producers and  
18 processors.

19 We believe that a federal marketing  
20 order will contribute to a more stable market  
21 environment that is favorable to growers, buyers,  
22 shellers and consumers. The National Pecan

1 Growers Council would like to go on record in  
2 favor of the order and greatly appreciate your  
3 support.

4 Respectfully submitted, Jay B. Glover,  
5 President, National Pecan Growers Council."

6 MR. QUIROS: Thank you, Mr. Glover.

7 No further questions, Your Honor.

8 JUDGE GUTHRIDGE: Any follow-up from  
9 the Department of Agriculture?

10 (No verbal response)

11 Does anyone in the audience have any  
12 questions for Mr. Glover?

13 (No verbal response)

14 Hearing none, then, Mr. Glover, you're  
15 excused. If you would talk with Ms. Gonzalez to  
16 see if she needs anything clarified.

17 (Witness excused.)

18 It's now 12:12 p.m. Shall we recess  
19 and return at 1:15 p.m.?

20 MR. QUIROS: 1:30 p.m. perhaps.

21 JUDGE GUTHRIDGE: 1:30 p.m.

22 MR. QUIROS: We have some witnesses to

1 prepare.

2 JUDGE GUTHRIDGE: Okay. 1:30 p.m.

3 We're in recess.

4 (Whereupon, the above-entitled matter  
5 went off the record at 12:12 p.m. and resumed at  
6 1:31 p.m.)

7 JUDGE GUTHRIDGE: On the record. Mr.  
8 Davis, call your next witness.

9 MR. DAVIS: Your Honor, the Proponents  
10 call as our next witness Mr. Ben King.

11 (Whereupon, the above-  
12 referred to document was  
13 marked as Proponent Exhibit  
14 37 for identification.)

15 JUDGE GUTHRIDGE: Mr. King, please  
16 raise your right hand.

17 (Proponent Witness Ben King Sworn)  
18 Proceed.

19 DIRECT TESTIMONY

20 MR. DAVIS: Good afternoon, Mr. King.  
21 Thank you so much for being here.

22 MR. KING: Yes.



1 MR. DAVIS: You have in front of you  
2 what's in this record as Exhibit 1 for the  
3 proposed FMO and Exhibit 23.

4 MR. KING: Yes.

5 MR. DAVIS: The summary of the  
6 economic testimony of Dr. Palma. Have you had an  
7 opportunity to review those two documents?

8 MR. KING: Yes, I have.

9 MR. DAVIS: All right. Do you  
10 understand that you have a prepared statement  
11 that you would like to read?

12 MR. KING: Yes, I do.

13 MR. DAVIS: Why don't we go through  
14 that?

15 MR. KING: Thank you very much. My  
16 name is Ben King. It's spelled B-E-N K-I-N-G.  
17 Although, I currently reside in Chicago, I have  
18 extensive personal heritage and involvement in  
19 orchard management and California agriculture  
20 generally and the California pecan industry in  
21 particular.

22 Six years ago, I converted an orange

1 orchard that has been in my family for over 100  
2 years to pecans. And since then I have planted  
3 and purchased approximately 850 acres of pecans  
4 in California.

5 Currently, I am the largest producer  
6 of pecans in California. That's approximately 1.6  
7 million pounds of an estimated six million pounds  
8 state crop and owner of the largest acreage of  
9 pecans in California. In addition to the pecan  
10 acreage, I also own approximately 380 acres of  
11 almonds which has been established on land that  
12 has been in my family since the 1860s.

13 I have also been active in  
14 establishing several new companies that are  
15 intended to provide expertise, technology and  
16 capital to the California pecan industry in the  
17 future. I have established an asset management  
18 company called Arbor Nutrio LLC based in Chicago  
19 and co-founded a pecan marketing company called  
20 Pacific Gold Nut Company based in El Paso, Texas  
21 and co-founded a tree nut orchard management  
22 company called Pacific Gold Agriculture with

1 offices in Visalia which is the San Joaquin  
2 Valley and Colusa which is my home town located  
3 in northern Sacramento Valley.

4 One of my co-founders, Erin  
5 Steidlmayer, of Pacific Gold Agriculture is also  
6 present here at these hearings. She looks  
7 forward to introducing herself and our collective  
8 vision for pecans as a sustainable tree nut  
9 orchard management in California from her own  
10 perspective.

11 Under the Small Business  
12 Administration guidelines, we would be considered  
13 a large grower business.

14 I feel like I have been informed about  
15 the process of securing a federal marketing  
16 order. I have been given an opportunity to  
17 participate in this process.

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

1 pound cost. Overall, I am aware of the costs  
2 that a federal marketing order may impose on my  
3 farm and I do not believe those costs are unduly  
4 burdensome, but rather a wise investment for our  
5 companies and industry as a whole.

6 In recent years, I have seen wide  
7 variation in the prices paid for pecans and I  
8 believe that this volatility in prices is  
9 unhealthy for producers and potential future  
10 providers of capital to the industry. This  
11 volatility is extreme compared to my experiences  
12 as an almond grower and the price volatility that  
13 is observed for walnuts and pistachios in  
14 California. While the extreme price volatility  
15 of pecans is unhealthy because operating costs  
16 have been rising regardless of pecan price  
17 declines, it is also a deterrent to make  
18 necessary capital investments in orchard  
19 efficiency or sustainability infrastructure.

20 Further, the lack of accurate market  
21 information on the anticipated size of the pecan  
22 crop makes it difficult for us to feel confident

1 about prices offered for our pecans. Increased  
2 price stability through more accurate market  
3 information would greatly benefit our farm.

4 I think our farm and the industry  
5 would also benefit in the future from grade,  
6 size, quality, packaging, shipping protocols, and  
7 other handling requirements as we compete with  
8 other tree nuts.

9 I also understand that under the  
10 proposed order, only growers with more than 30  
11 acres of pecans or more than 50,000 pounds of  
12 average production per year over the last four  
13 years will be allowed to vote on this proposed  
14 order. In my opinion, this threshold is  
15 reasonable because a grower that does not meet  
16 this threshold is not a commercial grower, but  
17 nevertheless will benefit from the increased  
18 marketing information and price stability that is  
19 likely to come with the federal marketing order.

20 The American Pecan Board has kept our  
21 organization informed about its effort to propose  
22 a federal marketing order. I have financially

1 contributed to the work of the American Pecan  
2 Board because I believe in their goals.

3 In conclusion, we fully support the  
4 proposed federal marketing order for pecans and  
5 encourage the Secretary to implement the order as  
6 proposed by the American Pecan Board. I thank  
7 you for this opportunity. I would be glad to  
8 answer any questions anyone may have.

9 MR. DAVIS: Thank you, Mr. King.

10 Your Honor, the Proponents tender  
11 Exhibit 37, the testimony of Ben King along with  
12 his CV.

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

15 MR. HILL: No objection.

16 JUDGE GUTHRIDGE: Any objection from  
17 anyone in the audience?

18 (No verbal response)

19 Hearing no objection, Exhibit 37 is  
20 admitted.

21 (Whereupon, the above-  
22 referred to document marked

1 for identification as  
2 Proponent Exhibit 37 was  
3 received into evidence.)

4 MR. DAVIS: And, Your Honor, we will  
5 reserve any questions at this time.

6 JUDGE GUTHRIDGE: Any questions from  
7 the Department of Agriculture?

8 CROSS EXAMINATION

9 MS. SCHMAEDICK: Michelle Schmaedick,  
10 USDA. Thank you, Mr. King, for your testimony.

11 MR. KING: Thank you.

12 MS. SCHMAEDICK: Thank you for joining  
13 us today. You mentioned that you are involved in  
14 the almonds and pistachio.

15 MR. KING: Not almonds. Just  
16 personally involved in from the grower's  
17 perspective almonds and pecans.

18 MS. SCHMAEDICK: Almonds and pecans,  
19 okay.

20 MR. KING: -- from orchard management  
21 we also work for this, for grove almonds.

22 MS. SCHMAEDICK: I'm sorry. Did you

1 also say for walnuts?

2 MR. KING: As kind of a loosely  
3 affiliated group, yes.

4 MS. SCHMAEDICK: Okay. So with these  
5 other commodities, have you served in any  
6 capacity on any committees?

7 MR. KING: No, I have not. I grew up  
8 in Colusa, California which is under 5,000 on an  
9 orchard right next to the river. I worked in  
10 walnut orchards. I worked in fruit orchards,  
11 peach orchards. But whenever I graduated from  
12 the University of California Davis I got an  
13 agriculture economics degree. Farming wasn't  
14 very good.

15 I wanted to do the farm management,  
16 but I went on to actually become an attorney in  
17 New York City and worked in the financial  
18 community. And during that time since my father  
19 died I continued to do farm management and  
20 improving the land that my great grandfather had.  
21 I've been planting pecan trees for over a decade.

22 So it's really a return for me the



1 last year to a return to agriculture. So I  
2 really appreciate the opportunity to be part of  
3 what's going on in the pecan industry. I've  
4 spent quite a bit of time and money looking at  
5 the other growers' perspectives and very much  
6 appreciate the leadership of the American Pecan  
7 Board and Mike Adams.

8 MS. SCHMAEDICK: Thank you. So given  
9 your background then in the financial and legal  
10 industries, have you had a chance to look at the  
11 proposal, the Exhibit 1 proposed federal  
12 marketing order?

13 MR. KING: Yes, I have.

14 MS. SCHMAEDICK: Have you had a chance  
15 to focus on the administrative committee  
16 components? I'm referring to Sections 986.52-  
17 986.55. It begins with council expenses and then  
18 covers powers, duties and procedure. Are you  
19 familiar with those sections?

20 MR. KING: I've looked at them. Yes,  
21 I have. I can't say to remember the detail, but  
22 I understand the accounts.

1 MS. SCHMAEDICK: So in your opinion is  
2 the way that the program is proposed in terms of  
3 its administrative capacity include all of the  
4 elements that you would hope to find in sound  
5 business plan?

6 MR. KING: Yes, I think you need both  
7 first of all for having a collective nature in  
8 cost sharing for the business and have some type  
9 of balance between people who are focused versus  
10 the product community. But also I think what  
11 it's going to provide is the collective which is  
12 very important for a national specialty crop but  
13 also a way to cost share and most of all  
14 transparency and empowerment of grower level in  
15 way to collaborate with the Department of  
16 Agriculture.

17 MS. SCHMAEDICK: Thank you. And in  
18 terms of the business practice oversight,  
19 bookkeeping, reporting, do you have any thoughts  
20 on that?

21 MR. KING: Right. I think  
22 transparency is kind of the cornerstone of trust

1 within finance, within anything in the business  
2 end. But more importantly I believe when you're  
3 dealing with people from a wide geographic areas  
4 and have different viewpoints, knowing that  
5 there's transparency and fairness in the process,  
6 that it's viable, it really depends on the  
7 enduring confidence of the complete pecan usury  
8 community to make sure this is successful.

9 I think every decision needs to be  
10 rationale and I'm sure that the conservatism is  
11 kept with that. The industry has been talking  
12 about this for so long. It's important we have  
13 procedures and transparency and reserve rates  
14 because we're just starting to process. And we  
15 don't know what the market is going to be and how  
16 the challenges are. But we need to make sure  
17 that we have processes in place to protect all  
18 this hard work done today.

19 MS. SCHMAEDICK: Thank you. You also  
20 mentioned that your business has made  
21 contributions to the American Pecan Board.

22 MR. KING: Yes.

1 MS. SCHMAEDICK: So I'd like to take  
2 that thought a step further. In the proposed  
3 language in Section 986.63, do you have that?

4 MR. DAVIS: I'll put that up for you.

5 MR. KING: One second. Which section  
6 again?

7 MS. SCHMAEDICK: 986.63,  
8 contributions.

9 MR. KING: Contributions, yes.

10 MS. SCHMAEDICK: I'll give you a  
11 moment to look over that language.

12 MR. KING: Yes, I've seen that.

13 MS. SCHMAEDICK: So in your opinion,  
14 can contributions be helpful to an organization?

15 MR. KING: Absolutely. I believe I  
16 was on the record saying this, but I don't know  
17 the basis. There are definitely good people  
18 involved. I think it's the rates of that  
19 facility, but also I think it's incumbent upon  
20 the Board to not have preferential treatment just  
21 because somebody gives a contribution. So I  
22 would contend to sort of remove myself from that

1 process. And somebody who cares about the  
2 industry I think will give contributions, but  
3 then it more should be incumbent upon making sure  
4 that from fiduciary that they are not influenced  
5 by those contributions.

6 MS. SCHMAEDICK: Thank you. So just  
7 to clarify. There's a statement in the middle of  
8 that paragraph that says, "Such contributions may  
9 only be accepted if they are free from any  
10 encumbrances or restrictions on their use." Is  
11 that the --

12 MR. KING: Yes, I think that's great  
13 to have that specifically in the language. But  
14 also I think the understanding if anybody makes a  
15 contribution to make sure there's no intended or  
16 unintended.

17 MS. SCHMAEDICK: Thank you. My last  
18 question for you is you mentioned the importance  
19 of developing packaging and shipping protocols.  
20 What do you have in mind when you say packing and  
21 shipping protocols?

22 MR. KING: Well, it's when -- I'm

1 really not an expert on that, but it's speaking  
2 of the general language. I do think uniformity.  
3 I do think there is no issue in the quality and  
4 the perception of quality of pecans. I do think  
5 that you can -- As somebody that's grown, who has  
6 been around farming my whole life, my favorite  
7 memory is picking fresh fruit or climbing on the  
8 cherry trees, and those are my memories of life.

9           There's something about quality or  
10 having great quality which today is more  
11 something that people are focused on the quality  
12 of the product. So to the extent that we can as  
13 the usury can have protocol that can ensure a  
14 certain quality to the consumer it will really  
15 enhance that amount of money that's in the  
16 market. Sometimes uniformity and quality levels  
17 should the practice of the market in the U.S.

18           MS. SCHMAEDICK: Thank you. No  
19 further questions.

20           CROSS EXAMINATION (Cont'd)

21           MR. HINMAN: Good afternoon. Don  
22 Hinman, USDA. I just have one question. You

1 mentioned the value of accurate market  
2 information in your testimony.

3 MR. KING: Yes.

4 MR. HINMAN: And you specifically  
5 mentioned in relation to the anticipated size of  
6 the pecan crop.

7 MR. KING: Yes.

8 MR. HINMAN: Others here have  
9 testified that another very useful aspect of data  
10 collection would be inventories. Would you  
11 agree that that is another useful part of the  
12 market information that would be collected?

13 MR. KING: Yes, I think the issue of  
14 the cold storage numbers and the reliability in  
15 reference to that, as I engage this industry is a  
16 common thing, about whether or not those are  
17 reliable and real numbers. They tend to be at  
18 times a decent size, but of course looking at the  
19 overall supply, when they're not verifiable, it  
20 will have harder confidence.

21 And then the other point is lesser so  
22 but since pecans are also a variable crop the

1 outcome of supply, the carry in and the potential  
2 for a large year is something that's impacted.

3 And the interaction of the others too which can -

4 - Three years ago we had a lean crop. So all  
5 these things, the supply of the pecans is  
6 probably more our ability in tree nuts based off  
7 of a smaller denominator because it's a large  
8 geographic zone, because your deliverable in food  
9 and in variety.

10 Information here in analyzing the bare bone  
11 information probably is more important than any  
12 other thing.

13 MR. HINMAN: Thank you. I have no  
14 other questions.

15 CROSS EXAMINATION (Cont'd)

16 MS. VARELA: Jennie Varela, USDA.  
17 Thank you so much for your time, Mr. King. I  
18 just want to follow up a little further on one of  
19 the statements you made. You mentioned that the  
20 volatility you experienced in pecans is extreme  
21 compared to the experiences as an almond grower  
22 than price volatility you see in walnuts and



1 pistachios.

2 MR. KING: Yes.

3 MS. VARELA: Could you expound on that  
4 a little.

5 MR. KING: Yes, I think as you've seen  
6 in 2001, the year up to 2012, with the natives we  
7 saw a four percent, three percent change in  
8 prices. That is just kills capital formation and  
9 kills who want to buy trees. And so that says to  
10 me as one of the -- I haven't looked at actual or  
11 done the work of a standard deviation of that  
12 variance. But I would imagine that the  
13 volatility of pecans in the last seven years or  
14 ten years versus almonds or walnuts I would  
15 imagine it's about two or three times the  
16 volatility. That's a guesstimate.

17 The other thing about volatility is  
18 that there's both good volatility and bad  
19 volatility. Good volatility is when the price  
20 goes up and that's what's happening. And it's  
21 happening this year in almonds and the exception  
22 last year an increase in prices for walnuts;

1       whereas pecans were basically static or they  
2       improved by a very small margin from prices three  
3       years ago, four years ago were higher than they  
4       are today, \$1.3 in shell or less than that.

5       That's part of it, too.

6               But overall I think it's my perception  
7       that historically because of the lack of  
8       information, because of geographic dispersion of  
9       the pecan growers that a lot of lessons learned  
10      by the growers, we can get lesser prices and  
11      assume that's fine because that's just how it is  
12      especially around here.

13             MS. VARELA: Thank you. And also  
14      drawing on your experience in California in  
15      particular you mentioned that you have the  
16      largest acreage.

17             MR. KING: Yes, it's certainly not the  
18      smallest in the country, by and large. There's  
19      only 6 million to 8 in pecans and two million in  
20      almonds. So about that, I guess.

21             MS. VARELA: Would you say that most  
22      of the pecan farms in California are on the

1 smaller side compared to some of the others.

2 MR. KING: Well, I think pecans in  
3 California are sort of unique. And I think  
4 that's a lot of reasons why the acreage hasn't  
5 grown. We guesstimate there's probably 25 to 30  
6 growers with 5,000 acres and half of that is --  
7 So there are some small pecan trees that were  
8 planted a while back that people will have custom  
9 on custom farming.

10 But they really haven't scaled it  
11 because of some of that increase came in the  
12 recent price economics. If you of almonds and  
13 re-extractions of 5,000 pounds per acre on these  
14 new varieties versus at \$2.00 a pound versus  
15 pecans where in California the high would be the  
16 same, that's still there. So the orchards have  
17 not scaled in California. And I think that's one  
18 function opportunity cost and also function of  
19 changing cultural practices in the pecan industry  
20 while these other nut crops are just see a  
21 significant amount of globalization.

22 MS. VARELA: Thank you. You mentioned

1 kind of new term for me there. Could you define  
2 custom farming for me please?

3 MR. KING: I'm sorry. Custom farming.

4 MS. VARELA: Custom farming.

5 MR. KING: So custom farming is where  
6 you hire somebody to do one part of your cultural  
7 practices, so a typical culture of custom farming  
8 operations harvest. So if I had 40 acres of  
9 pecans, I probably could -- I'd likely have some  
10 walnuts and maybe some almonds or at least  
11 walnuts. You could do all the irrigation. And  
12 you can do the spraying.

13 But when it comes to harvest you may  
14 want to have especially -- Because they have more  
15 leaves than the other nut trees, you have some  
16 come into the harvest. Or hedging, you are  
17 hedging to the amount of hedging for pecan  
18 there's one person actually goes up and down  
19 doing the hedging and it actually comes out less,  
20 too. So you find a specialized provider at a  
21 reasonable cost of your cultural boundaries.

22 MS. VARELA: And would you say that

1 that type of industry is more common where you  
2 are than in some of the other production or parts  
3 of the production area?

4 MR. KING: Yes, I'd say maybe  
5 depending on the area, you know, a place like  
6 Rosita Valley there's a lot. They probably do  
7 custom harvest for pecans. But when it comes to  
8 California because you have so many different  
9 crops and people you see have different trees,  
10 you will find people that are just nutting into  
11 orchard management or farm management.

12 One of the companies actually that  
13 we're establishing is an orchard management  
14 company where we will come in and invest to the  
15 management side for a price break or looking at  
16 unit center based structure. Pecans do have  
17 certain specialized requirements. Therefore, the  
18 machinery or even the knowledge is something  
19 specialized. You can do that yourself.

20 MS. VARELA: Thank you very much.  
21 That's all I have.

22 JUDGE GUTHRIDGE: Any more questions

1 from the Department of Agriculture?

2 (No verbal response)

3 Mr. Davis.

4 MR. DAVIS: One second. I want to  
5 make sure. I have no questions. Thanks so much.

6 JUDGE GUTHRIDGE: Thank you so much  
7 for your time. Does anyone in the audience have  
8 any questions for Mr. King?

9 (No verbal response)

10 All right. You can be excused. Check  
11 with Ms. Gonzalez to see if there are  
12 clarifications.

13 (Witness excused)

14 MR. KING: So I'll just leave the  
15 exhibits right here.

16 MR. DAVIS: Leave those exhibits right  
17 there. Yes, thank you so much.

18 This may just take a second longer  
19 since I'm solo here. But before I call my next  
20 witness, let me get the documents in a row.

21 JUDGE GUTHRIDGE: Is the next witness  
22 going to be Ms. Steidlmayer?

1 MR. DAVIS: Steidlmayer.

2 JUDGE GUTHRIDGE: You wanted to run  
3 outside for a minute.

4 MR. DAVIS: No, I'm getting documents  
5 ready.

6 (Whereupon, the above-  
7 referred to document was  
8 marked as Proponent Exhibit  
9 38 for identification.)

10 JUDGE GUTHRIDGE: Please raise your  
11 right hand.

12 (Proponent Witness Ms. Erin  
13 Steidlmayer sworn)

14 Mr. Davis.

15 DIRECT TESTIMONY

16 MR. DAVIS: Good afternoon, Ms.  
17 Steidlmayer. How are you?

18 MS. STEIDLMEYER: Good.

19 MR. DAVIS: Good. Thank you for  
20 coming in. You have before you Exhibit 1.

21 MS. STEIDLMEYER: Yes, I do.

22 MR. DAVIS: And that is the proposed

1 federal marketing order, correct?

2 MS. STEIDLMEYER: Yes, it is.

3 MR. DAVIS: Have you had an  
4 opportunity to review that in preparation?

5 MS. STEIDLMEYER: Yes, I have.

6 MR. DAVIS: Yes. And how about do you  
7 also have Exhibit 23?

8 MS. STEIDLMEYER: Yes, I have it here.

9 MR. DAVIS: And that is the executive  
10 summary of the economic testimony of Dr. Marco  
11 Palma, correct?

12 MS. STEIDLMEYER: Yes, it is.

13 MR. DAVIS: Have you had an  
14 opportunity to review that?

15 MS. STEIDLMEYER: Yes, I have.

16 MR. DAVIS: Ms. Steidlmayer, I  
17 understand you have a prepared statement. Would  
18 you be prepared to go forward with that?

19 MS. STEIDLMEYER: Yes. Thank you.

20 MR. DAVIS: Thank you.

21 MS. STEIDLMEYER: Good afternoon. My  
22 name is Erin Steidlmayer. It's spelled E-R-I-N



1 S-T-E-I-D-L-M-A-Y-E-R. I live in Colusa,  
2 California. I am a managing principal, co-owner  
3 and co-founder of Pacific Gold Agriculture which  
4 has offices located in Visalia and Colusa,  
5 California.

6 Pacific Gold Agriculture manages over  
7 1,200 acres of almonds and pecans and  
8 approximately 3,000 acres with our affiliated  
9 group companies. My responsibilities include  
10 general farm management duties, and more  
11 specifically, business development and human  
12 resources. Since we are affiliated with Ben King  
13 and Arbor Nutrio, we are the largest pecan  
14 orchard manager in California.

15 Due to my previous experience in the  
16 software technology industry and my understanding  
17 of the importance of said technology, Pacific  
18 Gold Agriculture is working with a software  
19 company to integrate technology an agriculture.  
20 We are able to track orchard by orchard, block by  
21 block, of productivity and we have the ability to  
22 monitor and compare solar panel power production,

1 soil water retention and much more.

2 With this technology, we can make the  
3 business of agriculture as transparent and  
4 understandable to the consumer as other  
5 industries which would definitely bring the pecan  
6 farming industry into the 21st century and  
7 beyond. Attached is my résumé.

8 Although I am an attorney by  
9 profession, my family heritage in farming goes  
10 back to the 1920s when my great grandparents  
11 emigrated from the Philippines to the sugar cane  
12 fields of Hawaii.

13 Pacific Gold Agriculture has more than  
14 \$750,000 in annual gross income from pecans. And  
15 therefore under the Small Business Administration  
16 definitions we are classified as a large pecan  
17 business.

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

1 pound cost. I believe that the benefits of the  
2 federal marketing order to our farming business  
3 will greatly outweigh any costs associated with  
4 it.

5 The American Pecan Board has kept our  
6 organization informed about its efforts to  
7 propose a federal marketing order. I believe  
8 that I have been informed about the process and I  
9 have been given the opportunity to participate in  
10 this process.

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

16 MR. DAVIS: Thank you so much, Ms.  
17 Steidlmayer.

18 Your Honor, the Proponent group  
19 tenders Exhibit 38, the testimony of Erin  
20 Steidlmayer and her curriculum vitae.

21 JUDGE GUTHRIDGE: Any objection from  
22 Department of Agriculture?

1 MR. HILL: No objections.

2 JUDGE GUTHRIDGE: Any objections from  
3 anyone in the audience?

4 (No verbal response)

5 Hearing no objection, Exhibit 38 is  
6 admitted into the record.

7 (Whereupon, the above-  
8 referred to document marked  
9 for identification as  
10 Proponent Exhibit 38 was  
11 received into evidence.)

12 MR. DAVIS: Your Honor, we will  
13 reserve questions.

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

16 CROSS EXAMINATION

17 MS. SCHMAEDICK: Melissa Schmaedick,  
18 USDA. Good afternoon, Ms. Steidlmayer. Thank  
19 you for your testimony.

20 MS. STEIDLMEYER: Sure.

21 MS. SCHMAEDICK: So I'm curious. I'm  
22 not quite sure based on your testimony. Are you

1 identified as a grower?

2 MS. STEIDLMEYER: So we're a farm  
3 management company. So we're neither  
4 specifically a grower or a handler. But we're  
5 affiliated with a grower. I work with Ben King  
6 and he is the grower and roughly it's up to the  
7 referrals.

8 MS. SCHMAEDICK: Well, given that  
9 relationship I was hoping that maybe you could  
10 speak to a term that is in the proposed program.

11 MS. STEIDLMEYER: Okay.

12 MS. SCHMAEDICK: If you could look at  
13 986.3 which is entitled affiliation. And I'll  
14 give you a moment to look it over.

15 MS. STEIDLMEYER: Sure.

16 MR. DAVIS: Ms. Steidlmayer, I'm going  
17 to try to get that up on the overhead for you,  
18 too.

19 MS. STEIDLMEYER: Okay.

20 MS. SCHMAEDICK: So I guess let's  
21 start off with what is your basic understanding  
22 of this term here? What is it trying to capture?

1 MS. STEIDLMEYER: I think it's trying  
2 to capture either -- So a grower or a sheller --  
3 I'm sorry. I want to make sure I answer this  
4 correctly.

5 MS. SCHMAEDICK: Sure. Take your  
6 time.

7 MS. STEIDLMEYER: Sure. So there's a  
8 common thread between the sheller and the grower.  
9 And the first part of the sentence, a grower or a  
10 handler that is under the control of another  
11 grower and handler, there is a proprietary  
12 relationship between those entities. So there's  
13 a common thread between the grower and the  
14 sheller.

15 MS. SCHMAEDICK: Thank you. I  
16 apologize for putting you on the spot there. You  
17 said you were an attorney. The reason I ask you  
18 this is in the context of membership on the  
19 proposed council for example I'm wondering about  
20 your relationship with the previous witness, Ben  
21 King, as a grower.

22 MS. STEIDLMEYER: Okay.

1 MS. SCHMAEDICK: Would you be  
2 considered an affiliate according to this  
3 definition?

4 MS. STEIDLMEYER: We are neither a  
5 grower or a handler. For the first part, we're  
6 not under the control of a grower/handler or  
7 directly. Or indirectly connecting in  
8 proprietary capacities. I think that we're still  
9 not because we're not a grower or a handler. So  
10 no.

11 MS. SCHMAEDICK: Okay. So then based  
12 on your understanding of the common thread --

13 MS. STEIDLMEYER: Right.

14 MS. SCHMAEDICK: -- if there were a  
15 common thread --

16 MS. STEIDLMEYER: Right.

17 MS. SCHMAEDICK: So it's a  
18 hypothetical. If there were a common thread,  
19 would that allow you to have a seat on the  
20 council?

21 MS. STEIDLMEYER: For our farm  
22 management company?

1 MS. SCHMAEDICK: Yes.

2 MS. STEIDLMEYER: Well, it's just  
3 answering a question if there were a common  
4 thread.

5 MS. SCHMAEDICK: If there were.

6 MS. STEIDLMEYER: Then yes.

7 MS. SCHMAEDICK: Okay. Thank you.  
8 That's my only question.

9 MS. STEIDLMEYER: Okay.

10 MS. SCHMAEDICK: Thank you.

11 JUDGE GUTHRIDGE: Any other questions  
12 from the Department of Agriculture?

13 CROSS EXAMINATION (Cont'd)

14 MR. HINMAN: Don Hinman, USDA. Ms.  
15 Steidlmayer, you mentioned 1,200 acres of almonds  
16 and pecans. Can you break it out? What is the  
17 number of acres of pecans at Pacific Gold  
18 Agriculture?

19 MS. STEIDLMEYER: Yeah, so it's about  
20 400 acres of almonds and about 800 acres -- it's  
21 actually 850 acres of pecans.

22 MR. HINMAN: That was my only



1 question. Thank you.

2 MS. STEIDLMAYER: Okay.

3 JUDGE GUTHRIDGE: Any other questions  
4 from the Agriculture?

5 (No verbal response)

6 Mr. Davis.

7 MR. DAVIS: Thank you so much. We  
8 have no questions.

9 MS. STEIDLMAYER: All right.

10 MR. DAVIS: Appreciate it. Thanks for  
11 coming.

12 JUDGE GUTHRIDGE: Is there anyone in  
13 the audience have a question for Ms. Steidlmayer?

14 MS. STEIDLMAYER: Steidlmayer.

15 JUDGE GUTHRIDGE: Steidlmayer.

16 (No verbal response)

17 No. So you're excused. Please check  
18 with Ms. Gonzalez.

19 MS. STEIDLMAYER: Sure.

20 (Witness excused)

21 MR. QUIROS: Your Honor, we'd like to  
22 call our next witness, Mr. Medina. Your Honor, I

1 need just a moment to talk with my co-counsel  
2 while he gets settled.

3 JUDGE GUTHRIDGE: Certainly.

4 (Off record discussion)

5 MR. DAVIS: And this is going to be  
6 39.

7 (Whereupon, the above-  
8 referred to document was  
9 marked as Proponent Exhibit  
10 39 for identification.)

11 In the meantime, let me go ahead and  
12 swear you in so we're ready to go.

13 (Proponent witness Eduardo Medina  
14 sworn)

15 MR. QUIROS: Thank you, Your Honor.

16 DIRECT TESTIMONY

17 MR. QUIROS: Mr. Medina, just to lay  
18 a foundation for your testimony, I wanted to ask  
19 you if you had been able to receive and review a  
20 copy of what is Exhibit 1 in this hearing which  
21 is the notice which contains the proposed federal  
22 marketing order for pecans.

1 MR. MEDINA: Yes, sir.

2 MR. QUIROS: Next I'd like to ask you  
3 if you have received what's been identified as  
4 Exhibit 23 in this hearing which is an executive  
5 summary of the economic report that was given by  
6 Dr. Marco Palma yesterday. Have you received  
7 that?

8 MR. MEDINA: Yes, sir.

9 MR. QUIROS: Thank you. And had a  
10 chance to review it.

11 MR. MEDINA: Yes, sir.

12 MR. QUIROS: Thank you. I understand  
13 you have prepared testimony. Would you like to  
14 read that now?

15 MR. MEDINA: Yes, sir.

16 MR. QUIROS: Thank you.

17 MR. MEDINA: My name is Eduardo  
18 Medina. It's spelled E-D-U-A-R-D-O M-E-D-I-N-A.  
19 I live in Dallas, Texas. I am the Chief  
20 Executive Officer of Pecan Grove Farms and  
21 Nursery. Pecan Grove Farms and Nursery is  
22 located in Cedar Creek, Texas. We have two pecan

1 farms located in Central and West Texas. One our  
2 farm, we grow improved varieties of pecans. I  
3 have attached a copy of my résumé.

4 Under the Small Business  
5 Administration guidelines, we are considered a  
6 large pecan grower farm.

7 There are four benefits I would like  
8 to see as a result of the proposed federal  
9 marketing order for pecans.

10 1. Increase detail and reliability of  
11 industry data. The lack of accurate market  
12 information on the anticipated size of pecan crop  
13 in any given year also makes it difficult for us  
14 to negotiate a fair price for our crop and to  
15 make reasonable business decisions about  
16 investments in our farms. More accurate market  
17 information would greatly benefit our farm  
18 operation.

19 2. Increase consumer focused pecan  
20 research. Our universities provide great  
21 agricultural and technical research today, but we  
22 need more research focused on health benefits of

1 pecans and research related to marketing to our  
2 customers.

3 MR. QUIROS: Mr. Medina, can I  
4 interrupt you there? Is there any other types of  
5 research do think would be helpful to have as  
6 part of the federal marketing order for pecans?

7 MR. MEDINA: Yes. I would like also  
8 research regarding technology nursery, falling  
9 trees, all related to having a better tree and  
10 better yield, less disease. And there's a lot of  
11 intent to do that. There is not a lot of  
12 resources available.

13 MR. QUIROS: Thank you, Mr. Medina.

14 MR. MEDINA: Number three would be  
15 industry (non-branded) pecan promotion and  
16 marketing. We need good marketing to address and  
17 win in the domestic U.S. market, the largest  
18 consumer market in the world.

19 4. The final benefit I would like to see is  
20 what I call "risk management." A unified voice  
21 for the entire industry to help us face  
22 challenges together, such as a potential product

1 recall. This unified industry representation,  
2 coupled with possible future handling  
3 improvements related to quality, packaging, size,  
4 grade, etc., will be very important in the future  
5 growth of the industry.

6 I have reviewed the economic analysis  
7 summary prepared by Dr. Marco Palma,  
8 specifically, it is very encouraging to review  
9 that using promotion investment of 2.5 cents per  
10 in shall pound that the increase of the value of  
11 the crop had an average of 6.3 cents positive  
12 impact per in shell pound.

13 Overall, I am aware of the costs that  
14 a federal marketing order may impose on our  
15 farms. I do not believe those costs are unduly  
16 burdensome. I believe that the benefits of the  
17 federal marketing order to our farms will greatly  
18 outweigh any costs associated with it.

19 MR. QUIROS: Mr. Medina, I'd like to  
20 interrupt you again if I can. Acknowledging that  
21 growers do not pay assessments, if you prices  
22 were affected essentially by the cost of the

1 assessments and you were paid lower in prices,  
2 what percentage of your costs for production  
3 would 2.5 cents be?

4 MR. MEDINA: It would be between one  
5 and three percent of the cost. And in my  
6 business experience, a marketing expense would be  
7 about ten percent. If you go to any public  
8 company, it will have about a ten percent market  
9 expense. So I think that is not burdensome.

10 MR. QUIROS: And you're familiar with  
11 Dr. Palma's testimony again which sets it at I  
12 think between 1.3 cents and 1.7 cents of the cost  
13 of production.

14 MR. MEDINA: Right.

15 MR. QUIROS: Thank you.

16 MR. MEDINA: I was about to get into  
17 that in my testimony.

18 MR. QUIROS: Yes. Thank you very  
19 much.

20 MR. MEDINA: I understand that under  
21 the proposed order, only growers with more than  
22 30 acres of pecans or more than 50,000 pounds of

1 average production per year over the last four  
2 years will be allowed to vote on the proposed  
3 order. In my opinion, this threshold is  
4 reasonable because a grower that does not meet  
5 this threshold is not a commercial grower. Any  
6 grower that is smaller than the proposed  
7 threshold could not justify the cost inherent in  
8 such a small production and is most probably  
9 merely a seller of pecans from older trees that  
10 happen to be on his or her property, a hobby  
11 farmer or one that does not plan to put all  
12 commercial inputs such as fertilizer, water, etc.  
13 on his farm.

14 I have been a member of the Texas  
15 Pecan Board for the past two years. The American  
16 Pecan Board has kept our organization informed  
17 about its efforts to propose a federal marketing  
18 order. Pecan Grove Farms and Nursery hosted the  
19 first meeting of the American Pecan Board and we  
20 have met with the board four times. I feel like  
21 I have been informed about the process and I have  
22 been given an opportunity to participate in this



1 process.

2 It is my expectation that the funds  
3 will be used efficiently and by that I mean with  
4 a high percentage of the money making it to  
5 industry uses rather than salaries and also  
6 effectively which also means using experts and  
7 not only growers and shellers involved in the  
8 deployment of the funds.

9 In conclusion, I fully support the  
10 proposed federal marketing order for pecans and  
11 encourage the Secretary to implement the order as  
12 proposed by the American Pecan Board. I will be  
13 glad to answer any questions you may have.

14 MR. QUIROS: Your Honor, we tender Mr.  
15 Medina's testimony and his résumé as Exhibit 39  
16 in these hearings.

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

19 MR. HILL: No, Your Honor.

20 JUDGE GUTHRIDGE: Any objection from  
21 anyone in the audience?

22 (No verbal response)

1                   With no objection heard, Exhibit 39  
2 will be admitted into the record.

3                   (Whereupon, the above-  
4 referred to document marked  
5 for identification as  
6 Proponent Exhibit 39 was  
7 received into evidence.)

8                   Mr. Quiros.

9                   MR. QUIROS: Yes, reserve questions.

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

12                   CROSS EXAMINATION

13                  MS. SCHMAEDICK: Melissa Schmaedick,  
14 USDA. Thank you, Mr. Medina, for your testimony.  
15 Thank you for joining us today. There are two  
16 things from your testimony that I wanted to  
17 explore a bit further.

18                  One is that you mentioned that you own  
19 a nursery. Is that correct?

20                  (Off record discussion)

21                  MR. MEDINA: Yes, I do.

22                  MS. SCHMAEDICK: Is that a separate

1 business or part of your pecan growing business?

2 MR. MEDINA: It's part of my pecan  
3 growing business. I see it as we can sell to  
4 consumers. We can see it commercially. So far  
5 we only sell it commercially. But we have made  
6 decisions to plant.

7 JUDGE GUTHRIDGE: Is that limited to  
8 a pecan nursery?

9 MR. MEDINA: Yes, we do a pecan  
10 nursery. So we don't have any other fruit or  
11 nuts.

12 MS. SCHMAEDICK: So I wanted to turn  
13 your attention to Exhibit 1. And I wanted you to  
14 look at specifically 986.28 which a definition  
15 for pecans.

16 MR. QUIROS: Mr. Medina, I also have  
17 it up on the screen.

18 MR. MEDINA: Thank you.

19 MS. SCHMAEDICK: Have you had a chance  
20 to look at this definition?

21 MR. MEDINA: Yes, I have.

22 MS. SCHMAEDICK: So given your

1 background in the nursery part with the pecan  
2 industry, can you tell me just in layman's terms  
3 a very quick explanation of the difference  
4 between a seedling and improved?

5 MR. MEDINA: I'm probably not the best  
6 person to ask that question. But I'll try to do  
7 my best. I think the difference between a  
8 seedling and an improved variety is that the  
9 seedling is what you obtain from the tree. You  
10 just plant it and it grows.

11 An improved variety would be you have  
12 a root system that you like. You actually either  
13 bud a new variety to that tree or you graft the  
14 tree into this new tree. So you are getting for  
15 example the best out of the root system as well  
16 as the best on the top side of the tree. I hope  
17 that helps.

18 So one you don't do anything. You  
19 know you get the tree and you put it in the  
20 ground and you have a seedling. But you don't  
21 know if it's really a combination of pollination.

22 MS. SCHMAEDICK: So just to clarify,

1 for a seedling you could take a pecan from that  
2 tree and stick it in the ground and you would get  
3 a tree.

4 MR. MEDINA: Yes, but that tree may be  
5 pollen. But when the flowers combine with pollen  
6 it will give a different variety independent of  
7 the percentage of the combination. So the  
8 chromosome will end up as something else. That's  
9 why it's not the same definition.

10 MS. SCHMAEDICK: I see. And in your  
11 nursery, what type do you carry? Improved pecan?

12 MR. MEDINA: Just improved varieties.

13 MS. SCHMAEDICK: Only improved, okay.  
14 So I want you to look at paragraph 82 of 986.28.  
15 And that paragraph starts with "Improved pecans."  
16 986.28, paragraph (a)(2) improved pecans.

17 MR. MEDINA: Yes.

18 MS. SCHMAEDICK: So there's a  
19 statement there that says that varieties are  
20 selected for superior trades. And then further  
21 on it says, "including but not limited to..." and  
22 it gives a listing of names of varieties. Do you

1 see that part?

2 MR. MEDINA: Yes, I do.

3 MS. SCHMAEDICK: To your knowledge, is  
4 this a fairly extensive list of the type of trees  
5 that are grown in nurseries?

6 MR. MEDINA: Yes, I think it's a fair  
7 list of the commercial varieties of improved  
8 varieties. There may be more that is less  
9 commercial. And there's continuously new  
10 development of new varieties. But today it is a  
11 fairly good list.

12 MS. SCHMAEDICK: Thank you. And you  
13 mentioned new varieties. Are there new  
14 varieties?

15 MR. MEDINA: Yes, the USDA rating  
16 center, there's three I believe in the U.S. and  
17 they try to do the work on traditional genetics  
18 which is the combination of two trees. Then they  
19 get a new pecan and they plant it and they grow  
20 it. Then they see how that performs for the  
21 first time.

22 And once they get certain track

1 records of production and the tree holds on and  
2 it's a good quality and it brings benefit to  
3 certain aspects of industry, then they will  
4 release it to the public as far as the USDA  
5 program.

6 There also has been recently growers  
7 that have actually been developing their own  
8 seedlings and finding out through development if  
9 that variety would be better than others. And  
10 they have been recently patented, two or three  
11 different improved varieties. But they are less  
12 commercial. It's rare that it becomes successful  
13 commercially.

14 MS. SCHMAEDICK: Thank you. And how  
15 are you as an industry owner made aware of these  
16 new varieties? Are they introduced to you and  
17 then you decide whether or not to carry them? Or  
18 how does that work?

19 MR. MEDINA: I try to be part of the  
20 process. I tried to be close to the reading  
21 centers as well as see other people's research.  
22 And then I also try to stay in touch with my

1 clients which is the buyers and see what the  
2 benefits are or not. So I actually travel  
3 throughout the U.S. from Georgia to Arizona a  
4 couple of times per year. I take home -- and  
5 just getting a sense of what the issues are and  
6 then just do something that you like to do and  
7 try and find out about it.

8 MS. SCHMAEDICK: And what types of  
9 attributes are you aware of that folks are trying  
10 to develop through those varieties?

11 MR. MEDINA: For example, in western  
12 states, they're more interested in avoiding  
13 something called scab. They're also looking for  
14 size of the pecan and early varieties. Those are  
15 the three main things that they're looking for.

16 So scab is a type of fungus that  
17 actually effects the production of the tree. And  
18 so you can have a variety that actually is less  
19 susceptible to scab and then a lot of times  
20 you'll have a higher yield.

21 When you go over to the western  
22 states, you're looking more for drought resistant



1 variety as well as salt resistant due to the  
2 weather conditions there and also clearly keep a  
3 high yield on your production.

4 MS. SCHMAEDICK: I believe you said  
5 that in the western states scab was a concern.

6 MR. MEDINA: In the western states  
7 they have scab. In the western states, they have  
8 salt and drought problems.

9 MS. SCHMAEDICK: Thank you for that  
10 clarification. In your opinion if research were  
11 allowed for under the proposed marketing order,  
12 would the development of disease resistant  
13 varieties be helpful?

14 MR. MEDINA: Yes, I think it would be  
15 very helpful. But I also think it's going to be  
16 helpful to make sure that nothing only stays in  
17 the U.S. Today according to the USDA program,  
18 you have just an open system with other  
19 countries.

20 They were actually the basis of the  
21 development of other countries on the expansion  
22 of the Mexican industry or the South African

1 industry and even the Chinese industry has been  
2 USDA. The USDA has been sending through the  
3 years material to develop orchards and teaching  
4 them how to grow them.

5 And they're thinking as an industry  
6 has been consistently -- There's not enough  
7 communication between one side and the other.  
8 And also the USA has not been able to have  
9 contracts with patent development or IT  
10 technology related to these varieties. Again  
11 there is any development from the industry as  
12 American example, it should be included and it's  
13 linked to IT propriety and stays in the U.S as  
14 far as the competitive advantage of other  
15 markets.

16 MS. SCHMAEDICK: Thank you. You also  
17 mentioned that you are affiliated with the Texas  
18 Pecan Board. Can you tell us about your role in  
19 that group?

20 MR. MEDINA: Yes, so I'm one of the  
21 eight members. And I'm Vice President at the  
22 present of the organization and what we work on

1 is innovation and trying to develop research on  
2 medical or health benefits in pecans. And there  
3 is an intent to do more. But the resources are  
4 very limited.

5 We also contribute capital to the MAP  
6 funding of the U.S. Council or the American  
7 Council.

8 MS. SCHMAEDICK: And the Texas Pecan  
9 Board, how do they generate revenue?

10 MR. MEDINA: They do a conference and  
11 they sell. I think 90 percent of their  
12 contributions come from that.

13 MS. SCHMAEDICK: Are there any  
14 assessments applied at the state level for Texas?

15 MR. MEDINA: There is the Texas board  
16 with this assessment checker program. Mike Adams  
17 is president. And everybody should contribute  
18 voluntary to spend some time with production.  
19 Unfortunately, that program hasn't worked very  
20 well. I think the contribution is less 23  
21 percent of the state production. That's if the  
22 performance so good.

1 MS. SCHMAEDICK: In your opinion, why  
2 is that so?

3 MR. MEDINA: From practically people  
4 are not aware of it, lack of communication.  
5 There is also this feeling that how do I know if  
6 I contribute someone else will do. So people  
7 take a short road. They don't see the benefit of  
8 actually participating as a group.

9 Hopefully, things are changing. And  
10 there's progress. We hope that this effort of  
11 the marketing order will help to be an example of  
12 why we should be investing. And specifically the  
13 Texas growers should be focused promoting Texas  
14 pecans. So this initiative of the marketing  
15 order should be definitely -- we should be having  
16 a Texas order, continuing investing in marketing  
17 within the State of Texas.

18 MS. SCHMAEDICK: As a member of the  
19 Texas Pecan Board, are you saying that you're not  
20 concerned about competition with the federal  
21 marketing order?

22 MR. MEDINA: No, I think if I can try

1 to summarize it one of the things I see maybe be  
2 captured in The Wall Street Journal or things  
3 that are a national distribution. And then  
4 there's the Dallas Morning News and make an  
5 effort in those local papers that will have an  
6 impact on the local consumption. It should be  
7 completely different. They are mutually  
8 exclusive or not. It should be.

9 MS. SCHMAEDICK: So you're saying that  
10 they are mutually exclusive. But could they also  
11 be --

12 MR. MEDINA: Complimentary.

13 MS. SCHMAEDICK: Yes.

14 MR. MEDINA: Yes, they could have  
15 funds. One of the things we could also do is  
16 contribute funds for the Texas board  
17 specifically to develop marketing within the  
18 state. Also in the MAP funding we are ongoing.

19 From the Texas Pecan Growers  
20 Association, we are funding a portion to the MAP  
21 fund. I'm not sure about the Texas Board. I  
22 usually go to one meeting out of three. So

1 that's why that's -- and I'm not always on the  
2 same day as they are.

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

5 CROSS EXAMINATION (Cont'd)

6 MR. HINMAN: Don Hinman, USDA.

7 MR. MEDINA: Hi.

8 MR. HINMAN: I'm going to ask you a  
9 few more questions.

10 MR. MEDINA: Sure. Please.

11 MR. HINMAN: And the questions relate  
12 to you listed in your testimony four benefits and  
13 I just want to ask you about two of those.

14 MR. MEDINA: Okay.

15 MR. HINMAN: On the first page, you  
16 mention an example market information about the  
17 size of the pecan crop. Then you put your  
18 categories as increased detail and response and  
19 reliability of industry data. Could you provide  
20 us a bit more detail about what you mean by  
21 detail and reliability of the data and how that  
22 would benefit the industry? This is on number

1 one on page one. Just comment more on increased  
2 detail and reliability of market information.

3 MR. MEDINA: Sure. In my mind is I'll  
4 try to keep it really simple. If we know that  
5 there is a lot of cold storage falling in  
6 production and we also know that there's going to  
7 be high volume in the industry generally, I might  
8 put it into cold storage my production and hold  
9 it until the market balances out. And therefore  
10 I can get a better price and at the same time as  
11 everyone else. There is that position that I can  
12 make.

13 However, if I know that in time I  
14 might be able to rent or lease a space of cold  
15 storage. So finding out at the last minute it's  
16 not a good practice. It also may need to have a  
17 national concern like if there's a whole lot of  
18 credits or how do I hold on based on my current  
19 inventory. How do I hold it long enough to make a  
20 better business decision. I hope that helps.

21 MR. HINMAN: Thank you. And number  
22 four on page two, there you mention possible

1 future handling improvements in quality,  
2 packaging, size, grade, etc. Could you comment  
3 along that how those would benefit the pecan  
4 industry?

5 MR. MEDINA: Sure. Today actually  
6 someone shared with me a website from the UC-  
7 Davis about cold storage. And it says that you  
8 can store all different tree nuts at 40 degree  
9 Fahrenheit in cold storage. That will allow you  
10 to keep the same quality for about 12 months.  
11 But if you keep it at zero like they tell people  
12 which was mentioned this morning the same quality  
13 are put into the study was that it would stay for  
14 two years.

15 So you can have an advantage of just  
16 holding longer. So David Salopek mentioned it  
17 this morning which proves it's actually already  
18 made by someone else in the recent times. So by  
19 having better packaging or practices you can have  
20 a longer shelf life. And therefore you would be  
21 able to go to market at the right time and avoid  
22 too much product in the market. And therefore



1 the price volatility should be reasonable in a  
2 significant way. I hope that helped.

3 MR. HINMAN: Yes. Thank you. I don't  
4 have any more questions.

5 CROSS EXAMINATION (Cont'd)

6 MS. VARELA: Jennie Varela, USDA. I  
7 have a few more questions for you. I wanted to  
8 ask you a few questions about the make-up of the  
9 proposed council. Have you had a chance to look  
10 at Section 986.45 in Exhibit 1?

11 MR. MEDINA: I'm sorry. I cannot  
12 answer you.

13 MS. VARELA: All right. From Exhibit  
14 1, it's Section 986.45.

15 MR. MEDINA: Okay. Yes, I've read it  
16 before.

17 MS. VARELA: Okay. Great. First of  
18 all, when you look at that, does it seem  
19 representative of the industry to you the way  
20 that those seats have been allocated?

21 MR. MEDINA: Yes, to an extent.

22 MS. VARELA: And would you say there

1 that there are several seats specific for small  
2 growers and small shellers?

3 MR. MEDINA: Yes.

4 MS. VARELA: Along with that, do you  
5 see that it's important -- Or in your opinion is  
6 it important that the council will be diverse?

7 MR. MEDINA: Yes, I think it's  
8 important for the council to have diversity in  
9 the way we look at the system. Each of them will  
10 have an idea of what their needs are and that has  
11 value. I think what I see that is missing is  
12 maybe one representative of outsiders, people  
13 thinking that if you get the best of the  
14 industries to help you make a decision.

15 At the end of the day it will be  
16 growers and shellers. But you notice there  
17 aren't any people in marketing or research or  
18 other different avenues. So that could be  
19 something that you might get. If you bring in  
20 someone from the outside you should always  
21 consider it. It says that, if you're not going  
22 to get paid, and you can get a volunteer from

1 outside of the industry there is no economic  
2 benefit on any decision or that needs to be  
3 compensated to justify his time.

4 It might be something you guys should  
5 consider about how to do, how to compensate a  
6 third party which the attendant be compensated  
7 properly to do the job.

8 MS. VARELA: And is that outside  
9 person just something that might be accomplished  
10 with the position of the public member?

11 MR. MEDINA: If that's the intent.  
12 The theory behind it is the other person early in  
13 the morning mentioned that in his practice he  
14 hasn't seen it. And I don't know if that's again  
15 because he's personally not been compensated for  
16 this time. Therefore he goes there and maybe  
17 works 12 hours a year and shows up to the meeting  
18 and is not even prepared.

19 I guess if you have a fairly  
20 compensated person that has expertise in that  
21 operation with the expectation of actually doing  
22 his job and bringing in the outside perspective

1 it would be helpful in my perspective.

2 MS. VARELA: Thank you. And then  
3 finally I wanted to ask you to look at Section  
4 986.94. That's towards the end of this section  
5 on termination.

6 MR. MEDINA: Which number is that  
7 again?

8 MS. VARELA: And I'm specifically  
9 looking at paragraph (d).

10 JUDGE MENDEZ: Ninety-four.

11 MS. VARELA: 986.94.

12 MR. MEDINA: Yes.

13 (Off record discussion)

14 MS. VARELA: And just for the record,  
15 that's the section that deals with having a  
16 continuous referendum every five years. Is that  
17 something that you feel would be beneficial to  
18 the functioning of the council?

19 MR. MEDINA: I think it's important to  
20 have a beginning and an end and also always  
21 validating the process. I don't have enough  
22 experience to say three years or five years or

1 ten years would be an important time. I just  
2 think it's always important to evaluate  
3 yourselves and to have this conversation.

4 MS. VARELA: And I actually do have  
5 one more other question for you if that's  
6 alright. I want to go back to one of the  
7 benefits that you stated in your testimony about  
8 wanting to have a voice for the industry and at a  
9 potential for risk management. That's an  
10 interesting idea to us especially as there are  
11 more and more safety regulations coming out.

12 Do you see a way that the council  
13 could play a part in helping the industry comply  
14 with some of those upcoming regulations? Is that  
15 something that you think would benefit the  
16 industry?

17 MR. MEDINA: I don't know if it's the  
18 role of the marketing order to actually spend  
19 money on those specific details of technology  
20 side. I think it would be good to develop the  
21 technology to maybe have the most efficient way  
22 to market a product.

1           So I think a balance between pushing  
2 requirements on something that may not be the  
3 role or we use our resources to fit it on just to  
4 get out technology that saves a lower quality or  
5 make sure that safety aspect. I was more  
6 concerned on communications. If there is an  
7 issue specifically here, how do you go into the  
8 newspapers and how do you control the message or  
9 public relations that's on any risk management  
10 issue.

11           The other aspect is probably a little  
12 more long-term issue in a preventive process.  
13 And that's one concern is going too far into  
14 technology that doesn't really value the data on  
15 the first day to the growers. I mean this  
16 marketing effort has to be going to the market  
17 more than trying to develop technology and  
18 research on safety programs or on how do we  
19 prevent something that may never happen. I would  
20 say I would prefer to invest money into the  
21 marketing.

22           MS. VARELA: Okay. Thank you very

1 much.

2 MR. MEDINA: Thank you.

3 JUDGE GUTHRIDGE: Any more questions  
4 from the Department of Agriculture?

5 MR. HILL: No.

6 REDIRECT EXAMINATION

7 MR. QUIROS: Thank you very much, Mr.  
8 Medina. I'd like to ask you a couple of  
9 questions. The first one relates to your  
10 experience as a nurseryman. As far as you are  
11 aware, are there any genetically modified pecan  
12 trees?

13 MR. MEDINA: There isn't any.

14 MR. QUIROS: And so there are none  
15 grown in any commercial nurseries as far as  
16 you're aware of.

17 MR. MEDINA: None that I'm aware of.

18 MR. QUIROS: Thank you. You gave  
19 testimony with regard to being on the Texas Pecan  
20 Growers Board. I just want a clarification.  
21 Isn't it true that you are a member of the Texas  
22 Pecan Growers Association Board, a growers group?

1 MR. MEDINA: Yes.

2 MR. QUIROS: And you're not a member  
3 of the Texas Pecan Board. Is that right?

4 MR. MEDINA: Correct.

5 MR. QUIROS: Thank you.

6 MR. MEDINA: I'm always confusing  
7 that.

8 (Laughter)

9 MR. QUIROS: Thank you. I just wanted  
10 to clarify that. But while I have on the Texas  
11 Pecan Board I do want to ask you a few questions.  
12 I know I just qualified you as not being on that  
13 board, but I know you know something about it.

14 I don't know a lot about it, but I  
15 understand that the voluntary program is only on  
16 acreage more than 30 acres, for growers more than  
17 30 acres. Is that true?

18 MR. MEDINA: I'm not familiar with  
19 that.

20 MR. QUIROS: Thank you. You heard Dr.  
21 Palma's testimony yesterday and his Exhibit 19  
22 discussion where he talked about being a free



1 rider. Are you familiar with that concept?

2 MR. MEDINA: Yes.

3 MR. QUIROS: And what does that mean  
4 in the context of a voluntary growers one and a  
5 half cent program?

6 MR. MEDINA: So I think I'll try to  
7 describe it very simple. When you see the budget  
8 of the Texas Pecan Board it's about \$50,000 a  
9 year from which is contributed 80 percent from  
10 two growers. And we know that Texas has more  
11 than two growers. So that's what I call free  
12 rider when you have anybody else who is not  
13 contributing.

14 MR. QUIROS: So the economic  
15 motivation would be that if you don't think that  
16 everybody else is contributing you're not willing  
17 to contribute. Is that so?

18 MR. MEDINA: I guess that's part of  
19 it, yes.

20 MR. QUIROS: And on the other hand if  
21 you think everybody is contributing you don't  
22 feel like you may necessarily have to contribute.

1                   MR. MEDINA: Yes, that they might not  
2 make a difference.

3                   MR. QUIROS: That's right. Just sort  
4 of a quick question for you. If there was a  
5 product safety disaster in this industry, what  
6 happened to cantaloupes a few years ago, what  
7 happened to pistachios 15 years ago, in your mind  
8 who would react on behalf of the industry right  
9 now?

10                  MR. MEDINA: Officially no one. But  
11 I'll say that everyone I think will call my  
12 house.

13                   (Laughter)

14                  But they think I'm the voice for the  
15 industry.

16                  MR. QUIROS: Well, we all have. That's  
17 a good answer. But from the standpoint of a true  
18 safety recall that could affect the entire  
19 industries production for several years, is there  
20 any one industry group that you know of that  
21 could speak?

22                  MR. MEDINA: No.

1 MR. QUIROS: And to the extent that  
2 there are current industry groups, they're mainly  
3 grower groups, sheller groups. They're specific  
4 interest groups or they're state boards that are  
5 funding promotion, etc. Is that correct?

6 MR. MEDINA: Correct.

7 MR. QUIROS: So we would really be --  
8 We wouldn't have an industry spokesperson. We'd  
9 be looking to the federal or state governments.

10 MR. MEDINA: But not only it needs to  
11 be a spokesperson, it will need to be a person  
12 would need to be a person who knows about the  
13 safety and the issue and how to manage the media  
14 to be an expert on growing pecans and even having  
15 a leadership role in the industry. It goes to  
16 the experience of how do you manage the press and  
17 how do you communicate when you should not  
18 communicate and really have one voice for the  
19 industry and lots of different skills. And there  
20 are people who just do that.

21 MR. QUIROS: I know you had some  
22 hesitation about what the American Pecan Council

1 if the proposed federal marketing order for  
2 pecans is approved should do with regard to  
3 handling authorities. But do you think that as  
4 part of this handling authorities at least  
5 working with the federal/state governments to  
6 come up with maybe a best practices or preparing  
7 the industry even as we've discussed to be able  
8 to respond to a disaster like that would be of  
9 some benefit to the industry and to your farm?

10 MR. MEDINA: Right. It would be  
11 greatly appreciated.

12 MR. QUIROS: Thank you.

13 MR. MEDINA: Because once the next  
14 thing happens you don't have time to let's say  
15 let's go and think about it and I'll get back to  
16 you in a month. You need to know what to do.

17 MR. QUIROS: That's right.

18 MR. MEDINA: And not in a month from  
19 now. And even then you may not even have the  
20 resources to hire that person an external  
21 management.

22 MR. QUIROS: And experience has showed

1 us, hasn't it, from these other commodities,  
2 cantaloupes, pistachios, that once that happens  
3 if you cannot react you could lose a crop year or  
4 two?

5 MR. MEDINA: Not only that. Look at  
6 other outside industry. Look at petroleum. They  
7 have the stats where they ended doing it wrong  
8 and everybody from the top down had tough luck  
9 and lost their jobs. And so it's important to  
10 know how to manage the media and it's not a  
11 single person. We cannot do it all. So it  
12 shouldn't be surrounded by the best --

13 MR. QUIROS: So when you're referring  
14 to risk management as you have, is that in your  
15 mind that it's those type of risks that are also  
16 important to help manage through the American --

17 MR. MEDINA: Sure. I mean they  
18 receive a message like pecans and do this and  
19 someone goes out there and markets and throws --  
20 The general in that perspective is the media.  
21 You should look and talk amongst yourselves. So  
22 they find something funny or interesting and they

1 will program it and see if it sticks. And there  
2 is no response organized to say "We as an  
3 organization don't think it's that way. And  
4 this is the way we should be looking at this  
5 issue." And have a spokesperson is very  
6 relevant.

7 MR. QUIROS: Right. And in your own  
8 mind is one of the best ways to manage those  
9 risks making sure that as an industry we're ahead  
10 certainly in compliance and ahead of the game  
11 with regard to product safety?

12 MR. MEDINA: Yes.

13 MR. QUIROS: Thank you, Mr. Medina.

14 I have no further questions, Your  
15 Honor.

16 JUDGE GUTHRIDGE: Department of  
17 Agriculture, any further questions?

18 (No verbal response)

19 Does anyone in the audience have any  
20 questions for Mr. Medina?

21 (No verbal response)

22 No. So you're excused.

1 MR. MEDINA: Thank you, sir.

2 JUDGE GUTHRIDGE: Can you go over and  
3 check with Mr. Gonzalez about anything.

4 MR. MEDINA: Thank you, sir.

5 (Witness excused)

6 MR. QUIROS: Your Honor, we would like  
7 to call our next witness.

8 JUDGE GUTHRIDGE: Is that Mr. Hudson?

9 MR. QUIROS: Dr. Randy Hudson.

10 JUDGE GUTHRIDGE: All right.

11 MR. QUIROS: But before we do, we  
12 would like to consult with Your Honor and also  
13 with the USDA for three to five minutes with  
14 regard to how to best take his testimony.

15 JUDGE GUTHRIDGE: All right. First  
16 let me ask. Ms. Wray.

17 MS. WRAY: Yes.

18 JUDGE GUTHRIDGE: Has anyone else  
19 signed up wanting to testify?

20 MS. WRAY: No.

21 JUDGE GUTHRIDGE: Does anybody out  
22 there want to testify that's not had an

1 opportunity to do so?

2 (No verbal response)

3 JUDGE GUTHRIDGE: Okay. So let's take  
4 a brief recess then about five minutes. And then  
5 a discussion.

6 MR. QUIROS: Thank you, Your Honor.

7 JUDGE GUTHRIDGE: Off the record.

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

10 JUDGE GUTHRIDGE: The hearing will  
11 come to order. Back on the record.

12 Please raise your right hand.

13 (Proponent Witness Dr. Randy Hudson  
14 Sworn)

15 Mr. Davis. Mr. Quiros.

16 MR. DAVIS: Mr. Quiros.

17 DIRECT EXAMINATION

18 MR. QUIROS: Dr. Hudson, thank you for  
19 joining us this afternoon and for your work with  
20 regard to the portions of Exhibit 1, Sections  
21 986.1 through 986.42, the definition section.

22 Before we begin that, please state



1 your name and spell it for the record.

2 DR. HUDSON: My name is Randy Hudson,  
3 R-A-N-D-Y H-U-D-S-O-N.

4 MR. QUIROS: And, Dr. Hudson, where do  
5 you live?

6 DR. HUDSON: I live in Osala, Georgia,  
7 [REDACTED].

8 MR. QUIROS: And please give us a  
9 summary of your educational background.

10 DR. HUDSON: I have a BS degree from  
11 the University of Georgia, soil science. And I  
12 have a masters degree from University of Georgia  
13 in plant science. And I have a PhD in  
14 entomology. I'm an inbred Bulldog.

15 MR. QUIROS: Dr. Hudson, what is  
16 entomology?

17 DR. HUDSON: The study of insects.

18 MR. QUIROS: Thank you. Describe your  
19 family's history in the pecan business.

20 DR. HUDSON: I am a 4th generation  
21 pecan farmer. I live on the farm that my great  
22 grandfather found many years ago. I live

1 approximately 200 yards from the home that my mom  
2 and dad built and where I was born.

3 We all have been in the pecan  
4 business. The initial pecan tree planted by my  
5 great grandfather is still there. It was planted  
6 by digging up wild seedlings, planting them in a  
7 row which is across from my home today. And it  
8 was initially planted to supply hog feed in the  
9 winter when animal feed was short and hog could  
10 feed on pecans. Obviously at that time pecans  
11 were at a lower level.

12 I grew up in the pecan industry. I  
13 went to the University of Georgia, started  
14 planting my first pecans, my home pecans, in  
15 1981. Formed and organized Dutch Pecan Inc. also  
16 in 1981 and vertically integrated the opportunity  
17 to not only grow pecans, but also to process and  
18 market pecans.

19 I've since formed five other entities  
20 where we grow and market pecans. They are  
21 growing operations. So I've been in the pecan  
22 business for all of my life.

1 MR. QUIROS: Dr. Hudson, you're a  
2 grower. You're also I understand an accumulator,  
3 a sheller to some extent, a handler and a  
4 marketer of pecans.

5 DR. HUDSON: Yes, that is true. We  
6 grow about 2,000 acres of pecans and we handle  
7 between 10 million and 15 million pounds of  
8 pecans annually which is our growing point. I am  
9 not a sheller by definition. We only shell for  
10 our gift pack which we do for some customers.

11 MR. QUIROS: So you shell less than  
12 one million pounds.

13 DR. HUDSON: We shell less than a  
14 million pounds.

15 MR. QUIROS: So you shelf pecans.

16 DR. HUDSON: Yes, we shelf pecans.  
17 And we also have a cleaning plan. So we do  
18 cleaning. We clean our own production as well as  
19 clean some neighbors.

20 MR. QUIROS: Okay. So a custom  
21 cleaner as well.

22 DR. HUDSON: Yes.

1           MR. QUIROS: Under the Exhibit 1 which  
2 is the proposed federal marketing order for  
3 pecans, you cannot be both a grower -- You cannot  
4 be elected to the board as both a grower and a  
5 sheller. I wanted to ask you. As you self  
6 identify, do you self identify as a grower or a  
7 handler or both?

8           DR. HUDSON: I am a grower. I was  
9 born a grower and I will die a grower.

10          MR. QUIROS: All right. Dr. Hudson,  
11 under the guidelines of the small business  
12 administration I need to ask you a couple of  
13 questions. Do you consider yourself a grower  
14 that grows more than \$750,000 or more of annual  
15 sales of pecans?

16          DR. HUDSON: Yes, I am.

17          MR. QUIROS: So you would be a large  
18 grower.

19          DR. HUDSON: Yes.

20          MR. QUIROS: And similarly, under the  
21 guidelines of the Small Business Administration,  
22 a large handler is one that has more than \$7

1 million or more in annual sales of pecans as a  
2 handler. Would you consider yourself a large  
3 handler or a small handler?

4 DR. HUDSON: Yes, I am. I'm a large  
5 handler.

6 MR. QUIROS: Thank you, Dr. Hudson.  
7 Please describe your experience in industry trade  
8 organizations.

9 DR. HUDSON: Okay. I'm a member of  
10 the Southeastern Pecan Growers Association. I'm  
11 a member and board member of the Georgia Pecan  
12 Board Association. I am a member of the Texas  
13 Pecan Grower Association and Western Pecan Grower  
14 Association.

15 I am past president of the Georgia  
16 Pecan Grower Association and I'm president elect  
17 of the U.S. Pecan Growers Council.

18 MR. QUIROS: Are you president elect  
19 or are you president?

20 DR. HUDSON: Oh, that's right. I'm  
21 president.

22 (Laughter)

1                   Doggone it. I became president about  
2 two weeks ago. Sorry.

3                   MR. QUIROS: And you succeeded Jay  
4 Glover.

5                   DR. HUDSON: I succeeded Jay Glover,  
6 yes.

7                   MR. QUIROS: Thank you. How did you  
8 become involved in the efforts to get a federal  
9 marketing order for pecans established?

10                  DR. HUDSON: Well, I've been active in  
11 trying to organize for a number of years. In  
12 fact, it became very apparent to me that our  
13 organization was disjointed. And for us ever to  
14 reach the levels that we've seen with other nuts  
15 in other industries, our industry had to work  
16 together.

17                  I made the mistake of agreeing to give  
18 a paper at the Southeastern Pecan Growers  
19 Association several years back now. I think it  
20 was three or four years. And at that meeting,  
21 the discussion had already been out in regards to  
22 organizing the industry. And I gave a paper on

1 the concepts of unification of both growers and  
2 shellers to be working together. For our family,  
3 I had a real firm belief that we needed a very  
4 strong domestic shelling industry. And growers  
5 would have to pay a very important role in that.

6 MR. QUIROS: And you are a board  
7 member of the American Pecan Board.

8 DR. HUDSON: Yes, I am.

9 MR. QUIROS: As part of your duties as  
10 a member of the Board in the American Pecan  
11 Board, did you participate in the drafting of the  
12 proposed order?

13 DR. HUDSON: Yes, I did. I helped in  
14 preparing the draft and I'd just like to say that  
15 this came about after meeting for long hours of  
16 discussions not only with our lawyers, but also  
17 with other members on the board, but then  
18 particularly in participating by going to any and  
19 all grower meetings, creating a dialogue and  
20 trying to find out exactly what it would take to  
21 pull our industry together.

22 MR. QUIROS: And did the American

1 Pecan Board vote to approve the proposed federal  
2 marketing order for pecans before it was  
3 submitted to the Secretary of Agriculture?

4 DR. HUDSON: Yes, we did. It was a  
5 unanimous vote.

6 MR. QUIROS: In particular, did you  
7 participate in the development of the definitions  
8 included in the proposed order?

9 DR. HUDSON: Yes, I did. I discussed  
10 each of these details quite extensively with our  
11 attorneys as you will remember that first  
12 session.

13 MR. QUIROS: Have you received and  
14 reviewed what is now the notice marked Exhibit 1  
15 in these hearings?

16 DR. HUDSON: Yes, I have.

17 MR. QUIROS: And to facilitate our  
18 discussion today, I am going to refer to Exhibit  
19 1 specifically the portion containing the  
20 proposed federal marketing order for pecans at  
21 Section 986.1-986.42.

22 Dr. Hudson, I'll now ask you about



1 specific definitions. Since the USDA has  
2 introduced the actual definitions into the record  
3 I will not ask you to read each one. But I'll  
4 refer to each by its number designation in  
5 Exhibit 1 and ask you a few questions about each.  
6 Feel free to comment. Is that agreeable to you?

7 DR. HUDSON: Yes, it is.

8 MR. QUIROS: Dr. Hudson, Section  
9 986.1, accumulator, is the word generally used in  
10 the pecan industry?

11 DR. HUDSON: Yes, it is.

12 MR. QUIROS: Is this the definition  
13 consistent with the industry usage in your  
14 experience?

15 DR. HUDSON: Yes, it is.

16 MR. QUIROS: Did you consider other  
17 definitions?

18 DR. HUDSON: No, not really because  
19 this is the term that is generally used in the  
20 industry.

21 MR. QUIROS: Under the definition,  
22 would Hudson Pecan Company be an accumulator?

1 DR. HUDSON: Yes.

2 MR. QUIROS: Thank you, Dr. Hudson.  
3 Section 986.2, act, why did you use this  
4 definition?

5 DR. HUDSON: We use this definition  
6 because it's used in other --

7 MS. CHILUKURI: Your Honor, if I may  
8 interject. It was my understanding that we would  
9 have an opportunity to ask questions under each  
10 definition.

11 JUDGE GUTHRIDGE: I think that's what  
12 we were going to start doing.

13 MR. QUIROS: Let's start now. Sure.  
14 Whenever you want to, you can interrupt.

15 CROSS EXAMINATION

16 MS. CHILUKURI: Thank you. Dr.  
17 Hudson, can you tell us what an accumulator is?

18 DR. HUDSON: An accumulator is a  
19 person who accumulates nuts. He may buy these  
20 nuts from his neighbors as we often do in  
21 everything from a medicine back to several  
22 containers. Or we may buy them from other

1 accumulators. Or we may buy them from growers  
2 across the country as we have in the past if they  
3 can't be purchased in this area of the country.

4 MS. SCHMAEDICK: Melissa Schmaedick,  
5 USDA. Thank you, Dr. Hudson, for your testimony.

6 DR. HUDSON: Randy is fine.

7 MS. SCHMAEDICK: On the topic of  
8 accumulator, is that type of business entity  
9 found here in the production area?

10 DR. HUDSON: I think I heard your  
11 question. There's a little vibration here. But  
12 as I understand it, you're asking me if there are  
13 accumulators across the production area of the  
14 United States. And that answer is yes.

15 MS. SCHMAEDICK: So in all three  
16 regions.

17 DR. HUDSON: There is numerous  
18 accumulators across the region. Not hundreds,  
19 but I would say there are numerous accumulators.  
20 Exact number I'm not sure.

21 MS. SCHMAEDICK: Now I see the  
22 definition as it is published in Exhibit 1. But

1 can you tell me in layman's terms what exactly  
2 does that accumulator do? What purpose do they  
3 serve?

4 DR. HUDSON: The accumulator buys  
5 pecans. I mean that's about as simple as I can  
6 put it. He goes anywhere and everywhere and  
7 locates pecans. And he compiles those pecans,  
8 puts those pecans together and may sort them by  
9 grade and quality and then sells them and puts  
10 them into his chain of commerce.

11 MS. SCHMAEDICK: Do you all  
12 accumulators perform that detail and that  
13 transaction?

14 DR. HUDSON: There are some  
15 accumulators that are extremely specific and they  
16 may have contractual relationships with just a  
17 single sheller or with a single exporter. But  
18 for the most part, once you put together a load  
19 of pecans and you have it in your possession then  
20 it becomes a matter of where the house price is  
21 that you sell, whether domestically or  
22 internationally.

1 MS. SCHMAEDICK: So accumulators may  
2 purchase product from growers.

3 DR. HUDSON: Yes.

4 MS. SCHMAEDICK: Do they purchase  
5 product from non growers?

6 DR. HUDSON: Yes.

7 MS. SCHMAEDICK: Would that be in the  
8 context of the medicine bags and totes of pecans?

9 DR. HUDSON: That's a possibility.

10 MS. SCHMAEDICK: And what do the  
11 accumulators do with their pecans? Do they place  
12 them into the stream of commerce or do they have  
13 an alternate handler? What do they do?

14 DR. HUDSON: Well, if you get  
15 extremely complicated and we will address this  
16 later on in the definitions of asking what might  
17 happen once the accumulator receives these nuts.  
18 I mean at all levels in the chain of marketing  
19 there are opportunities to add value obviously to  
20 that product.

21 So I would say that the term  
22 accumulator for the most part would refer to that

1 first principle organizer or compiler of product,  
2 of commodity. You would for the most part be in  
3 many cases particularly in east the first person  
4 to receive pecans from the growers.

5 MS. SCHMAEDICK: Thank you. No  
6 further questions at this time.

7 MR. QUIROS: Dr. Hudson --

8 JUDGE GUTHRIDGE: Any questions from  
9 USDA?

10 MS. CHILUKURI: I just have one  
11 question. Would an accumulator be classified as  
12 a handler?

13 DR. HUDSON: Yes.

14 MS. CHILUKURI: Thank you.

15 DIRECT EXAMINATION (Cont'd)

16 MR. QUIROS: Dr. Hudson, now turn your  
17 attention to Section 986.2, act. Why did you use  
18 this definition?

19 DR. HUDSON: We used this definition  
20 because it is consistent and generic with other  
21 market orders. It is included to clearly  
22 identify the legal authority under which the USDA

1 can establish federal marketing orders.

2 MR. QUIROS: Was there any controversy  
3 with regard to this definition?

4 DR. HUDSON: Absolutely not.

5 MR. QUIROS: Any questions?

6 MR. HILL: None.

7 MR. QUIROS: They have no questions.

8 JUDGE GUTHRIDGE: Is that all? Any  
9 questions from USDA?

10 MS. CHILUKURI: No questions.

11 MR. QUIROS: Dr. Hudson, I'll now turn  
12 your attention to Section 986.3, affiliation.  
13 And, Dr. Hudson, we also have that on the screen  
14 behind you if it would help you read.

15 MR. DAVIS: It's three pages. I can't  
16 get them all on there.

17 MR. QUIROS: So the affiliation  
18 definition if you need to see it. Is this term  
19 generally used in the pecan industry?

20 DR. HUDSON: No, not really.

21 MR. QUIROS: Why did the board need to  
22 define this term?

1 DR. HUDSON: Affiliation is one of  
2 those issues. Particularly where it's used is  
3 concerned with voting procedures as in Section  
4 986.46 and also referred to in Section 986.31  
5 related to proprietary capacity.

6 MR. QUIROS: Did you consider other  
7 alternatives to this definition?

8 DR. HUDSON: Yes, I'll be honest with  
9 you. We did. We considered this. There was  
10 considerable amount of debate and we could have  
11 had each subsidiary vote. But we felt that it  
12 was fair to have all affiliated organizations  
13 have only one vote.

14 And this comes to democracy issues  
15 here. There are some large growers like myself  
16 who have several corporations. They have LCs,  
17 loose-tail corporations or other entities for  
18 their various farms or handling elements of their  
19 overall business.

20 We did not think it would be fair to  
21 small and mid-sized growers or shellers to let  
22 each part of a large organization have a vote.



1 They should be considered and it was our position  
2 that they should be considered that it would be  
3 one entity for voting purposes to allow that.

4 In Georgia I personally know of one  
5 grower who has 40 entities and I hold an  
6 ownership of five different entities. I do not  
7 feel like and we do not feel like that I should  
8 be given five votes and he should be given 40.  
9 Each entity should be one vote.

10 MR. QUIROS: Thank you, Dr. Hudson.  
11 No other comments from us. We'll reserve any  
12 questions after we hear of any other questions  
13 from the USDA.

14 JUDGE GUTHRIDGE: Does the USDA have  
15 any questions?

16 (No verbal response)

17 Okay.

18 MR. QUIROS: All right. Dr. Hudson,  
19 I'll now turn your attention to Section 986.4,  
20 blowout. Is this term generally used in the  
21 pecan industry?

22 DR. HUDSON: Yes, it is.

1 MR. QUIROS: Is this definition  
2 consistent with the usage of this term in your  
3 experience?

4 DR. HUDSON: Yes, it is.

5 MR. QUIROS: Why did the board define  
6 this term?

7 DR. HUDSON: We defined this term  
8 principally because it's used in the definitions  
9 of substandard pecans and also in assessments.  
10 In Section 986.28, paragraph 3 and Section  
11 986.61.

12 MR. QUIROS: Your Honor, we have no  
13 further questions with regard to this definition.

14 JUDGE GUTHRIDGE: Does Agriculture  
15 have any questions?

16 CROSS EXAMINATION (Cont'd)

17 MS. CHILUKURI: Dr. Hudson, can you  
18 tell us what a blowout is?

19 DR. HUDSON: Well, it's what it is.  
20 It's a blowout. And most of the nuts when they  
21 go through the sizing and cleaning process will  
22 go across an aspirator. And what happens here is

1 if you have light nuts in the samples, this large  
2 vacuum is pulled on these nuts and these lighter  
3 nuts are really literally pulled off.

4 A high quality desirable pecan would  
5 break 50 to 52 percent meat. A blowout might  
6 very well break 18 to 20 percent edible meat.  
7 And they also hurt your grade involved in  
8 handling. And we pull these nuts off, put them  
9 over to the side and they have value.

10 MR. QUIROS: Your Honor, I want to  
11 question whether we go on like this. The  
12 American Pecan Board has defined its federal  
13 marketing order and it has sent it to the  
14 Secretary. That's been acceptable and published.  
15 It is already an exhibit.

16 And if we have definitions and then  
17 ask Dr. Hudson to redefine what's in the plain  
18 meaning already been filed as part of Exhibit 1  
19 it will take a long time. But more than that, we  
20 don't want a re-definition of this. We don't  
21 want plain terms.

22 We've stated with specificity what

1 each one of these definitions means and I know  
2 they're odd definitions. They're sometimes  
3 definitions that are unique to this industry.  
4 But they have been defined. They are an exhibit.

5 And I don't want us to get into  
6 controversy later that something that Dr. Hudson  
7 said and trying to clarify what a definition  
8 meant. We'll have plenty questions regarding  
9 that. It's his attempt to redefine how these  
10 definitions should be defined.

11 JUDGE GUTHRIDGE: Well, Mr. Quiros --

12 MR. DAVIS: Your Honor, if you could  
13 one second.

14 (Off record discussion)

15 MR. QUIROS: And so I'm objecting to  
16 the form of the question.

17 JUDGE GUTHRIDGE: Mr. Quiros, you  
18 called Dr. Hudson as a witness. And because as I  
19 understood our procedural conversation earlier  
20 you thought that there should be testimony about  
21 how these definitions came about.

22 You seem to be switching to a 180 that

1 the -- let me finish -- definitions as they stand  
2 are sufficient. They are the record. They are  
3 what they are and that there need to be any  
4 questioning of Dr. Hudson on these definitions.  
5 So if you have no questions about the definitions  
6 themselves, would USDA want to -- I don't know  
7 what the USDA has an interest in asking about any  
8 particular definitions or feels the need to do  
9 that. But he was called as your witness.

10 MR. QUIROS: Yes, Your Honor. And I  
11 agree to that. We wish this to go on and there  
12 could be questions with regard to those. But we  
13 don't want Dr. Hudson to be asked as a form of a  
14 question to redefine what the definition of  
15 blowouts is. He and his board -- He does not  
16 have the authority to do that.

17 The board has defined and has voted on  
18 these definitions and then on the entire proposed  
19 federal marketing order. He can interrupt what  
20 he means by that or what the industry means by  
21 that. But I don't want us to be on every  
22 definition asking him to redefine what a blowout

1 is. The blowouts are defined.

2 I think the form of the question if  
3 the USDA wants to ask what does that mean that's  
4 different. And that's what I'm objecting to.

5 JUDGE GUTHRIDGE: You're objecting to  
6 them asking what he means by --

7 MR. QUIROS: No, just the opposite.  
8 I'm encouraging them to ask him what he means by  
9 the definition. I'm not wanting him to be asked  
10 to redefine it. Then I think we've created a  
11 record that's different from Exhibit 1, the  
12 proposed federal marketing order which has been  
13 voted on by the board and been published in the  
14 notice. And that's the form of the question that  
15 I object to.

16 JUDGE GUTHRIDGE: I'm then sort of at  
17 a loss as to why you called him in the first  
18 place. If the proposal as submitted was intended  
19 to stand on its own and if I assume any problems  
20 that anybody else has with the definitions would  
21 be articulated in some sort of filing to the  
22 Secretary or in the comments.

1 I would assume that the Proponents  
2 would have an opportunity at that point to  
3 respond to objection of the definitions. But I'm  
4 just not sure why he's here other than to answer  
5 questions as the Department has.

6 MR. QUIROS: Again, Judge, perhaps I  
7 was unclear about this. We have Dr. Hudson read  
8 every definition into the record. I don't think  
9 that's necessary since Exhibit 1 has already been  
10 admitted as evidence.

11 JUDGE GUTHRIDGE: I don't think so  
12 either.

13 MR. QUIROS: Dr. Hudson --

14 JUDGE GUTHRIDGE: We already assume  
15 that the USDA doesn't just want to listen to him,  
16 Dr. Hudson, read each definition.

17 MR. HILL: That would be correct.

18 JUDGE GUTHRIDGE: Okay.

19 MR. QUIROS: Dr. Hudson has already  
20 testified that there was a unanimous vote by the  
21 American Pecan Board with regard to the proposed  
22 federal marketing order for pecans including

1 these definitions. So the American Pecan Board  
2 has proposed these definitions.

3 A question asking him about the  
4 definitions or about what they mean is something  
5 different than asking him to redefine what they  
6 mean. And that's what I object to. Or else I  
7 would need him to read in every one of these and  
8 say, "I believe that blowouts are" and then read  
9 the definition. This is what the American Pecan  
10 Board believes blowouts are. If they want to ask  
11 questions about that, that's different from  
12 saying "Please define what blowouts are." Then  
13 you've got competing definitions unless he uses  
14 the exact same words.

15 JUDGE GUTHRIDGE: I guess what we're  
16 going to have to do is if you're going to  
17 continue asking questions and asking about the  
18 definitions and then the USDA follows up with  
19 their questions I'd have to take the objection at  
20 that time. I don't think I can make a blanket  
21 ruling that this is what kind of question USDA  
22 has to ask of Dr. Hudson.



1                   But again it goes back to is his  
2 testimony necessary at this point in this hearing  
3 since the definitions are already in, the  
4 proposal is already in, and that's the  
5 submission. And as far as you know, neither the  
6 USDA nor anyone else has any objection to those  
7 definitions.

8                   MR. QUIROS: Your Honor, we'll be glad  
9 to object on a case by case basis, on a  
10 definition by definition basis, if Dr. Hudson is  
11 asked -- and we will object -- to redefine any of  
12 these definitions. If he is asked questions  
13 about the definition or about its meaning, we  
14 think that's appropriate in this context.

15                   JUDGE GUTHRIDGE: And as I say, I  
16 think that's what we'll have to do is go question  
17 by question if he's going to be continuing to  
18 testify.

19                   MR. QUIROS: Then we object to the  
20 USDA's last question with regard to asking Dr.  
21 Hudson to define blowouts.

22                   JUDGE GUTHRIDGE: Actually, I found

1 his answer kind of helpful. He described as I  
2 recall his testimony the process of how these  
3 lighter-weight pecans are vacuumed out of the  
4 flow I guess of the pecans going by.

5 (Off record discussion)

6 And I don't think he was redefining  
7 what a blowout is. He was more telling us how  
8 they got them out of the production.

9 MR. DAVIS: Your Honor, we're co-  
10 counsel. If I may jump in.

11 JUDGE GUTHRIDGE: Are you breaking  
12 this in?

13 MR. DAVIS: No, I agree with him. And  
14 again, we don't want to be pedantic or overly  
15 legalistic about this. Representing Dr. Hudson  
16 because he helped develop these, he also knows  
17 the process. We were led to believe and we were  
18 told in our preparation that it's very helpful  
19 for the record to understand that these things  
20 were not just ran down. It was thoughtful. They  
21 considered alternatives. You're going to hear a  
22 lot about different alternatives.

1           But once the definition is set, it is  
2 the definition. So truly you have noticed we  
3 have not said anything about any of the other  
4 questions. But it's only when you say "What is a  
5 blowout?" In this record, the definition of a  
6 blowout should be "Blowout means lightweight or  
7 undeveloped in shell pecan nuts that are  
8 considered of lesser quality in market value."

9           If a question were raised "Why are  
10 they of lower market value" that would be a  
11 perfectly legitimate question. If he was asked,  
12 "How exactly are those separated," that would be  
13 perfectly legitimate question.

14           But you understand our concern is that  
15 if you asked a witness every one of these  
16 definitions "What does that mean," I would hope  
17 we could take a break and we will instruct the  
18 witness to read it into the record because that's  
19 the definition that the American Pecan Board  
20 voted on unanimously to say "If we're going to  
21 operate, that's the definition."

22           JUDGE GUTHRIDGE: Let me ask this.

1       Might a faster way or a more efficient way to do  
2       is anyway since Dr. Hudson is here to explain and  
3       I assume he's here -- I gather the USDA told you  
4       that you should have somebody to explain this.

5               MR. DAVIS: We've got to say something  
6       about every element of the FMO and we will.

7               JUDGE GUTHRIDGE: Maybe a more  
8       efficient way to handle this though would be  
9       there are some definitions for which USDA has no  
10      problem and so maybe shifting to USDA -- and I'm  
11      thinking out loud and this is a problem I have.  
12      I tried to anticipate this as much as I could in  
13      these hearings. But this is one that I had not  
14      anticipated.

15              Whether USDA should bring up any  
16      questions on any of the specific definitions for  
17      which it might have a problem or might need some  
18      more foundation in its view as the decision maker  
19      on this. So rather than have Dr. Hudson go  
20      through each definition, they could ask about  
21      specific ones. Because as you say, they are  
22      already in the record. If they don't have any

1 questions, if nobody in the audience has any  
2 questions about a particular definition, why talk  
3 about it at all at this point?

4 MR. DAVIS: I'll be interested to hear  
5 Ms. Chilukuri's response to that.

6 JUDGE GUTHRIDGE: Or Mr. Hills'  
7 response.

8 MR. QUIROS: We understood we had the  
9 burden to prove every element of the federal  
10 marketing order for pecans, including all of the  
11 definitions. So we felt like we needed to -- The  
12 entire thing has been entered into the record,  
13 Your Honor. And taking that logic to its  
14 furthest extent, we could say nothing about it  
15 and have no witnesses and say "If there are any  
16 objections we'll answer."

17 So we had understood that under the  
18 law that it was our burden to establish every  
19 one. We're glad to have questions. If our  
20 witness has to redefine these, we are going to  
21 instruct him to read the definition and that will  
22 be the extent of his testimony. If they ask him

1 any questions about those definitions and how it  
2 relates to the industry, we are willing to have  
3 our witness answer those questions.

4 JUDGE GUTHRIDGE: At this point he has  
5 explained how the definitions were formulated.  
6 That's now on the record. That goes beyond just  
7 the specific proposal itself.

8 But let me hear from USDA on this.

9 MS. CHILUKURI: Your Honor, on this  
10 initial matter, I was intended to ask Dr. Hudson  
11 or anyone else to read the definitions which I  
12 understand what the definitions are both for our  
13 purpose as decision makers, but also so that it's  
14 public information.

15 Obviously, these have been admitted  
16 into the record. My questions are for the  
17 audience and other stakeholders to be able to  
18 hear some of these. I think our intent is also  
19 to go in-depth on certain definitions. But we're  
20 early in the process. So obviously we need a  
21 basis for what some of those definitions are.

22 As part of the proceeding they were

1 talked about in terms of general use. But we'd  
2 like to know what those terms mean. So I was  
3 trying to address that issue. And that was my  
4 intent in asking what does something mean and for  
5 instance to ask for that it is clear.

6 JUDGE GUTHRIDGE: Are there other  
7 definitions of specific terms that you know you  
8 do want to ask questions and others that you know  
9 you don't have any questions?

10 MS. CHILUKURI: Again, it depends on  
11 what Dr. Hudson testifies to with regard to the  
12 definitions that we will focus time on.

13 JUDGE GUTHRIDGE: Do you know what  
14 those are at this point?

15 MS. CHILUKURI: Some we do know and  
16 others we'll have to hear testimony.

17 JUDGE GUTHRIDGE: Let me ask this and  
18 maybe I guess since most of the marketing orders  
19 are old, aren't they? Or were any of you  
20 involved in any of the development of any  
21 specific marketing orders? Ms. Schmaedick, you  
22 were. Is this sort of testimony about each

1 specific definition normally required in this  
2 kind of process?

3 MS. SCHMAEDICK: Thank you, Your  
4 Honor. I would like to clarify that in my past  
5 experience with this, the Proponent group has  
6 entered into evidence for example an exhibit that  
7 has the proposed language. And instead of  
8 reading that language verbatim, they have offered  
9 testimony in support of that language. But that  
10 testimony always includes an explanation in  
11 layman's terms of what the meaning is, what the  
12 intent is, what the purpose is.

13 And it is very important to capture  
14 that information on record because this record if  
15 this program is implemented serves as the basis  
16 for understanding the intent of every single  
17 section. So if we simply take the proposal on  
18 its face value and say, "Okay. This is approved  
19 by the American Pecan Board and because it was a  
20 unanimous approval, we're not going to assess it.  
21 We're just going to accept it at face value."

22 And I understand the frustration and



1 I certainly don't want to be advocating reading  
2 it verbatim long sections. But I do think that  
3 with the benefit of futures yet to come and the  
4 benefit of those at USDA who need to be able to  
5 look at the record and understand what the intent  
6 is of the captures of this proposal, we need to  
7 have a statement of what the meaning is that is  
8 parallel to the definition.

9 Secondly, we are not -- Introducing a  
10 new definition into the record is simply not a  
11 result of an answer to a question. If the  
12 Proponent group were to enter in the new  
13 definition, they would have to go through a  
14 process of crafting that language and submitting  
15 it as an exhibit.

16 We are simply taking testimony to what  
17 was submitted as this proposal and whether or not  
18 this proposal is justified.

19 JUDGE GUTHRIDGE: And I think that's  
20 part of your meaning. If an existing board were  
21 to take the terms in the regulations and to  
22 redefine it, they would have to go through the

1 same kind of process of justifying why they're  
2 changing it, why the new definition is better  
3 than the old definition or more justified than  
4 the old definition.

5 MS. SCHMAEDICK: Correct. It would  
6 not be --

7 JUDGE GUTHRIDGE: This is the same  
8 kind of foundation that you're trying to build by  
9 your questions.

10 MS. SCHMAEDICK: Correct. It would  
11 not be a capricious act of saying "Oh well, he  
12 used this word instead of that word."

13 JUDGE GUTHRIDGE: But not he. The  
14 American Pecan Board did.

15 MS. SCHMAEDICK: Right.

16 JUDGE GUTHRIDGE: He's here as well as  
17 the American Pecan Board.

18 MS. SCHMAEDICK: Correct. So to  
19 reiterate, it would be helpful in just very  
20 general terms of this term means X. It's  
21 important because of that. And certainly that  
22 will be received as information supporting the

1 definitions that are published in the Federal  
2 Register exhibit.

3 JUDGE GUTHRIDGE: Would I correctly  
4 understood from what you're saying, Ms.  
5 Schmaedick, that if they were an NP definition  
6 that that issue why the board chose one that's in  
7 here rather than the NP definition should be part  
8 of the record?

9 MS. SCHMAEDICK: Yes.

10 JUDGE GUTHRIDGE: The development of  
11 this component?

12 MS. SCHMAEDICK: Yes, absolutely.

13 MR. QUIROS: Your Honor, we're in  
14 violent agreement with that. But I don't want a  
15 parallel definition. Dr. Hudson can be asked any  
16 questions about what a definition means or what  
17 we were thinking at the time. I just don't want  
18 to create a record that has a parallel definition  
19 for which the American Pecan Board hasn't voted  
20 on.

21 When those questions come, I'll be  
22 glad to ask him what the definition should be.

1 But we absolutely expected that. We've prepared  
2 questions for Dr. Hudson to in fact draw out the  
3 meaning and whether these are industry standard  
4 meanings. And we invite the audience and the  
5 USDA to ask questions about that. But I can't  
6 have a redefinition of those without objecting to  
7 the form of the question and asking Dr. Hudson  
8 which I'm going to do as soon as we go back on  
9 this issue to define blowouts.

10 Again, I don't mind talking about how  
11 they're used in the industry and otherwise. But  
12 if somebody asks for a redefinition, we will have  
13 to come back to the one that was voted on.

14 JUDGE GUTHRIDGE: Well, I think it's  
15 fair if there's a competing definition out there.  
16 I think it's fair that we have that in the record  
17 and the American Pecan Board's reason for  
18 choosing definition A over definition B.

19 MR. QUIROS: Exactly, Your Honor.

20 MR. HILL: I just want to make clear  
21 of the record when we say what does this mean.  
22 We're not looking for a new definitional

1 language. We're just simply asking for an  
2 understanding of what your definition is.

3 MR. QUIROS: That's what a definition  
4 is. When you say what does it mean, if I know a  
5 way to do that and say "How is it used?" But if  
6 you're asking that, I will be on alert to look to  
7 protect the integrity of what has been voted on  
8 by the American Pecan Board as their definition.  
9 So I'm just forewarning.

10 JUDGE GUTHRIDGE: Thank you. Are we  
11 finished with blowout?

12 MR. QUIROS: No, Your Honor. I've got  
13 one other question.

14 DIRECT EXAMINATION (Cont'd)

15 MR. QUIROS: Dr. Hudson, does blowouts  
16 mean lightweight or underdeveloped in shell pecan  
17 nuts that are considered of lesser quality and  
18 market value?

19 DR. HUDSON: Yes.

20 MR. QUIROS: Thank you, Dr. Hudson.

21 Section 986 --

22 JUDGE GUTHRIDGE: Are there any

1 questions from the USDA?

2 MS. CHILUKURI: No.

3 JUDGE GUTHRIDGE: Okay. Proceed.

4 MR. QUIROS: Thank you. Dr. Hudson,  
5 Section 986.5, to certify. Is this term  
6 generally used in the industry?

7 DR. HUDSON: No, it's not. Not before  
8 now.

9 MR. QUIROS: Why did you create this  
10 definition?

11 DR. HUDSON: The definition was  
12 created because the industry has not had uniform  
13 inspections. The federal marketing order will  
14 permit uniform standards for inspections that  
15 will help the industry as referred in Section  
16 986.69.

17 MR. QUIROS: Explain to us how this  
18 will help the industry.

19 DR. HUDSON: Well, it will help the  
20 industry by increasing consumer confidence and  
21 safety and quality of product and would and  
22 should increase sales by confirming the

1 assessment payments and also ensuring that  
2 everyone involved pays their fair share.

3 MR. QUIROS: How will it help  
4 consumers?

5 DR. HUDSON: By having more consistent  
6 quality product and ensuring compliance.

7 MR. QUIROS: So in the way that you're  
8 using it in this definition it's both to certify  
9 as to handling standards and to certify as to  
10 receipts of assessments. Is that correct?

11 DR. HUDSON: Yes, that's correct.

12 MR. QUIROS: And is this term used in  
13 other federal marketing orders as defined here?

14 DR. HUDSON: Yes, it is.

15 MR. QUIROS: Any discussion or  
16 controversy at meetings with growers or shellers?

17 DR. HUDSON: No, there wasn't.

18 JUDGE GUTHRIDGE: Does USDA have any  
19 questions?

20 CROSS EXAMINATION (Cont'd)

21 MS. SCHMAEDICK: Melissa Schmaedick,  
22 USDA. Dr. Hudson, the term to certify, if I

1 understood your statement correctly, this term  
2 would become relevant in the event that there are  
3 handling preadmissions in effect. Is that  
4 correct?

5 DR. HUDSON: Yes.

6 MS. SCHMAEDICK: And who in your  
7 opinion would do the certifying?

8 DR. HUDSON: In my opinion, it would  
9 probably be the Federal/State Inspection Service.  
10 But here again, I cannot answer that  
11 definitively.

12 MS. SCHMAEDICK: So I'm looking at the  
13 definition as it is published in Exhibit 1. And  
14 it says "To certify means the issuance of a  
15 certification and inspection." So at this point  
16 you're not sure who would do that inspection or  
17 who would issue the certification?

18 DR. HUDSON: At this point, I am not.  
19 But I'm sure someone is.

20 JUDGE GUTHRIDGE: Let me ask about  
21 this point. It says "certification by the  
22 inspection service." And I see in Section 986.24



1 there is a definition of the inspection service  
2 as means the "Federal/State Inspection Service or  
3 any other inspection service authorized by the  
4 Secretary."

5 DR. HUDSON: Yes, I think that's a  
6 good definition.

7 MS. SCHMAEDICK: I'm sorry. Just one  
8 clarification. What would be the answer to that  
9 question?

10 DR. HUDSON: I would only add the  
11 current inspection that goes on in the State of  
12 Georgia is made by the Federal/State Inspection  
13 Service.

14 MS. SCHMAEDICK: Thank you. And that  
15 is used in compliance. Is that correct?

16 DR. HUDSON: Quite frankly, there is  
17 no required inspection of pecans that are going  
18 into trade. Most of the inspection is done on a  
19 volunteer basis.

20 MS. SCHMAEDICK: Okay. Thank you. No  
21 further questions.

22 DIRECT EXAMINATION (Cont'd)

1 MR. QUIROS: Dr. Hudson, just to  
2 clarify, in the definition of the certified where  
3 it says "of pecans by the inspection service" you  
4 meant inspection services defined in Section  
5 986.24, did you not?

6 DR. HUDSON: Yes, I did.

7 MR. QUIROS: Thank you. Dr. Hudson,  
8 Section, Section 986.6, confidential data or  
9 information, why do you have this definition?

10 DR. HUDSON: Confidentiality, in this  
11 discussion both the growers and the handlers,  
12 there was an expressed concern that personal  
13 business information would be or could be  
14 disclosed. We added this definition and then  
15 forwarded it to the federal marketing order as  
16 Section 986.81 to assure all of the concerns that  
17 their individual data would be protected and that  
18 they would only be disclosed in a collective or  
19 as an accumulated data pool.

20 MR. QUIROS: No further questions on  
21 this definition at this time.

22 JUDGE GUTHRIDGE: USDA?

1 CROSS EXAMINATION (Cont'd)

2 MS. CHILUKURI: Dr. Hudson, can you  
3 give some examples of what confidential data or  
4 information would entail?

5 DR. HUDSON: Certainly. Data in  
6 regards to -- and I'll use my own personal case -  
7 - would be my personal inventory, in other words,  
8 how much inventory I have which I think I would  
9 take good care of how many pounds I may or may  
10 not have of cold storage. Collectively though, I  
11 certainly want to know how many everyone else has  
12 if I can get that information.

13 So I think that kind of information.  
14 Certainly customers that might be a party to  
15 this. So there has to be confidentiality here.

16 JUDGE GUTHRIDGE: Anything else?

17 (No verbal response)

18 REDIRECT EXAMINATION

19 MR. QUIROS: Dr. Hudson, I'd like a  
20 follow-up question. I'm showing you on the  
21 screen Section 986.81 of Exhibit 1, confidential  
22 information. Would you take a moment just to

1 quickly review it? And definition 986.6 really  
2 addresses the issue that is further addressed in  
3 986.81. Is that true?

4 DR. HUDSON: Yes.

5 MR. QUIROS: And the idea you  
6 mentioned about you wouldn't want others to know  
7 about perhaps your -- you used as an example --  
8 your carry in or frozen inventory. But to the  
9 extent that that was kept, that information was  
10 kept confidential by the employees of the council  
11 and was only disclosed to no person except for  
12 the Secretary, would that seem like an  
13 appropriate balance between your confidentiality  
14 and the need of the American Pecan Council to  
15 have accurate data and information?

16 DR. HUDSON: Yes, I do. It's  
17 absolutely necessary.

18 MR. QUIROS: Thank you. No further  
19 questions on this definition.

20 JUDGE GUTHRIDGE: Anything else,  
21 Agriculture?

22 RE CROSS EXAMINATION

1 MS. SCHMAEDICK: Melissa Schmaedick,  
2 USDA. Just a quick question. Dr. Hudson, are you  
3 aware of any other witnesses that will be  
4 testifying to Section 986.81?

5 DR. HUDSON: No, I am not.

6 MS. SCHMAEDICK: Thank you.

7 DIRECT EXAMINATION (Cont'd)

8 MR. QUIROS: Dr. Hudson, I'd like to  
9 draw your attention to Section 986.7, container.  
10 Is this term generally used in the industry?

11 DR. HUDSON: Yes, it is.

12 MR. QUIROS: Is this definition  
13 consistent with the way the term is generally  
14 used in your experience?

15 DR. HUDSON: Yes, it is.

16 MR. QUIROS: Why do you need this  
17 definition?

18 DR. HUDSON: We need this definition  
19 because it's used in various places in the  
20 marketing order draft.

21 MR. QUIROS: Thank you. No further  
22 questions at this time on this definition.

1 JUDGE GUTHRIDGE: Any questions from  
2 Agriculture?

3 CROSS EXAMINATION (Cont'd)

4 MS. VARELA: Jennie Varela, USDA. Dr.  
5 Hudson, in putting together this definition, were  
6 there any other types or descriptors of  
7 containers that the board considered that might  
8 need to be added to the definition? Or was this  
9 a compilation of earlier ideas?

10 DR. HUDSON: What I'm saying is there  
11 were others considered, but it was a decision of  
12 the board that this list must appropriately  
13 described containers as it relates to the pecan  
14 industry.

15 MS. VARELA: In your opinion, does  
16 this capture all of the possibilities of the  
17 types of receptacles that are used in the  
18 industry right now?

19 DR. HUDSON: Yes, to the best of my  
20 ability it does.

21 MS. VARELA: And do you think it gives  
22 you enough flexibility for the future that if

1 some new products are developed that it will  
2 still be included under this definition?

3 DR. HUDSON: I think that that  
4 adequately covers most any issue in regards to  
5 containers, yes.

6 MS. VARELA: Thank you.

7 CROSS EXAMINATION (Cont'd)

8 MS. SCHMAEDICK: Melissa Schmaedick,  
9 USDA> Dr. Hudson, you stated that container as  
10 currently used is the term currently used in the  
11 industry, correct?

12 DR. HUDSON: Yes.

13 MS. SCHMAEDICK: How is it currently  
14 used?

15 DR. HUDSON: Well, quite frankly, in  
16 a very broad sense, if you talk to me as an  
17 exporter and talk about containers, we're talking  
18 about 44,000 pounds or 20 mix of tons going to a  
19 C gram container. But on a more specific basis,  
20 I also have a shelling company and we sell 12  
21 ounce bags. For that matter, we sell two ounce  
22 bags.

1           And in regards to trying to confine a  
2 catchall term that could describe how pecans  
3 packaged, sold, transported, container was the  
4 best selection that we could come up with.

5           MS. SCHMAEDICK: So, in your opinion,  
6 is the inclusion of the words "including you tell  
7 (phonetic) packaging", is that to capture the  
8 marketing use of container versus a shipment use  
9 of container?

10          DR. HUDSON: I would say it would be  
11 inclusive of that. I mean because as an example  
12 a container or a palette of 12 ounce bags would  
13 be a container or probably 30 or 60 12 ounce bags  
14 wrapped in a box which very well could be also a  
15 container used in a prescriptive mode composed of  
16 42 cases which in terms could be a container put  
17 into a 44 foot container and then shipped to  
18 China. So the best catchall word to define  
19 pecans that are put to exist and be marketed  
20 would be the container.

21          MS. SCHMAEDICK: Thank you. No  
22 further questions.



1 JUDGE GUTHRIDGE: Mr. Quiros.

2 DIRECT EXAMINATION (Cont'd)

3 MR. QUIROS: Dr. Hudson, Section 986.8  
4 and again there's a reference in 986.45 council,  
5 Mr. Adams is going to testify in more detail  
6 about the creation and the operation of the  
7 American Pecan Council under Section 986.45. But  
8 in general terms, did you participate in the  
9 process of defining the council and its duties as  
10 set forth in the federal marketing order?

11 DR. HUDSON: Yes, I did.

12 MR. QUIROS: Do you agree with the  
13 definition and structure of the council?

14 DR. HUDSON: Yes, I do.

15 MR. QUIROS: Again, in general, what  
16 did you want to accomplish in the creation of the  
17 council?

18 DR. HUDSON: If we had to put it into  
19 one word, it would be diversity. As I mentioned,  
20 we wanted this to be industry wide. We wanted it  
21 to be composed of growers and shellers both big  
22 and small. We wanted geographic diversity. And

1 we wanted it to be national in scope to include  
2 the pecan growing industry.

3 MR. QUIROS: Why are there more  
4 growers than shellers on the council?

5 DR. HUDSON: Well, because quite  
6 frankly there are more growers across the  
7 producing regions than there are shellers. And  
8 in past history, marketing orders have been  
9 predominantly composed of mainly growers.

10 MR. QUIROS: Thank you. Did the board  
11 consider other alternatives?

12 DR. HUDSON: Yes, they did.

13 JUDGE GUTHRIDGE: Are you comparing  
14 other alternatives to the term council as defined  
15 in 986.8 or others as in 986.45 which you seem to  
16 have segued into?

17 MR. QUIROS: Thank you, Judge, for  
18 asking for that clarification. Did the board  
19 consider other alternatives in the structure of  
20 the council?

21 DR. HUDSON: Yes, we did. This was  
22 debated at considerable length at numerous

1 meetings. But we thought that this was the best  
2 structure.

3 MR. QUIROS: Explain that please.

4 DR. HUDSON: Well, first under the  
5 Act, quite honestly we were not required to put  
6 any shellers on the council. But again, as I  
7 mentioned, the board wanted wide industry input  
8 and we certainly wanted the shellers or  
9 processors to be represented.

10 But since there are far more growers  
11 than shellers, we thought that the growers should  
12 have more members. To be fair to the shellers,  
13 however, the board did in fact create a super  
14 majority position which must include both growers  
15 and shellers mode to pass any significant  
16 decision.

17 And I refer to Section 986.55  
18 paragraph (c). In other words, although the  
19 shellers have fewer votes nothing of significance  
20 in regards can be done without a buy-in by both  
21 the growers and the shellers.

22 MR. QUIROS: Dr. Hudson, take a look

1 at Section 986.45(b)(1)-(2) for a moment.

2 986.45(b)(1)-(2). It starts off with "In each  
3 region..." Do you see that? Just take a moment  
4 for that.

5 (Off record discussion)

6 DR. HUDSON: Yes.

7 MR. QUIROS: Dr. Hudson, please tell  
8 us why we use these particular size cutoffs with  
9 regard to Seat 1 and 2 and then in regard to Seat  
10 3 in Section 986.45(b)(1).

11 DR. HUDSON: Well, here again, in one  
12 word it's diversity, to ensure diversity.

13 MR. QUIROS: You wanted both small and  
14 large growers to have a seat at the table within  
15 each regional grower seats.

16 DR. HUDSON: Yes, we did.

17 MR. QUIROS: Thank you. Take a look  
18 at Subsection (2) of that section 986.45(b)(2).  
19 Take a look at those size cutoffs for a moment  
20 and tell me why those you thought were  
21 appropriate.

22 DR. HUDSON: Of?

1                   MR. QUIROS: Yes, in Section 986.45 of  
2 Exhibit 1, Subsection (b) Subsection (2), sheller  
3 seats.

4                   DR. HUDSON: Sheller seats, yes.

5                   MR. QUIROS: "And each region shall  
6 have sheller seat one allocated to a sheller who  
7 handles more than 12.5 million pounds of in shell  
8 pecan and a sheller seat two allocated to a  
9 sheller who handles less or equal to 12.5 million  
10 pounds."

11                  DR. HUDSON: Here again we wanted to  
12 make sure that both the large side of the sheller  
13 industry was represented as well as the smaller  
14 shellers.

15                  MR. QUIROS: In each region?

16                  DR. HUDSON: In each region.

17                  MR. QUIROS: Why no specific seat for  
18 accumulator in the region?

19                  DR. HUDSON: Well, that is because  
20 there really is no pure accumulator and almost  
21 all or either a grower or sheller or both like  
22 myself. My company is really a good example and

1       although we do accumulate from others it would be  
2       best -- And a few others as well are generally  
3       nature in scope. Many of them are purchased from  
4       all across the country. We did not feel it  
5       necessary to assign an accumulator to a specific  
6       region.

7                   MR. QUIROS: And you were aware that  
8       Mike Adams will also review this section 986.45  
9       on the council in the Dallas hearings.

10                  DR. HUDSON: Yes.

11                  MR. QUIROS: Thank you. No further  
12       questions on this definition at this time, Your  
13       Honor.

14                  JUDGE GUTHRIDGE: Department of  
15       Agriculture.

16                  CROSS EXAMINATION (Cont'd)

17                  MS. SCHMAEDICK: Melissa Schmaedick,  
18       USDA. Dr. Hudson, in your testimony, you  
19       testified to both the term council and then you  
20       also gave us some statements on Section 986.45  
21       which is American Pecan Council. I'd like to ask  
22       you some questions on both these sections. Is

1 that okay with you?

2 DR. HUDSON: If it's okay with my  
3 attorneys.

4 (Laughter)

5 MR. QUIROS: Yes, it's okay.

6 MS. SCHMAEDICK: So you stated that  
7 you are a part of the American Pecan Board.

8 DR. HUDSON: Yes.

9 MS. SCHMAEDICK: And you were involved  
10 in the discussions that resulted in the adopting  
11 of the language of 986.45 which is American Pecan  
12 Council.

13 DR. HUDSON: Yes.

14 MS. SCHMAEDICK: Can you tell me about  
15 some of the other alternatives that were  
16 considered in those discussions?

17 DR. HUDSON: Yes, I can. Obviously,  
18 there were different numbers all around I think  
19 and initially we considered a very large number.  
20 And quite frankly there were those in the  
21 industry that felt like that that would be  
22 cumbersome and inoperable. We had those who

1 wanted a very small board of less than 10. And  
2 quite honestly that was too small.

3 So we were trying to look for a number  
4 that would be representative of the industry,  
5 that would be diverse represented by both growers  
6 and shellers, but then beyond that also allow the  
7 membership to make sure we satisfy diversity at  
8 other levels. So after considerable -- This was  
9 debated quite extensively at several of our  
10 meetings and post meetings, the 17 number that we  
11 came up with we felt like fairly represented the  
12 industry as a whole.

13 And I would say this, too. In that  
14 vote when it was finally decided, our board voted  
15 unanimously and on that board were growers and  
16 shellers. And both growers and shellers voted  
17 unanimously to accept the number that we put  
18 forward in our order.

19 MS. SCHMAEDICK: And during those  
20 discussions that you had, was feedback from  
21 industry taken into consideration? For example,  
22 you mentioned that you have traveled to other



1 meetings and met with individuals in the  
2 industry. Did this discussion process then follow  
3 that feedback?

4 DR. HUDSON: Yes, it certainly did at  
5 all levels, individually with growers for  
6 different reasons, as well as growers in general  
7 which endorse this round.

8 MS. SCHMAEDICK: Thank you. I wanted  
9 to ask you about the, let's see, 986.45  
10 paragraph(a). I'm sorry. Excuse me. Paragraph  
11 (b)(1) grower seats. In this proposed section,  
12 there are two seats, grower seat one, grower seat  
13 two.

14 And there is a threshold that is  
15 described between seat one and seat two, all  
16 related to record. And seat one and seat two are  
17 allocated to growers whose acres are equal to or  
18 exceeds 176 pecan acres and then goes on to seat  
19 three as allocated to a farmer whose acreage does  
20 not exceed 175 pecan acres. Can you talk to us  
21 about the discussion you had revolving around  
22 seats one and two and their association with 176

1        pecan acres versus seat three and their 175 pecan  
2        acre section?

3                    DR. HUDSON: Yes. Here again, this  
4        paragraph was put in here to ensure a broad base,  
5        diverse support of the growers in that we didn't  
6        want the board to be made up of a bunch of very  
7        large, old white men like myself with several  
8        thousand acres of pecans.

9                    So the idea here is that allowing a  
10       grower who has 175 acres or less ensures that we  
11       have a small to moderate what we consider grower  
12       on the board. Above 175, there is criteria such  
13       that one is based on total acres produced or  
14       quantity of nuts produced, what is the total  
15       production produced. And the vote would be  
16       weighted toward the production.

17                   And then the other would be voted just  
18       at large. So the opportunity comes in to have a  
19       very large grower and then maybe a moderately  
20       sized popular grower who is in the popular vote,  
21       but does not win the weigh-in vote. So that  
22       gives you an opportunity for having a diverse

1 group of members not just from one region, but  
2 from the three different regions across the  
3 country.

4 MS. SCHMAEDICK: Thank you. I want to  
5 ask you about the relationships between your  
6 definition of commercial grower. I believe you  
7 said commercial viable is set at 30 acres. Is  
8 that correct?

9 DR. HUDSON: Yes or 50,000 pounds.

10 MS. SCHMAEDICK: And so then you have  
11 this 175 pecan acres demarcating --

12 DR. HUDSON: Right.

13 MS. SCHMAEDICK: -- large or small.  
14 Can you talk how those numbers worked again?

15 DR. HUDSON: Well, obviously, the 30  
16 acres or 50,000 pounds would be on the very  
17 bottom of the small. And I think if you were to  
18 look at our industry as a whole, you would see  
19 that by sheer numbers a majority of the growers  
20 would come somewhere between 175 and probably 550  
21 pounds. That's not a sizeable resource there.  
22 That's just my opinion.

1           And so in looking at a number that we  
2 felt like would encompass not only sufficient  
3 number of acreage but also sufficient number of  
4 growers it just worked out where 175 acre plateau  
5 seemed to be the best. Here again this was a  
6 discussion that we had in trying to ensure that  
7 we had grower diversity. We wanted the small  
8 growers to be involved.

9           MS. SCHMAEDICK: Thank you. And so in  
10 the industry in terms of the industry's  
11 description of itself, would 175 acres be --  
12 Well, what I'm wondering about is you have the  
13 Small Business Administration definition that  
14 identifies small businesses and you know by  
15 default large businesses. Sometimes that SBA  
16 definition doesn't apply to the real world of an  
17 industry. Does the 175 acres more accurately  
18 describe the threshold for your industry between  
19 large and small?

20           DR. HUDSON: I'm going to just have to  
21 say I don't know.

22           MS. SCHMAEDICK: Okay.

1 DR. HUDSON: I can't tell you where  
2 the median income level or median acre level for  
3 our industry. I can tell you this that as we go  
4 above 30 acres and get into the area where pecans  
5 become a profitable entity it is north of 30  
6 acres obviously.

7 MS. SCHMAEDICK: But in the pecan  
8 industry standards, someone who has 150 acres,  
9 are they relatively small by industry standards?

10 DR. HUDSON: No, I would not say  
11 they're relatively small. I would say probably  
12 they're more in the range of medium sized  
13 producer, not a small size, not a large size.  
14 But in the medium range.

15 MS. SCHMAEDICK: Thank you for that  
16 clarification. I want to turn your attention to  
17 986.45(b)(2), sheller seats. And we have sort of  
18 a similar concept applied here. And for the  
19 record, you have seat one allocated to the  
20 sheller if he handles more than 12.5 million  
21 pounds of in shell pecans. And seat two is  
22 allocated to a sheller who handles less than or

1 equal to 12.5 million pounds.

2 Again, can you tell me about the  
3 discussion around that number, 12.5 million  
4 pounds?

5 DR. HUDSON: I would probably just  
6 refer you to Bruce Caris' discussion on that  
7 matter as a sheller representative on that board.  
8 Quite frankly and as a grower and a very small  
9 sheller, I deferred that conversation to those  
10 who are involved in the sheller industry and  
11 accepted what they said or what they determined  
12 to be a small and a larger sheller.

13 And I did not have input into that  
14 decision other than taking their recommendation  
15 and accepting it and voting in favor of it. But  
16 I would say this, there's a very simple math that  
17 can be accomplished here. And that is that if  
18 you take 12.5 million pounds of in shell and you  
19 assume a 50 percent shell out which would give  
20 you about 6.25 million pounds of meats and you  
21 multiply that times the margin that most shellers  
22 are making in regards to marketing that meat, in

1 that case that number would fall below what the  
2 SBA designates as being a small business.

3 MS. SCHMAEDICK: Thank you. There's  
4 a sentence in this section 986.45. It's towards  
5 the bottom of the introductory paragraph. I'll  
6 read it for the record. It says, "Grower and  
7 sheller members and their alternates shall be  
8 selected by a secretary from nominees submitted  
9 by the council." Was this process discussed  
10 during your meetings on this proposed language?

11 DR. HUDSON: Yes, it was.

12 MS. SCHMAEDICK: What is the intent on  
13 this statement?

14 DR. HUDSON: The intent quite frankly  
15 I think -- No, I'm not even going to think here.  
16 I cannot elucidate what it might be, but I can  
17 tell you what I think it is.

18 MS. SCHMAEDICK: Okay.

19 DR. HUDSON: And that is to guarantee  
20 the opportunity for diversity in all ways.

21 MS. SCHMAEDICK: Thank you. In your  
22 reading of the statement, what is the role of the

1 secretary vis a vis the members of the council?

2 DR. HUDSON: Quite honestly, I look  
3 at him as the boss. You know we serve at the  
4 pleasure of the secretary. And we understand  
5 that. And we appreciate that.

6 In fact, quite honestly, we welcome  
7 that. We need authority. He has the authority.  
8 And so, quite honestly, we welcome that.

9 MS. SCHMAEDICK: And then nominees,  
10 what is your understanding? Who are the  
11 nominees?

12 DR. HUDSON: The nominees would be  
13 those respective individuals who are respected,  
14 an active part of the industry and not just a  
15 part of the industry and individuals who would be  
16 willing to represent the industry as a grower or  
17 a sheller or an accumulator or in another who can  
18 help guide our industry into the future and the  
19 leaders.

20 MS. SCHMAEDICK: Thank you. No  
21 further questions on that particular section or  
22 definition.



1                   JUDGE GUTHRIDGE: I have one thing and  
2 I think it was Mr. Keck earlier today was  
3 testifying about everybody he works with are  
4 geeks and I have my own geeky aspects myself. I  
5 look at this definition of grower seats and what  
6 occurs to me is somewhere in this great land  
7 there is some farm that's 175.5 acres. Where  
8 does that fit in?

9                   DR. HUDSON: If he wants to be a small  
10 grower, we just go out and cut him down an acre.

11                  JUDGE GUTHRIDGE: Or you go ahead and  
12 help him plant another half-acre.

13                  DR. HUDSON: I would just say that  
14 that would be an issue for USDA to determine if  
15 he is in fact a small grower or a large grower.  
16 We're going to accept their determination.

17                  JUDGE GUTHRIDGE: All right. Thank  
18 you.

19                  CROSS EXAMINATION (Cont'd)

20                  MS. CHILUKURI: Just to follow up on  
21 what you were saying, Judge Guthridge and Dr.  
22 Hudson, so how would the grower with 175.5 acres

1 be treated under 986.45(b)(1)?

2 DR. HUDSON: Well, he would be treated  
3 very kindly. Does that answer your question?

4 MS. CHILUKURI: No, it does not.

5 DR. HUDSON: Well, if it's less than  
6 176, then -- May I consult with my attorneys  
7 here?

8 MS. CHILUKURI: We can discuss the  
9 clarifying changes on record or feel free to  
10 discuss that.

11 DR. HUDSON: I would refer that to the  
12 attorneys.

13 CROSS EXAMINATION (Cont'd)

14 MR. HILL: Well, the USDA asks would  
15 you be fine if it reads "equal to or exceeds 176"  
16 just like "exceeds 175 pecan acres"?

17 DR. HUDSON: Would I be welcome to  
18 that? Certainly. I would have no objection to  
19 that. But I'm just one poor, simple pecan grower  
20 from Georgia.

21 MR. HILL: Thank you.

22 MR. QUIROS: Your Honor, we have

1 several questions if the USDA has no others.

2 REDIRECT EXAMINATION (Cont'd)

3 MR. QUIROS: Would it be clearer in  
4 that section, Dr. Hudson, if it said less than  
5 176 acres?

6 DR. HUDSON: Yes, it would.

7 MR. QUIROS: Thank you. And would you  
8 object or do you think the American Pecan Board  
9 would object if that language was changed to less  
10 than 176 acres?

11 DR. HUDSON: If so passed by the  
12 board, yes.

13 MR. QUIROS: Thank you.

14 JUDGE GUTHRIDGE: Which number are you  
15 changing?

16 MR. QUIROS: This is the seat number  
17 three which would Exhibit 1, Section 986.45(b)(1)  
18 picking up on the sentence that says, "Each  
19 region shall also have a grower seat three  
20 allocated to a grower whose acreage does not  
21 exceed 175 pecan acres." And the clarifying  
22 question I was asking Dr. Hudson is if that

1 language was changed to say instead of "does not  
2 exceed 175 pecan acres" said "is less than 176  
3 pecan acres."

4 DR. HUDSON: And my answer on this is  
5 yes.

6 MR. QUIROS: Thank you. I'd like to  
7 hand you a calculator and ask you to run some  
8 numbers for me if you would, Dr. Hudson. I'm  
9 referring to a question that Ms. Schmaedick asked  
10 with regard to whether 176 would represent a  
11 small grower in your industry. So I'd like you to  
12 put in 176. Why don't we use that as the  
13 dividing line?

14 DR. HUDSON: Certainly.

15 MR. QUIROS: And then I'd like to  
16 refer you to Exhibit 23 that was entered into the  
17 record yesterday where Dr. Palma referenced that  
18 across the production area the average in shell  
19 pounds per acre were 1,666.67 pounds. Would you  
20 please multiply 176 times 1,666.67?

21 DR. HUDSON: Yes, that's \$293,333.92.

22 MR. QUIROS: Thank you. That would

1 just be pounds, not dollars.

2 DR. HUDSON: I mean pounds, yes.

3 MR. QUIROS: Thank you. And then I'd  
4 like to refer you to what was entered by the  
5 USDA, Mr. Hinman Exhibit 6, Table 23, the price  
6 of pecans across the production area of improved  
7 pecans for 2014, the highest value of pecans  
8 relative to natives and seedlings and improved of  
9 \$2.12. Would you now multiple that by \$2.12?  
10 And what number do you get?

11 DR. HUDSON: \$621,869.90.

12 MR. QUIROS: Is that more or less than  
13 \$750,000?

14 DR. HUDSON: Yes, that would be less.

15 MR. QUIROS: And so under the  
16 definitions provided by the Small Business  
17 Administration, that would be a small grower.

18 DR. HUDSON: A small grower.

19 MR. QUIROS: And was that part of the  
20 considerations that were made by those  
21 discussions about whether or not that seat three  
22 would represent a small grower under the Small

1 Business Administration? Was that discussed  
2 amongst you?

3 DR. HUDSON: Yes, it was. Thank you  
4 for reminding me.

5 MR. QUIROS: Thank you, Doctor. I  
6 have no further questions on this subject.

7 JUDGE GUTHRIDGE: Does the Department  
8 of Agriculture have anything else?

9 (No verbal response)

10 Carry on.

11 MR. QUIROS: Thank you, Dr. Hudson.  
12 Under Section 986.9, crack or cracks, is this  
13 term generally used in the industry?

14 DR. HUDSON: Yes, it is.

15 MR. QUIROS: Is this definition  
16 consistent with the usage of the term in the  
17 industry based on your experience?

18 DR. HUDSON: Yes, it is.

19 MR. QUIROS: Why define this term?

20 MR. HINMAN: This term was defined  
21 because cracks were less valuable and therefore  
22 should be assessed at a lesser amount. We

1 addressed this in the definition of substandard  
2 at Section 986.28, paragraph (3) and at Section  
3 986.61.

4 MR. QUIROS: No further questions of  
5 the witness on this definition at this time.

6 JUDGE GUTHRIDGE: Any questions from  
7 Agriculture?

8 CROSS EXAMINATION (Cont'd)

9 MS. VARELA: Jennie Varela, USDA. I  
10 just want to make sure I'm getting the full idea  
11 of this. In that last sentence there, it's  
12 saying that it can refer to causes of crack in  
13 harvesting or handling. Is the intent there just  
14 to make sure that crack applies to anywhere in  
15 the process?

16 And maybe I should rephrase that. I'm  
17 sorry. Is there anything not included in this  
18 definition, any situation where a crack could  
19 occur? Or is this covering every possibility?

20 DR. HUDSON: Okay. I'll answer that.  
21 Cracks can occur any time an in shell pecan is  
22 handled. In fact, some of the very thinner skin

1 varieties are subject to cracking. And that is  
2 an issue.

3 Typically, cracks are taken out in the  
4 cleaning process and sorted in the cleaning  
5 process and separated. Here again, they help  
6 out. So they're not discarded. And they are  
7 handled quite gingerly in the process. But that  
8 does not prevent particularly some of the thinner  
9 shell varieties from cracking. Did I answer your  
10 question?

11 MS. VARELA: Yes, that gets me  
12 farther. I also want to be sure that I'm not  
13 confusing this with part of the shelling process  
14 that's intentional.

15 DR. HUDSON: Right.

16 MS. VARELA: So does this definition  
17 mostly apply to unintentional cracking?

18 DR. HUDSON: Cracks is referred to in  
19 this document to be exclusively an issue  
20 addressed at each grower.

21 MS. VARELA: So the intent is just to  
22 apply to those that have not been sent to



1 shelling.

2 DR. HUDSON: Right.

3 MS. VARELA: Okay. Thank you.

4 CROSS EXAMINATION (Cont'd)

5 MS. SCHMAEDICK: Melissa Schmaedick,  
6 USDA. Dr. Hudson, I'm looking at this definition  
7 986.9. I'll read it into the record. "Crack  
8 means to break, crack or otherwise compromise the  
9 outer shell." What does otherwise compromise the  
10 outer shell mean? Could that include holes? Or  
11 is there some other type of compromise that you  
12 have?

13 DR. HUDSON: Now here again, if that  
14 shell, if the integrity of that shell, has been  
15 in any way damaged, then it considered to be a  
16 crack. And that's a very distinct service.  
17 There are insects that can in fact crack the  
18 shell. And they're obviously removed in the  
19 cleaning process.

20 MS. SCHMAEDICK: Thank you. So then  
21 as in the handling process with how this crack  
22 actually are hulled together or they're taken out

1 and then they are further processed?

2 DR. HUDSON: They are typically pooled  
3 together and then processed, generally processed  
4 together. A cracked in shell pecan has to go  
5 through a much more extensive sanitation process  
6 during the processing procedures because of the  
7 risk of contamination by the shell being cracked  
8 and exposed to other insects and pests and  
9 disease and contaminants.

10 MS. SCHMAEDICK: Thank you. And you  
11 mentioned that this term is also used in the  
12 context of substandard costs or price.

13 DR. HUDSON: Yes, it would be  
14 classified as substandard.

15 MS. SCHMAEDICK: So in that sub  
16 category of substandard, are the cracks pooled  
17 with the blowouts to use a previous term?

18 DR. HUDSON: Typically, cracks are  
19 kept separate from blowouts because they may go  
20 in different directions. There are very few  
21 processing companies that will take cracks  
22 because of the contamination risk, the additional

1 risk from contamination as opposed to blowouts  
2 which the shell is not broken and they're just  
3 thin weighted nuts.

4 MS. SCHMAEDICK: Thank you. I want to  
5 maybe take a quick leap here to connect some  
6 dots. So we talked about the term to certify  
7 which relates to inspection. Do you foresee the  
8 term crack or cracks being used potentially in  
9 future handling that might try to pinpoint  
10 certain defects within pecans? So does it have a  
11 relevance outside of just substandard?

12 DR. HUDSON: Do I see? It might help  
13 if I explain just briefly how these cracks and  
14 blowouts and standard pecans are handled.  
15 They're coming through a graded process at the  
16 rate of thousands of pounds a minute, hundreds of  
17 thousands pounds a day. They're sorted out both  
18 by electronic eyes. They're blown out by  
19 blowers. And then there's a spiral human  
20 inspection.

21 As the blowouts come out or as the  
22 cracks come out, they are sorted and kept

1 separate. And more times than not cracks are put  
2 directly into the cold storage facilities and  
3 kept separate because they would mold very  
4 quickly particularly if there was any moisture.

5 Now in regards to the future  
6 regulations that might occur, it is a very good  
7 point. It's an excellent point. Because of the  
8 issues in regards to contamination because of  
9 that crack -- here again this is strictly my  
10 opinion -- there will probably come a time when  
11 cracks will probably be discarded. But here  
12 again that's just my opinion.

13 Again, this is a very small percentage  
14 of the total sample as are blowouts. You're  
15 talking about in most cases less than three  
16 percent of the total sample would fit into those  
17 classifications.

18 MS. SCHMAEDICK: Thank you. I  
19 appreciate you're making that connection with the  
20 safety component. My question to you came from  
21 the context of my familiarity with pistachios  
22 where they at one point very carefully identified

1 all the different types of defects and the  
2 potential risks associated with that. So that  
3 was why I was asking that question.

4 DR. HUDSON: Right. If I might follow  
5 up with one more comment here and not to belabor  
6 your point. Cracks is also one of the standards  
7 that the USDA uses in certifying pecans. So  
8 cracks is something that goes in as a defect.

9 MS. SCHMAEDICK: Okay. Thank you. No  
10 further questions.

11 JUDGE GUTHRIDGE: Mr. Quiros.

12 MR. QUIROS: Yes.

13 REDIRECT EXAMINATION (Cont'd)

14 MR. QUIROS: I think the USDA raised  
15 some very interesting questions that I'd like to  
16 talk with you about them, Dr. Hudson, with you a  
17 little further. Take a look at that first  
18 sentence and let me direct your attention to it.  
19 "Crack means to break, crack or otherwise  
20 compromise the outer shell of a pecan so as to  
21 expose the kernel inside to air outside the  
22 shell."

1                   But notice the term is "crack." And  
2 I want to ask you. That's also applied in  
3 shelling, not just in grower harvesting. For  
4 instance, in Section 986.19 to handle means to  
5 receive shell crack. Is that right?

6                   MR. HILL: Your Honor, I have to  
7 object at this time. I think the counsel is  
8 testifying now. Do you have a question that you  
9 want to ask this witness?

10                  MR. QUIROS: Sure. Let me restate it.  
11 Please take a look at the general definition in  
12 sentence one. Does that apply to both grower  
13 cracking of the shells and also handler cracking  
14 of a shell?

15                  DR. HUDSON: Yes, it does.

16                  MR. QUIROS: And as evidence of your  
17 contemplation of that, I refer you to Section  
18 986.19. And is that what you meant by using the  
19 term crack when you were defining the word to  
20 handle?

21                  DR. HUDSON: Restate that for me. I'm  
22 a little confused here.

1                   MR. QUIROS: Sure. I thought the USDA  
2 raised a very good issue and Ms. Varela about the  
3 second sentence which is the term cracks. And  
4 cracks refers to an accumulated group or  
5 container of pecans that have been cracked in  
6 harvesting or handling. But it's the idea that  
7 that happens often times for a grower. Do you  
8 understand where I'm coming from?

9                   DR. HUDSON: Yes, I see where you're  
10 coming from, yeah.

11                   MR. QUIROS: Okay.

12                   DR. HUDSON: They're not the same.  
13 They're quite different. I mean I understand  
14 what you're saying. In fact, to crack pecans is  
15 typically used in our industry also synonymously  
16 with the share at that level of processing. To  
17 crack or a crack at this level of processing in  
18 the in shell basis is totally different where one  
19 has a very positive connotation and the other has  
20 a negative connotation.

21                   MR. QUIROS: Right. So the first  
22 sentence relates to the general definition of

1 exposing the meat.

2 DR. HUDSON: Exposing the meat, yes.

3 MR. QUIROS: That's right. And the  
4 second, the word cracks which is plural --

5 DR. HUDSON: Right.

6 MR. QUIROS: -- defines generally that  
7 accumulated group that can happen at any time.

8 DR. HUDSON: Right.

9 MR. QUIROS: But generally it happens  
10 with regard to the harvesting and the cleaning  
11 operations. Is that correct?

12 DR. HUDSON: Certainly.

13 MR. QUIROS: Thank you. You testified  
14 that cracks have value, but a lower value. Is  
15 that true?

16 DR. HUDSON: Yes.

17 MR. QUIROS: Does anyone that's a  
18 grower really want to have cracks?

19 DR. HUDSON: No. Cracks cost you  
20 money.

21 MR. QUIROS: Right. So you're not  
22 looking to crack that shell. Is that correct?



1 DR. HUDSON: Certainly not.

2 MR. QUIROS: Because you compromise  
3 the meat and lower the value.

4 DR. HUDSON: As opposed to being a  
5 value added process that is quite the opposite.

6 MR. QUIROS: All right. Now later  
7 down the chain as you just testified.

8 DR. HUDSON: That becomes positive.

9 MR. QUIROS: When you crack a pecan,  
10 when a handler cracks a pecan that's using the  
11 general sentiment term of the cracking.

12 DR. HUDSON: Yes.

13 MR. QUIROS: And those are used in the  
14 industry. Is that correct?

15 DR. HUDSON: That is correct.

16 MR. QUIROS: Thank you, sir. No  
17 further questions at this time of this  
18 definition.

19 RECROSS EXAMINATION (Cont'd)

20 MS. CHILUKURI: Just to clarify for my  
21 own understanding, this is a clerical change.  
22 But would it make sense to separate the

1 definitions, crack versus cracks and have them as  
2 two?

3 DR. HUDSON: Now, quite frankly, I  
4 think as described in the document and taken into  
5 context of where it is described, I think it  
6 satisfies all that would be subject to the  
7 guidelines. Now, would it clarify? Yes, perhaps  
8 it would. But I honestly don't think it's  
9 necessary.

10 MS. CHILUKURI: And for my own  
11 understanding, crack can refer to part of the  
12 handling process.

13 DR. HUDSON: To crack would be more of  
14 a process associated with shelling. To crack a  
15 pecan for shelling or for your own use. Cracks  
16 plural in reference to a product being brought in  
17 in the process would be an in shell pecan where  
18 through the process of shaking or sweeping or  
19 harvesting the outer hard shell has been broken.

20 MS. CHILUKURI: And would those  
21 cracks, the plural noun, be substandard pecans?

22 DR. HUDSON: Yes, cracks, plural noun,

1 are substandard.

2 MS. CHILUKURI: And cracking is the --  
3 that is part of the handling process.

4 DR. HUDSON: Right. It's best  
5 identified as the verb for shelling, to crack.

6 MR. QUIROS: Thank you.

7 DR. HUDSON: Or adverb.

8 JUDGE GUTHRIDGE: Are we ready to go  
9 on?

10 MR. QUIROS: Yes sir.

11 JUDGE GUTHRIDGE: We're no longer on  
12 crack.

13 DIRECT EXAMINATION (Cont'd)

14 MR. QUIROS: Dr. Hudson, if I could  
15 turn your attention to Section 986.10, custom  
16 harvester. Is this term generally used in the  
17 industry?

18 DR. HUDSON: Yes, it is.

19 MR. QUIROS: Is this definition  
20 consistent with the terms used in the industry  
21 based on your experience?

22 DR. HUDSON: Yes, it is.

1 MR. QUIROS: Why define it?

2 DR. HUDSON: It's a very important  
3 concept and we need to make clear that a custom  
4 harvester that although he is involved in the  
5 handling of pecans will not be assessed under  
6 Section 986.61.

7 MR. QUIROS: Why should they be  
8 exempt?

9 DR. HUDSON: Well, this is a  
10 proprietary issue. It goes back with the grower  
11 or the custom harvester never takes title to the  
12 pecans. There is no proprietary interest in the  
13 crop. They are just getting a fee for service.  
14 In this case, they're harvesting. And this was  
15 covered quite extensively I think yesterday in  
16 Mr. Phillip Arnold's testimony.

17 MR. QUIROS: Thank you, Dr. Hudson.  
18 I have no further questions at this time on this  
19 definition.

20 CROSS EXAMINATION (Cont'd)

21 MR. HILL: Just a couple of quick  
22 questions. A custom harvester, do they ever take

1 possession of the crop to their own site of  
2 custom harvesting or do they do it on the site  
3 where they collect the harvest?

4 DR. HUDSON: Customer harvesting  
5 occurs in so many different ways from mechanical  
6 to hand harvesting. But it is a process whereby  
7 the pecans, the grower will pay someone to come  
8 in and harvest his pecans. If it's the more  
9 typical manner whereby about 99 percent of the  
10 pecans are harvested mechanically, the pecans are  
11 custom harvested and then taken to the sheller  
12 and then they're custom cleaned.

13 MR. HILL: Right.

14 DR. HUDSON: But this is for a fee  
15 basis. There never is a -- Well, not never, but  
16 typically there is no proprietary ownership of  
17 the customer's nuts.

18 MR. HILL: So it typically never  
19 leaves the site to the site of the harvester.

20 DR. HUDSON: No, it will leave the  
21 farm and often times whoever custom harvests will  
22 also haul those pecans to the cleaner.

1           MR. HILL: Okay. I just want to go  
2 ahead just a little bit to Section 986.19, to  
3 handle. Let me see if I can find it for you. It  
4 says, "The term to handle," 986.19 about halfway  
5 down. It says, "The term to handle shall not  
6 include sales within the area of production to  
7 handlers, growing warehouse, grower warehousing,  
8 custom handler."

9           I notice they use a different term  
10 there. Is that custom handler referring to the  
11 same custom harvester in 986.10?

12          DR. HUDSON: Well, here again, custom  
13 labor occurs at nearly every level of pecan  
14 production particularly for smaller growers.  
15 They cannot afford the very expensive equipment.  
16 They may hire a custom harvester to come in.  
17 They may very well hire a truck to do their  
18 hauling. They may very well then have to have  
19 them custom cleaned. And to take it even further  
20 they may have to hire a broker to custom sell  
21 them.

22           There are a lot of opportunities here

1 for custom work to occur. But I think the issue  
2 here is proprietary or ownership. Who owns the  
3 nuts because that's very important to determine  
4 in later chapters where we talk about this. So  
5 custom harvesting, custom hauling, custom labor,  
6 custom cleaning, all of these the grower never  
7 loses the ownership of those nuts.

8 MR. HILL: So you're saying custom  
9 handler might be something more than just custom  
10 harvesting. Is that right?

11 DR. HUDSON: I'm not really familiar  
12 with custom handling. I'm not familiar with  
13 that. But that is a possibility to handle all of  
14 it and call it a handler.

15 MR. HILL: I don't have anything else.

16 JUDGE GUTHRIDGE: If I could just  
17 interject because it occurred when Mr. Hill was  
18 saying the custom harvester could also be a  
19 contract carrier of the pecans to the sheller for  
20 the same person. In neither case would he have a  
21 proprietary interest in pecans.

22 DR. HUDSON: No, he would simply be

1 hired for the purpose of hauling or harvesting.

2 CROSS EXAMINATION (Cont'd)

3 MS. SCHMAEDICK: Melissa Schmaedick,  
4 USDA. Dr. Hudson, I want to keep your attention  
5 on this to handle here in the bottom part of the  
6 definition and how it relates to custom  
7 harvester. So if you were to continue to read  
8 back that sentence that starts with the term  
9 "shall not include." It continues on to say "or  
10 other similar activities paid for on a fee for  
11 service basis by a grower who retains ownership  
12 of pecans."

13 In your opinion, does custom  
14 harvesting fall under that broader category of a  
15 fee for service basis paid for by the grower who  
16 retains ownership of pecans?

17 DR. HUDSON: It is a fee for service.  
18 And here again it goes back to proprietary  
19 ownership of the nuts. It is a fee for service.

20 MS. SCHMAEDICK: So just to clarify,  
21 custom harvesting is not necessarily captured in  
22 the term custom handling. But in your opinion,



1 it is covered in the statement fee for service  
2 basis by a grower who retains ownership. Is that  
3 correct?

4 DR. HUDSON: That is correct, yes.

5 MS. SCHMAEDICK: Thank you. No  
6 further questions.

7 MR. QUIROS: None from the Proponent  
8 counsel.

9 JUDGE GUTHRIDGE: All right.

10 DIRECT EXAMINATION (Cont'd)

11 MR. QUIROS: Dr. Hudson, Section  
12 986.11, Department or USDA, why define this?

13 DR. HUDSON: It is defined because  
14 it's used throughout the federal marketing order.  
15 It's used in other marketing orders. And we  
16 needed it to clearly identify the USDA's role in  
17 the oversight of the administration of the  
18 federal marketing order.

19 MR. QUIROS: Any discussion or  
20 controversy with regard to this definition?

21 DR. HUDSON: None at all. We accepted  
22 that.

1 JUDGE GUTHRIDGE: Any questions from  
2 the USDA?

3 MR. HILL: No questions.

4 JUDGE GUTHRIDGE: Are you well  
5 defined?

6 (Laughter)

7 MR. QUIROS: Section 986.16,  
8 disappearance. Is this term generally used in  
9 the industry?

10 DR. HUDSON: Yes, it is.

11 MR. QUIROS: Is this definition  
12 consistent with the usage in the industry based  
13 on your experience?

14 DR. HUDSON: Yes, it is.

15 MR. QUIROS: Why define?

16 DR. HUDSON: Well, disappearance is a  
17 very important aspect in that the industry needs  
18 data on the amount of product that disappears in  
19 the production process. Under the federal  
20 marketing order, the council can collect such  
21 data and report to the Secretary and to the  
22 industry as outlined in Section 986.65(a)(2).

1 MR. QUIROS: Dr. Hudson, I'm going to  
2 put that up on the board. This is Exhibit 1,  
3 Section 986.65.

4 MR. DAVIS: What subsection? I'm  
5 sorry.

6 MR. QUIROS: Subsection (a). I'm  
7 sorry. Subsection (b). The 986.65(a)(2) I want  
8 you to take a look at.

9 MR. DAVIS: I don't have (a) and (b).

10 MR. QUIROS: You should. It says --  
11 Dr. Hudson, can you refer to your Exhibit 1 that  
12 you have there, 986.65?

13 JUDGE GUTHRIDGE: This one.

14 DR. HUDSON: Yes, 986 where?

15 MR. QUIROS: 986.65 subsection (b).  
16 It should be on your page 380030.

17 DR. HUDSON: 986.65.

18 MR. QUIROS: (b).

19 DR. HUDSON: (b)?

20 MR. QUIROS: Yes.

21 DR. HUDSON: Okay. That's for  
22 disappear.

1 MR. QUIROS: Right. So in your  
2 reference just into Section 986.65(a)(2), that  
3 reference should have really been 986.65(b). Is  
4 that correct?

5 DR. HUDSON: Yes.

6 MR. QUIROS: And that is part of the  
7 duty of the council to make a report and  
8 recommendation to the Secretary which includes  
9 the estimate of disappearance.

10 DR. HUDSON: Yes, it is.

11 MR. QUIROS: And that why you used it  
12 in that definition.

13 DR. HUDSON: Yes, I did.

14 MR. QUIROS: Thank you. How would  
15 such information be useful to you or to the  
16 council?

17 DR. HUDSON: I would simply say that  
18 this is probably one of the most important  
19 statistical pieces of data that I use. If we  
20 asked me why our industry has floundered for 50  
21 years, I would say that this missing piece of  
22 data is the most important.

1           How in the world can any industry make  
2 a business decision, a sound business decision,  
3 without a grasp of supply and demand? And a very  
4 important part of that is disappearance.

5           In fact today, discussions are being  
6 held about where the pecan crop might be  
7 positioned this coming year as far as the price.  
8 Absolutely no way to do this under current  
9 metrics. We make projections. We make  
10 estimates. But we need this opportunity in this  
11 market order to give us that.

12           MR. QUIROS: Thank you, Dr. Hudson.  
13 No further questions from the Proponent at this  
14 time.

15           JUDGE GUTHRIDGE: Any questions from  
16 Agriculture?

17           CROSS EXAMINATION (Cont'd)

18           MS. SCHMAEDICK: Melissa Schmaedick,  
19 USDA. Dr. Hudson, can you explain how  
20 disappearance is defined please?

21           DR. HUDSON: Disappearance to a very  
22 simple, simplistic answer is it's the difference

1 between supply and demand. You have a certain  
2 amount of supply. You have a certain amount of  
3 supply. You have a certain amount of demand over  
4 a given period of time. And disappearance is a  
5 relationship if you want to survive.

6 MS. SCHMAEDICK: Thank you. Given  
7 that response, would supply then be the sum of  
8 grower pecan production and handler clean  
9 production?

10 DR. HUDSON: I wish it was that  
11 simple. It's not. It's also a function of  
12 imports. It's a function of grower inventories.  
13 So there is a very complicated set of matrix that  
14 associated with disappearance. And estimates  
15 don't just get you where you need to be.

16 I think it was quoted earlier. We  
17 can't even currently get together on what we  
18 think the U.S. pecan supply might be this fall.  
19 If you ask growers, one grower and the next,  
20 there's a difference.

21 MR. QUIROS: Your Honor, we've been at  
22 this a little over an hour and 45 minutes. Could

1 we take a break and resume inside this? We'll not  
2 move onto another definition and resume and maybe  
3 just a five minute break.

4 JUDGE GUTHRIDGE: You look -- Ms.  
5 Schmaedick looks like she's just about halfway.

6 MS. SCHMAEDICK: I'm only a minute  
7 away from a question.

8 JUDGE GUTHRIDGE: Why don't you go  
9 ahead and ask this one?

10 MS. SCHMAEDICK: Thank you. I  
11 appreciate that. So I'm confused on  
12 disappearance. And perhaps my confusion will be  
13 clarified when we move onto the other definitions  
14 of grower and clean production and handling clean  
15 production. But if I read this definition, it  
16 says, "Disappearance means the difference between  
17 the sum of grower clean production and handler  
18 clean production and the sum of available supply  
19 of merchantable pecans and merchantable  
20 equivalent of in shell pecans."

21 You said that disappearance is that  
22 you calculated by the difference of supply and

1 demand. Is that what you said?

2 DR. HUDSON: Yes.

3 MS. SCHMAEDICK: I'm trying to make  
4 sense of that definition. It seems like you're  
5 saying disappearance is the difference between  
6 the two sums of supply. And with that, perhaps  
7 it's a good time to take a break.

8 DR. HUDSON: Yes.

9 (Laughter)

10 JUDGE GUTHRIDGE: Off the record.

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

13 JUDGE GUTHRIDGE: Okay. We're back on  
14 the record. I think we're at the point where Ms.  
15 Schmaedick could ask the question. So there's  
16 been some discussions off the record. Where do  
17 we go right now?

18 MR. QUIROS: Dr. Hudson, do you have  
19 anything?

20 DR. HUDSON: Yes, I do. I would first  
21 like to humbly offer my apology in regards to my  
22 utmost misunderstanding or -- not my



1       misunderstanding, but my misquoting in regards to  
2       disappearance. And this in fact relates to  
3       shrinkage which occurs at the growers and at the  
4       handler processing facilities and has absolutely  
5       nothing to do with what I stated. Please forgive  
6       me. I am just a simple, humble pecan farmer from  
7       Georgia and you know that.

8                       (Laughter)

9                       MS. SCHMAEDICK: Certainly. Thank  
10       you.

11                      CROSS EXAMINATION (Cont'd)

12                     MS. SCHMAEDICK: Just to clarify  
13       shrinkage as I understand from your statement  
14       that it is the difference from between what is  
15       harvested and what is then forwarded to the  
16       market. So it's that portion between the harvest  
17       and going to market that you referred to  
18       shrinkage. Is that correct?

19                     DR. HUDSON: Yes. More accurately  
20       disappearance.

21                     MS. SCHMAEDICK: And in your industry  
22       it's disappearance.

1 DR. HUDSON: Yes.

2 MS. SCHMAEDICK: Okay. Thank you.

3 JUDGE GUTHRIDGE: Is that measured in  
4 weight? Or is that measured in --

5 DR. HUDSON: Yes, it would be measured  
6 in pounds.

7 JUDGE GUTHRIDGE: So weight.

8 DR. HUDSON: Yes.

9 JUDGE GUTHRIDGE: Okay.

10 MS. SCHMAEDICK: Can I ask a further  
11 question related to this definition?

12 DR. HUDSON: Yes.

13 MS. SCHMAEDICK: I realize we have not  
14 addressed the definitions of grower cleaned  
15 production and handler cleaned production. And  
16 you have not yet been asked the definitions of  
17 merchantable pecans. Correct?

18 DR. HUDSON: Yes.

19 MS. SCHMAEDICK: But if we are to  
20 direct your attention to grower cleaned  
21 production which is 986.17, I'll read that  
22 definition.

1                   MR. QUIROS: I'll get it up there,  
2                   too.

3                   MS. SCHMAEDICK: "Grower cleaned  
4                   production means the production of harvested and  
5                   processed through a clean plant to determine  
6                   volumes of improved pecans, native and seedling  
7                   pecans and substandard pecans to transfer for  
8                   sale." So for example, let's say that the  
9                   handler cleaned production definition also  
10                  identifies the difference between what is  
11                  harvested and what results after cleaning. Is  
12                  that correct?

13                  DR. HUDSON: Yes.

14                  MS. SCHMAEDICK: So if we take that  
15                  assumption and then look at the definition of  
16                  merchantable pecans which is 986.26, that  
17                  definition is broken into two sections (a) and  
18                  (b). I'm sorry. Two paragraphs (a) and (b).  
19                  But essentially I'll read into the record. It  
20                  says "Merchantable pecans means pecans meeting  
21                  minimum grade regulations that may be effected  
22                  pursuant to 986.69." Do you see that?

1 DR. HUDSON: Yes.

2 MS. SCHMAEDICK: The term merchantable  
3 pecans, does it only come relevant when there are  
4 handling regulation in effect?

5 DR. HUDSON: Now here again  
6 merchantable pecans whether they're at the  
7 growing clean level or at the shell clean level  
8 in regards to poundage, if the growers -- It may  
9 very well not go into the chain. It's still in  
10 the handling room. And it may continue to dry  
11 out.

12 I guess the answer is -- Would you  
13 restate the question, the relationship between  
14 the two?

15 MS. SCHMAEDICK: Sure. I'm just  
16 trying to understand that merchantable pecans as  
17 described in Exhibit 1 meaning pecans meet the  
18 minimum grade regulations that may be in effect.  
19 So my question to you is if there are no handling  
20 regulations in effect is the term merchantable  
21 pecans relevant.

22 DR. HUDSON: No.

1 MS. SCHMAEDICK: Thank you. So  
2 disappearance in absence of handling regulations  
3 simply means if we were deduce logically based on  
4 your testimony the difference between what's  
5 harvested and the cleaned product. And that  
6 difference is disappearance or shrinkage. Is that  
7 following what's lost in clean process?

8 DR. HUDSON: Yes.

9 MS. SCHMAEDICK: Thank you.

10 JUDGE GUTHRIDGE: Volume or weight?

11 DR. HUDSON: Weight.

12 MS. SCHMAEDICK: Weight. Thank you  
13 for the correction.

14 DR. HUDSON: You got that one right.

15 MS. SCHMAEDICK: No further questions.

16 JUDGE GUTHRIDGE: Are you  
17 contemplating another question?

18 MR. HILL: No more questions.

19 DIRECT EXAMINATION (Cont'd)

20 MR. QUIROS: Thank you, Dr. Hudson,  
21 for your explanation there. So your concept is  
22 shrinkage and the definition is as it's currently

1 used 986.12, disappearance, which is part of  
2 Exhibit 1. You still agree with that definition.

3 DR. HUDSON: Yes, I do.

4 MR. QUIROS: Thank you. Section 986.1  
5 3, farm service agency, why define?

6 DR. HUDSON: We defined this because  
7 it will be the essential agency in establishing  
8 our voting eligibility and gathering accurate  
9 crop data.

10 MR. QUIROS: Any discussion or  
11 controversy?

12 DR. HUDSON: No, there was not.

13 MR. QUIROS: Has this been used in  
14 other federal marketing order?

15 DR. HUDSON: Yes, it has.

16 MR. QUIROS: Thank you. No further  
17 questions at this time.

18 JUDGE GUTHRIDGE: Any questions from  
19 Agriculture?

20 MS. CHILUKURI: No questions.

21 DIRECT EXAMINATION (Cont'd)

22 MR. QUIROS: Thank you. Dr. Hudson,

1 on Section 986.14, fiscal --

2 MS. CHILUKURI: I'm sorry. Do you  
3 have a question, Melissa? I apologize. Okay.  
4 No questions.

5 CROSS EXAMINATION (Cont'd)

6 MS. SCHMAEDICK: Actually, I do have  
7 a question. I apologize. Melissa Schmaedick,  
8 USDA. Dr. Hudson, I believe in previous  
9 testimony we heard a term called pecan acre. And  
10 I'm wondering if there's a connection between  
11 what pecan acre means and the farm service  
12 agency.

13 DR. HUDSON: Yes, there is. An acre  
14 of pecans as identified is not consistent across  
15 the pecan industry as evidenced by the fact that  
16 in Oklahoma there may only be one pecan tree on  
17 10 acres. But a pecan farmer may have 10,000  
18 acres and he's commercial spread across 10,000  
19 acres.

20 Whereas in the west, historic pecan  
21 men may have 40 or more trees on an acre. And in  
22 the east generally about an acre of pecans for

1 the most part is considered to be an acre of land  
2 and wider spaces.

3 But there are exceptions. As for  
4 example you may have a pecan orchard that has a  
5 small pond in the middle of it. There may be 24  
6 acres of land and a two acre pond. So there's  
7 only 22 acres of actual orchard.

8 So you know pecan acres is kind of a  
9 relative measure. But farm services sorts that  
10 out in regards to how that would be determined.

11 MS. SCHMAEDICK: Thank you. And again  
12 based on your previous testimony, is the term  
13 pecan acre as defined by the farm services agency  
14 relevant in analyzing the native pecan  
15 production?

16 DR. HUDSON: Yes.

17 MS. SCHMAEDICK: Or native pecan  
18 orchards?

19 DR. HUDSON: Yes.

20 MS. SCHMAEDICK: How is that?

21 DR. HUDSON: Well, there is no other  
22 way for the determination to occur than for



1 someone like farm services to do that. Yes.

2 MS. SCHMAEDICK: Is that because  
3 native production is not immediately divided into  
4 rows on acres?

5 (Off record discussion)

6 DR. HUDSON: Yes, by sheer nature,  
7 it's very widespread. In these cases,  
8 particularly for the southern areas along river  
9 bottoms. And so an acre of pecans may not  
10 necessarily be an acre of land.

11 MS. SCHMAEDICK: So in terms of fair  
12 when you're trying to capture both native and  
13 improved pecans and looking at acreage and acres  
14 of production, for example, is it important to  
15 have a farm service agency's definition of pecan  
16 acre?

17 DR. HUDSON: Yes, it's extremely  
18 important.

19 MS. SCHMAEDICK: Thank you. No  
20 further questions.

21 REDIRECT EXAMINATION (Cont'd)

22 MR. QUIROS: Dr. Hudson, your opinion

1 is still that the definition of farm service  
2 agency is the appropriate definition. Is that  
3 correct?

4 DR. HUDSON: Yes, it is.

5 MR. QUIROS: And we'll have a further  
6 discussion of FSA pecan acres in Section 986.16,  
7 will we not?

8 DR. HUDSON: Yes, we will.

9 MR. QUIROS: Thank you. I'd like to  
10 go onto the definition of fiscal year, Section  
11 986.14. Is this term used in the industry?

12 DR. HUDSON: Yes.

13 MR. QUIROS: Is this definition  
14 consistent with industry usage in your  
15 experience?

16 DR. HUDSON: Yes, it is. There are  
17 those that might use calendar year, but most use  
18 fiscal year which is also compatible with us  
19 growing pecans or in our circumstance. So yes.

20 MR. QUIROS: How does this relate to  
21 the planning and harvesting of pecans?

22 DR. HUDSON: Well, it fits very well

1 into the cycle. The pecans are generally  
2 harvested at the beginning of October. By late  
3 winter, early spring the pecans are fully  
4 harvested, either sold or in storage. And so in  
5 regards to quantifying production, it fits very  
6 well and assessing production, it fits very well  
7 into that cycle.

8 MR. QUIROS: Does the Proponent group  
9 ever anticipate that they need to change the  
10 definition of the fiscal year?

11 DR. HUDSON: In my opinion, no.

12 MR. QUIROS: And was there any  
13 discussion of controversy with regard to this  
14 issue?

15 DR. HUDSON: No, there was not.

16 MR. QUIROS: Will the councils have  
17 any flexibility if they want to change that in  
18 the future?

19 DR. HUDSON: Yes.

20 MR. QUIROS: Thank you. No further  
21 questions of this definition at this time.

22 JUDGE GUTHRIDGE: The USDA, any

1 questions?

2 CROSS EXAMINATION (Cont'd)

3 MS. SCHMAEDICK: Melissa Schmaedick,  
4 USDA. Dr. Hudson, we've received testimony from  
5 growers in the western region who have indicated  
6 that their harvest starts much later than  
7 October. But you must mentioned that harvest  
8 starts in October.

9 DR. HUDSON: Right.

10 MS. SCHMAEDICK: Where does harvest  
11 start in October?

12 DR. HUDSON: The harvest in the east  
13 and some of the southern regions will begin pre-  
14 checking in early October. And then as time goes  
15 on, it progresses across the production belt.  
16 Most production in the fall begins in early  
17 November and is usually completed by mid to late  
18 December provided that there's pretty good  
19 weather.

20 In the east because of rains we have  
21 on occasions started harvesting October and not  
22 completed the harvest until really early spring

1 into March if we have adverse harvest conditions.  
2 So there is a variation across the pecan belt of  
3 when harvest begins in the industry.

4 MS. SCHMAEDICK: Thank you. In your  
5 work with the American Pecan Board, did you  
6 select the dates October 1st and September 31st  
7 so that those dates would be workable in all  
8 regions?

9 JUDGE GUTHRIDGE: September 30th.

10 DR. HUDSON: Yes.

11 MS. SCHMAEDICK: I'm sorry. September  
12 30th.

13 DR. HUDSON: Yes, it was.

14 MS. SCHMAEDICK: So that decision was  
15 an all-inclusive decision.

16 DR. HUDSON: Yes, it was. It was a  
17 unanimous vote by the board.

18 MS. SCHMAEDICK: Thank you. No  
19 further questions.

20 MS. VARELA: I'm sorry. I have one  
21 more question.

22 JUDGE GUTHRIDGE: Sorry.

1 CROSS EXAMINATION (Cont'd)

2 MS. VARELA: Jennie Varela, USDA. Dr.  
3 Hudson, I want to ask you a couple of questions  
4 about using fiscal year as defined. In your  
5 discussions of determining what the start dates  
6 were, did the board take into account the  
7 administration of the council and what dates  
8 might work well in terms of setting a budget for  
9 each year?

10 DR. HUDSON: Yes, we did. And in  
11 doing so by setting those dates to start creating  
12 that budget which would begin late spring/early  
13 summer, then we would have a fair handle on how  
14 much money you could be dealing with. Most of  
15 the production would be at least in some level in  
16 the process. We would have a better  
17 understanding of where it might be as compared to  
18 moving it up to January 1. We would still be in  
19 harvest and would not have a good handle on it.

20 MS. VARELA: And just to follow along  
21 that line, if you were trying to start in a  
22 different part of the year it might make it more

1 difficult to have the same accurate idea of how  
2 much income you would have.

3 DR. HUDSON: Right.

4 MS. VARELA: And earlier we heard  
5 testimony about the August 31st rule.

6 DR. HUDSON: Yes.

7 MS. VARELA: Can you link together  
8 because I do believe that's connected to your --

9 DR. HUDSON: Right.

10 MS. VARELA: Can you please relate  
11 what some of the discussions were in terms of how  
12 those dates work together?

13 DR. HUDSON: Yes. The first rule  
14 simply allows us to get a handle on the amount of  
15 inventory that might still be held in the Rule  
16 11. So we would have an accounting of that.  
17 Those inventories are on the farm would be  
18 counted. And then that would give us a handle as  
19 to what that production would be that had not  
20 going into the chain of commerce.

21 MS. VARELA: That's very helpful.

22 Thank you. I just have one other more general

1 question regarding these dates. As an industry,  
2 do you generally refer to your crop from a  
3 specific year?

4 DR. HUDSON: Pardon?

5 MS. VARELA: As an industry, do you  
6 typically refer to your crop year 2013, '13-'14?  
7 Is there an industry standard for defining a  
8 certain year's crop? Or does that not --

9 DR. HUDSON: I don't think there's a  
10 general standard because it's referred to both  
11 ways. We start harvesting in '14 and finish up  
12 in '15 and we say it some days as '14-'15 and  
13 then some years it will just say '15 data,  
14 although some of the harvest actually occurred  
15 over into '16.

16 MS. VARELA: All right. Thank you  
17 very much.

18 JUDGE GUTHRIDGE: Anything else from  
19 Agriculture?

20 CROSS EXAMINATION (Cont'd)

21 MS. SCHMAEDICK: Melissa Schmaedick,  
22 USDA. To clarify if you have a reporting date on



1 August 31st and your fiscal year ends September  
2 30th, does that not give you a whole month to  
3 analyze that data prior to the next fiscal year  
4 starting and budget sessions starting?

5 DR. HUDSON: Yes, it is. In fact,  
6 that was the purpose of that meeting.

7 MS. SCHMAEDICK: Thank you. No  
8 further questions.

9 JUDGE GUTHRIDGE: Anything else?

10 (No verbal response)

11 DIRECT EXAMINATION (Cont'd)

12 MR. QUIROS: Thank you, Dr. Hudson.  
13 If you'd now turn your attention to Section  
14 986.15, grade and size. Prior to the proposed  
15 federal marketing order for pecans, are there  
16 uniformly established grade and sizes for pecans  
17 that are used in the industry?

18 DR. HUDSON: Yes, they are. There are  
19 current USDA standards. But quite frankly these  
20 standards are antiquated and a regular source of  
21 some confusion. We felt that the industry will  
22 need the ability to redefine size and grade

1 standards in the future.

2 Of course, this will require full  
3 industry input through the council so the  
4 definitions are more precise and are used  
5 uniformly. The council with input from the  
6 industry will recommend to the Secretary what  
7 should be done here as outlined in Section  
8 896.69, paragraphs (1) and (2).

9 MR. QUIROS: Is there any controversy  
10 about whether uniform grades and sizes should be  
11 established?

12 DR. HUDSON: Sure there is. But I  
13 would not think that there will be -- This can be  
14 resolved. And I do not think there will be very  
15 much if growers and shellers have a chance to sit  
16 down around the table and decide together what  
17 these standards should look like.

18 There certainly will be discussion  
19 about what they should be and we're going to make  
20 sure everyone has an opportunity to have input  
21 into this process.

22 MR. QUIROS: The Judge has some

1 questions.

2 JUDGE GUTHRIDGE: Yeah, when you say  
3 there's controversy, is there controversy on  
4 whether or not they have standards or controversy  
5 as to what those standards should be.

6 DR. HUDSON: Well, quite frankly, it's  
7 in all of them. There is no mandated standards  
8 that are currently used in the industry.  
9 Currently, USDA has standards for size. They  
10 have standards in regards to grade or percent of  
11 meat per unit. And then they have color  
12 standards.

13 In fact, there's not even a standard  
14 that is required as far as moisture. So there  
15 needs to be some unified standards throughout,  
16 some new standards, and then there needs to be  
17 some teeth put into the fact.

18 We need standards. My goodness, how  
19 do you run a business without standards. I hope  
20 that answers your question.

21 JUDGE GUTHRIDGE: I'm not sure that it  
22 did. I'm still not sure whether there are some

1       pecan growers and/or shellers who think there  
2       should be no standards.

3               DR. HUDSON: I would say this. The  
4       pecan growers or shellers who think that there  
5       should be no standards should not be a pecan  
6       grower or sheller. We need standards. And we  
7       need enforcement of those standards. And I think  
8       the general consensus of the industry would buy  
9       that.

10               CROSS EXAMINATION (Cont'd)

11               MS. SCHMAEDICK: Melissa Schmaedick,  
12       USDA. Dr. Hudson, at the bottom of that  
13       definition, at the bottom of 986.15, grade and  
14       size, the language states "...or other variations  
15       in the grade and size based thereon recommended  
16       by the council and approved by the Secretary."

17               Based on your knowledge and the  
18       discussions of the proposed draft, are there  
19       certain requirements that need to be met in terms  
20       of the council making that recommendation? For  
21       example, is a super majority required in that  
22       recommendation?

1 DR. HUDSON: Yes, in the adoption of  
2 something as important as standards if a standard  
3 required a super majority vote we need both  
4 growers and shellers to approve this before we  
5 would recommend it.

6 MS. SCHMAEDICK: And could it be  
7 possible to develop different levels and grades  
8 and standards for example for native versus  
9 improved varieties? Could there be two different  
10 variety size for example? Could you have a  
11 different size scale for native versus improved?

12 DR. HUDSON: Yes. I really believe  
13 that there would be an opportunity here to  
14 develop a standard or standards that would more  
15 properly reflect the diversity of the nuts and  
16 the size and the quality in our industry. And  
17 certainly it would need to be a standard for  
18 seedlings and natives.

19 MS. SCHMAEDICK: Thank you. And to  
20 your knowledge the current United States  
21 standards for in shell and shelled pecans, are  
22 they met on a voluntary basis currently? Or are

1 they mandated?

2 DR. HUDSON: They're not mandated. In  
3 fact, a very small percentage of the in shell we  
4 market requires that there be examination and  
5 determination in regards to the quality of a  
6 standard pecan. So there's a some confusion  
7 about the terminology, grade, use, channels, in  
8 commercial marketing of pecans.

9 MS. SCHMAEDICK: In previous  
10 testimony, we've had some witnesses refer to or  
11 speak to U.S. standards and characterize them as  
12 being outdated. Do you share that opinion?

13 DR. HUDSON: Yes, I do.

14 MS. SCHMAEDICK: So the inclusion of  
15 this particular term as well as the inclusion of  
16 the proposed authority for the council to make  
17 recommendations, would that provide the  
18 opportunity to create updated grades that are  
19 better?

20 DR. HUDSON: Yes, it will. My  
21 understanding is that the last provisions to  
22 standards occurred in 1986 and before that it was

1 in 1969. So there needs to be a renewing of  
2 these standards.

3 MS. SCHMAEDICK: Tying back to your  
4 comment on the super majority requirement for  
5 making recommendation, does that indicate that  
6 any formulation of a proposed grades and  
7 standards would involve a discussion vetting with  
8 the industry to ensure that they are appropriate?  
9 What do you think of that?

10 DR. HUDSON: Yes, it would. And I can  
11 tell you that in discussions we've had with the  
12 processing industry it is just essential as the  
13 rules are in this process.

14 MS. SCHMAEDICK: Thank you. I have no  
15 other questions.

16 CROSS EXAMINATION (Cont'd)

17 MS. CHILUKURI: Dr. Hudson, with the  
18 voluntary standards that are in place, do you  
19 know how much of the industry is following the  
20 standards?

21 DR. HUDSON: No, I do not. I can tell  
22 you that particularly on the in shell side, the

1 marketing of the in shell side, the large  
2 containers domestically are not asked to get a  
3 USDA assignment or termination made. It's  
4 generally January-ish.

5 MS. CHILUKURI: Okay. Thank you.

6 JUDGE GUTHRIDGE: Anything else?

7 MS. CHILUKURI: No more questions.

8 JUDGE GUTHRIDGE: Back to you.

9 DIRECT EXAMINATION (Cont'd)

10 MR. QUIROS: Thank you, Dr. Hudson.

11 Now I'd ask you to turn your attention to Section  
12 986.16, grower. Take a moment to please read  
13 that definition again. And then we're going to  
14 break it down.

15 DR. HUDSON: Okay.

16 MR. QUIROS: Dr. Hudson, first in the  
17 industry, is a grower generally considered the  
18 same as a producer?

19 DR. HUDSON: Yes, he is.

20 MR. QUIROS: Why the discussion of  
21 owning and leasing?

22 DR. HUDSON: Here again reflects the



1 industry practices. Both arrangements are  
2 common. And the phrase for proprietary capacity  
3 as used in the Act to signify ownership and  
4 control of the product is defined in the  
5 marketing order in Section 986.31.

6 MR. QUIROS: How do owners and lessees  
7 fit into the concept of proprietary capacity?

8 DR. HUDSON: Well, here again, it goes  
9 back to who in fact owns the nuts. It is a very  
10 common relationship where an owner will lease his  
11 orchard to a producer for a price or crop. But  
12 he loses the proprietary ownership of that crop.  
13 So he is owner, but he is not the grower.

14 MR. QUIROS: Thank you. And how  
15 prevalent is the lessee scenario in the industry  
16 across all areas?

17 DR. HUDSON: It is fairly prevalent.

18 MR. QUIROS: Thank you. I'd like to  
19 ask you to turn your attention about halfway down  
20 the definition on the provision after the word  
21 provided. Why did the board select these  
22 cutoffs?

1 DR. HUDSON: Well, the board selected  
2 this because in the smaller are really not  
3 commercial. And for the amount of investments  
4 and expense that it takes anything below this  
5 level would be considered to be an noncommercial  
6 grower. A considerable amount of equipment that  
7 it would take to harvest and grow the crop and  
8 then looking at the level of profitability, it  
9 was not considered to be commercial.

10 Our intent was to include all truly  
11 commercial growers, but exclude those that might  
12 be called yard owners or hobby farmers. The  
13 proposed market order quite honestly in our  
14 opinion was meant for truly commercial pecan  
15 growers who have their lives and livelihood at  
16 risk.

17 MR. QUIROS: Thank you. And Ms.  
18 Schmaedick asked you a little bit about the FSA  
19 and a pecan acre. What is a pecan acre? Do you  
20 understand anything more about that, but do you  
21 think it was fully covered?

22 DR. HUDSON: I honestly think we

1       adequately covered that. But here again it is  
2       another one of these nebulous terms which would  
3       have different meanings in different areas of the  
4       pecan industry.

5               MR. QUIROS: And so the FSA is used to  
6       help sort that out amongst the regions and  
7       amongst the states.

8               DR. HUDSON: Yes, the farm service  
9       agency handles that.

10              MR. QUIROS: Thank you. Why did you  
11       use both an acreage and a poundage threshold in  
12       that sentence?

13              DR. HUDSON: We wanted to make sure  
14       that particularly those new growers that were  
15       coming into the industry would be able to have  
16       input and so that a grower who may be a new  
17       grower who has planted 30 acres or more would be  
18       considered in the market order.

19              MR. QUIROS: How about in the west  
20       region where they may have more poundage?

21              DR. HUDSON: Well, in the west region,  
22       if they indicate that their average yields are

1 higher, then it's possible that at the 50,000  
2 pound level might be obtained or could be  
3 expected to be obtained on average in less than  
4 30 acres. So that is why we use the 30 acres or  
5 50,000 pound rule.

6 MR. QUIROS: Dr. Hudson, did you hear  
7 the testimony of David Salopek this morning?

8 DR. HUDSON: Yes, I did.

9 MR. QUIROS: Did you hear him testify  
10 that he thought that the average in shell pounds  
11 per acre in the west was approximately 2,000  
12 pound per acre?

13 DR. HUDSON: Yes, I did. And that  
14 would be consistent with the --

15 MR. QUIROS: So 50,000 pounds divided  
16 by --

17 DR. HUDSON: Two thousand would be 25  
18 acres.

19 MR. QUIROS: Exactly. So in the west  
20 that would be inclusive of a smaller acreage  
21 farmer that had larger yields per pound. Is that  
22 correct?

1 DR. HUDSON: Yes, it would.

2 MR. QUIROS: But in the east where  
3 they have a smaller poundage the 30 acres would  
4 be a fairer approximation to central and the east  
5 regions. Is that right?

6 DR. HUDSON: Yes, it would. Both in  
7 the east and in the central in regards to current  
8 commodity programs, Georgia has a Georgia  
9 Commodity Commission. Ours is based on acreage  
10 as well as the Texas Pecan Board. Their  
11 assessments is based on acreage.

12 MR. QUIROS: And what's their minimum  
13 size of acreage in the Georgia and Texas?

14 DR. HUDSON: Thirty acres is a  
15 consistent number.

16 MR. QUIROS: Thank you. Did you  
17 consider any other standards besides the one that  
18 you included here?

19 DR. HUDSON: Yes, we did. In fact,  
20 there was a considerable amount of discussion in  
21 regards to where the standard might be that we  
22 opted for, what we thought would be fair across

1 the industry.

2 MR. QUIROS: Do you want to discuss  
3 any higher or lower thresholds if you remember  
4 that were talked about?

5 DR. HUDSON: Well, you know yes I can.  
6 Quite frankly, we had growers in Georgia who  
7 wanted the pecan tree to be allowed. But if  
8 you've driven through Georgia beginning about  
9 Macon, Georgia and all the way to the far land,  
10 there are pecan trees in just about every yard  
11 and the probability of determine that universe.

12 And then there were others quite  
13 extreme that felt like the numbers should be  
14 higher. But based on data that was collected and  
15 will be presented by Dr. Wells in Georgia and Dr.  
16 Palma, we felt like that the numbers for acres  
17 would be used or would be the fairness investment  
18 of termination for what would constitute and  
19 identify a grower.

20 MR. QUIROS: Dr. Hudson, this is  
21 America. And I know that you've addressed it and  
22 just touched on it. But I'd like to hear more

1 about that. Why not let anybody who grows pecans  
2 vote?

3 DR. HUDSON: Well, quite frankly,  
4 that's an improbably possibility. We could never  
5 have of course a real true record of everyone  
6 that should vote. But the purpose of the market  
7 order is to support, to help, those people, those  
8 individuals, whose livelihood depends on pecans.  
9 So the numbers that we used throughout have been  
10 based on what we considered to be a commercial  
11 level industry.

12 MR. QUIROS: And have you heard  
13 testimony from other growers in the last two days  
14 as to whether or not that was fair?

15 DR. HUDSON: Yes, I have.

16 MR. QUIROS: Have you heard anyone  
17 disagree with that as a fair standard?

18 DR. HUDSON: No, I have not.

19 MR. QUIROS: Thank you. Did you  
20 attend the meetings with growers where this  
21 standard was discussed?

22 DR. HUDSON: Yes, I did.

1 MR. QUIROS: And any controversy  
2 there?

3 DR. HUDSON: None.

4 MR. QUIROS: Thank you. No further  
5 questions on this definition at this time.

6 CROSS EXAMINATION (Cont'd)

7 MS. SCHMAEDICK: Melissa Schmaedick,  
8 USDA. Dr. Hudson, at the end of 986.16, grower,  
9 there's a sentence that reads "The council may  
10 recommend changes to this definition subject to  
11 the approval of the Secretary." Can you comment  
12 on what might cause the council to want to change  
13 this definition and how would it change?

14 DR. HUDSON: Do I have to?

15 MS. SCHMAEDICK: Well, let me ask you  
16 a question.

17 DR. HUDSON: No, I will answer the  
18 question.

19 MR. QUIROS: Break, Your Honor. I  
20 need a break.

21 (Laughter)

22 DR. HUDSON: Yes.



1 MS. SCHMAEDICK: Okay. Let me ask  
2 another question. So if we pretend for a moment  
3 and project ourselves 50 years into the future,  
4 do you think that definition of 30 acres and  
5 50,000 pounds still be the appropriate threshold  
6 to define grower? Or could it possibly change?

7 DR. HUDSON: Thank you for answering  
8 that question. And certainly it will and I think  
9 dynamically the industry's dynamics are going to  
10 change with what's happening in the marketing  
11 orders. And if it's successful which we all hope  
12 it will be, then I think what we want to see is  
13 this industry grow quite significantly.

14 Certainly, as it grows and as our  
15 children take over our enterprises, that there  
16 may be flexibility to redefine that. So that is  
17 the reason why we wanted to make sure that the  
18 council had that opportunity and that it was  
19 subject to approval by the Secretary.

20 MS. SCHMAEDICK: Thank you. In your  
21 opinion, is that an issue that would require  
22 extensive discussion and deliberation prior to

1 getting a recommendation?

2 DR. HUDSON: Oh yeah. That's one of  
3 those that we would all discuss. Yes.

4 MS. SCHMAEDICK: Just to clarify that,  
5 in your opinion it would require a super majority  
6 vote?

7 DR. HUDSON: Yes, it would.

8 MS. SCHMAEDICK: Thank you. No  
9 further questions.

10 CROSS EXAMINATION (Cont'd)

11 MS. VARELA: Jennie Varela, USDA. At  
12 this time I'd think to think backwards a little.  
13 Melissa likes to go in the future. I'm trying to  
14 go backwards. When you all were developing this  
15 definition was there any discussion that had to  
16 do with professional management? Because earlier  
17 we had some testimony about different custom and  
18 procedures. But was there any consideration of  
19 whether we wanted to exclude anybody in  
20 particular because it didn't have a proprietary  
21 interest?

22 DR. HUDSON: No. There never was any

1 discussion of excluding anyone.

2 MS. VARELA: Maybe exclude was the  
3 wrong term. You were all aware that there are  
4 professional managers in the industry, correct?

5 DR. HUDSON: Yes.

6 MS. VARELA: But they're not  
7 considered growers, correct?

8 DR. HUDSON: They are growers if they  
9 meet the definition of grower.

10 MS. VARELA: Right. Your intent was  
11 to make sure that you were capturing proprietary  
12 interest.

13 DR. HUDSON: Yes.

14 JUDGE GUTHRIDGE: Anything else?

15 MR. QUIROS: Yes.

16 REDIRECT EXAMINATION (Cont'd)

17 MR. QUIROS: Dr. Hudson, if I could  
18 ask you to turn your attention to Section  
19 986.55(c)(1)(vii). I've got it up there. This  
20 is part of the super majority procedures that are  
21 required of the council members.

22 So when you were referring to that

1 super majority you were referring to modifying  
2 the definition of growers and shellers. Is that  
3 correct?

4 DR. HUDSON: Yes.

5 MR. QUIROS: Thank you. No further  
6 questions from this definition.

7 JUDGE GUTHRIDGE: Nothing else?

8 (No verbal response)

9 MR. QUIROS: Thank you.

10 DIRECT EXAMINATION (Cont'd)

11 MR. QUIROS: Dr. Hudson, please turn  
12 now to Section 986.17, grower clean production.  
13 Is this term used in the industry?

14 DR. HUDSON: Yes, it is.

15 MR. QUIROS: Is this definition  
16 consistent with the usage in the industry in your  
17 experience?

18 DR. HUDSON: Yes, it is.

19 MR. QUIROS: Why define?

20 DR. HUDSON: It is defined because the  
21 council will collect data on the amount of clean  
22 production and distribute that collected data as

1 identified in Section 986.61(5).

2 MR. QUIROS: Thank you. No further  
3 questions at this time of this definition.

4 MS. SCHMAEDICK: No questions.

5 MR. QUIROS: Dr. Hudson, I'd not like  
6 to turn your attention to actually two  
7 definitions at the same time which is Section  
8 986.18 and Section 986.19, handler and to handle.  
9 Would you take a moment to refresh your memory  
10 with regard to those two definitions? This is  
11 very weighty and important and packed. So let's  
12 take a some time to review that and then we'll  
13 get into questions.

14 DR. HUDSON: Okay.

15 MR. QUIROS: Let's address the easy  
16 thing first. Section 986.18, handler, just means  
17 one that handles pecans as defined in Section  
18 986.19. Is that correct?

19 DR. HUDSON: Yes, it is.

20 MR. QUIROS: Before we get into this  
21 definition, I think it might help and we haven't  
22 had testimony yet on this if you could describe

1 for us, Dr. Hudson, what happens when a nut is  
2 harvested. Take us from the harvesting through  
3 the transfer of that nut and give us some idea of  
4 how the industry handles its product. And then  
5 we'll go back and take a look at these  
6 definitions and see if they make sense.

7 DR. HUDSON: Understanding that  
8 there's exceptions to this that the pecans are in  
9 early fall wherever that might be across the  
10 belt. We'll shake the pecans off the trees with  
11 a mechanical shaker. These pecans will then be  
12 swept into windrunners by a specialized sweeper.  
13 Then a harvester, a mechanical harvester will  
14 come back and literally pick up these pecans and  
15 do a very superficial cleaning at that time.

16 These pecans then go onto a wagon and  
17 then these wagons are dumped into trucks and  
18 taken to the cleaning vats where they're cleaned.  
19 And this just involves dumping the pecans into a  
20 large vat. They're elevated through multiple  
21 sections of cleaning and taking out limbs,  
22 leaves, rocks, farm material, cracks, blowouts.

1 Then sorted and bagged and then graded and  
2 stored.

3 MR. QUIROS: Let me interrupt you just  
4 a second. At that time in a normal situation,  
5 this nuts are still owned by the lessee or the  
6 grower. Is that correct?

7 DR. HUDSON: That is correct.

8 MR. QUIROS: Okay. Then what happens  
9 next?

10 DR. HUDSON: Then the pecans are sold  
11 or they are cracked or they are put into  
12 warehouses for storage. But more times than not,  
13 they're sold at that time.

14 MR. QUIROS: And who are they sold to,  
15 Dr. Hudson?

16 DR. HUDSON: They can be sold to  
17 numerous groups. They can be sold to the  
18 accumulators. Most often, they're sold to  
19 shellers. Or in some cases like ours, they're  
20 exported. So there are opportunities that are  
21 involved with this.

22 MR. QUIROS: And you're familiar with

1 the concept that growers do not pay assessment,  
2 but only handlers. Is that correct?

3 DR. HUDSON: That is absolutely true,  
4 yes.

5 MR. QUIROS: So when you were  
6 discussing this definition were you conscious of  
7 that issue and the way the Act is formulated in  
8 that regard?

9 DR. HUDSON: Yes, I am.

10 MR. QUIROS: And is there an overall  
11 concept with regard to this handling definition  
12 with regard to the transfer of these nuts or sale  
13 and money? What's that concept?

14 DR. HUDSON: That overall concept is  
15 that as long as the grower owns or maintains  
16 proprietary rights to those nuts than they have  
17 not commit the level of being passed to a  
18 handler. Once the nuts are entered into the  
19 chain of commerce, then they at that level cross  
20 that boundary from being a commodity to being a  
21 product that is susceptible to an assessment.

22 MR. QUIROS:



1                   JUDGE GUTHRIDGE: May I clarify  
2 something in my own mind here? I think one of  
3 the people who testified yesterday talked about -  
4 - I thought he mentioned that he sold his crop on  
5 occasion while it's still on the tree. Do I  
6 remember that correctly?

7                   MR. QUIROS: That's a good question,  
8 Your Honor. I've heard that term before. It's  
9 sort of a forward purchasing term. The buyer  
10 obviously in most situations can't take control  
11 of that until it's harvested. But I'll let Dr.  
12 Hudson -- Have you ever heard that term before,  
13 Dr. Hudson?

14                  DR. HUDSON: Yes, I have. This does  
15 occur.

16                  MR. QUIROS: In that situation, when  
17 does the handler take control of the crop?

18                  DR. HUDSON: Here again, it goes back  
19 to who owns the nuts. In other words, at what  
20 point do the nuts go where they're going?

21                  My understanding is some of this gets  
22 kind of blurry. I would say this is a blurry

1 position.

2 MR. QUIROS: And is that term often  
3 times used as part of a forward contract term?

4 DR. HUDSON: Right. Very well could  
5 be.

6 MR. QUIROS: And so often in that  
7 situation you would be required as a grower to  
8 deliver those nuts to the handler that had bought  
9 the crop on the trees. Is that correct?

10 DR. HUDSON: Yes. That is, in some  
11 cases.

12 MR. QUIROS: Let's go back to talking  
13 simply about a handler. Describe the different  
14 types of handlers that exist in the industry.

15 DR. HUDSON: Well, here again, there  
16 are accumulators which are very common who  
17 compile large pecans from the growers and they  
18 put lots together. Those are accumulators.

19 The most obvious are shellers where  
20 growers will get their pecans cleaned and the  
21 shellers return them to the warehouses. They  
22 were sample nuts. And then they buy them. And

1 then the sheller gets them to the handler.

2 And then there are situations where  
3 the growers themselves would be identified as  
4 handlers if they sold pecans directly outside of  
5 their area. So both the growers in this case  
6 become handlers and typically with accumulators  
7 and shellers.

8 MR. QUIROS: Dr. Hudson, if you were  
9 thinking about all of those groups that are  
10 handlers and again thinking big concept here,  
11 where does actually handling begin?

12 DR. HUDSON: Handling begins at that  
13 point that the pecans no longer are a commodity  
14 but rather a product at that point of monetary  
15 exchange.

16 MR. QUIROS: So when money changes  
17 hands.

18 DR. HUDSON: When money changes hands  
19 and a value is put on that load, hands are shook,  
20 the trade is made.

21 MR. QUIROS: How about when a growers  
22 loses control?

1 DR. HUDSON: It's at that point where  
2 a grower loses control.

3 MR. QUIROS: Okay. Thank you. Is the  
4 selling function of handling because the pecans  
5 are placed in the stream of commerce?

6 DR. HUDSON: I'm sorry.

7 MR. QUIROS: Is selling a function of  
8 handling because the pecans are placed in the  
9 stream of commerce in the case of a grower?

10 DR. HUDSON: Yes.

11 MR. QUIROS: Does selling apply to a  
12 sale by grower to a person with handling  
13 facilities in the proposed production area?

14 DR. HUDSON: Yes.

15 MR. QUIROS: To be clear, do the  
16 activities of shelling, cracking, roasting,  
17 packing pecans constitute handling?

18 DR. HUDSON: Yes.

19 MR. QUIROS: If yes, is this because  
20 these activities involve the future preparation  
21 of pecans for the market?

22 DR. HUDSON: Yes, it does.

1 MR. QUIROS: And as a grower would you  
2 ever let a person do that to yours if they hadn't  
3 given you money?

4 DR. HUDSON: Only in a custom shelling  
5 relationship where I retained the ownership of  
6 the pecans.

7 MR. QUIROS: Where you retained the  
8 title of. Why is cleaning not considered a  
9 handling function?

10 DR. HUDSON: It is not considered a  
11 handing function because here again it is a  
12 process of simply getting the pecans prepared for  
13 the market. And so here again it is a service and  
14 the grower still maintains proprietary ownership  
15 of those nuts.

16 MR. QUIROS: Okay. I'm going to give  
17 you an allied concept now, but I think it's  
18 important.

19 DR. HUDSON: Okay.

20 MR. QUIROS: And I know we'll get to  
21 the definition later of inner handler transfers.  
22 But do inner transfer transfers occur in the

1 pecan industry?

2 DR. HUDSON: Yes, they do.

3 MR. QUIROS: If so, how will these be  
4 handled under the marketing order?

5 DR. HUDSON: Well, I would simply  
6 refer to Section 986.62 in that regards. Which  
7 handler will be required to meet these  
8 requirements in Section 986.62?

9 DR. HUDSON: The receiving handler  
10 where here again the nut goes from the commodity  
11 to being a crop.

12 MR. QUIROS: And won't both handlers  
13 in that situation be required to comply?

14 DR. HUDSON: Be responsible for them.

15 MR. QUIROS: All right.

16 DR. HUDSON: And they certainly will  
17 be responsible for many records.

18 MR. QUIROS: Let me focus your  
19 interest real briefly on that last phrase where  
20 we say "or transfers between handlers" in that  
21 definition.

22 DR. HUDSON: Right.

1           MR. QUIROS: Focus on it. Tell us why  
2 you put that in there.

3           DR. HUDSON: Because it is a situation  
4 that does occur where you have companies in some  
5 cases that serve as a means of putting loads  
6 together where they might go to a grower, work  
7 for a company compiling pecans.

8           I'll give you another good example of  
9 this out of my own personal business. In  
10 Georgia, there are literally hundreds of small  
11 buying groups. They buy pecans from growers.  
12 But in many cases, these buying groups are  
13 affiliated with larger accumulators like myself  
14 who in turn take this small amount of product,  
15 bring it in, compile it, clean it up, put it with  
16 larger lots and then market.

17           In that case, it would be extremely  
18 difficult to get and burdensome. Pretty small  
19 buying points to be able to maintain all of the  
20 necessary documentation that it might require to  
21 be able to handle those nuts.

22           MR. QUIROS: Thank you, Dr. Hudson.

1 I think I may have led you a bit astray.

2 DR. HUDSON: Right.

3 MR. QUIROS: And that was helpful and  
4 we will get to it in Section 986.62, but I just  
5 meant in that last phrase. Is this a placeholder  
6 and a reminder that we're going to get in the  
7 inner handler transfer section?

8 DR. HUDSON: Yes. I'm sorry. It is  
9 in fact.

10 MR. QUIROS: Thank you.

11 DR. HUDSON: It is the placeholder.

12 MR. QUIROS: We talked about custom  
13 cleaning. What other types of fee for service  
14 based activities occur in this industry?

15 DR. HUDSON: Custom harvesting,  
16 warehousing, cold storage, transportation. So  
17 particularly for smaller growers who can't afford  
18 the equipment and do not have access to the  
19 equipment, the ability to hire many of their work  
20 responsibilities to the customer they do that.

21 MR. QUIROS: In those situations, does  
22 the grower retain title and control of the



1 product?

2 DR. HUDSON: Yes, in a custom  
3 relationship regardless of where it might be the  
4 grower still retains the ownership.

5 MR. QUIROS: Should the persons  
6 providing these custom services be considered  
7 handlers?

8 DR. HUDSON: No, they should not.

9 MR. QUIROS: So that second sentence  
10 which is the exception there of the terms of "to  
11 handle shall not include" you think that  
12 accurately reflects the industry.

13 DR. HUDSON: Right. It does. They  
14 should not be included as handlers.

15 MR. QUIROS: Okay. And that's because  
16 of what again?

17 DR. HUDSON: Because they do not have  
18 proprietary ownership of the product. They never  
19 take the product and have control of it.

20 MR. QUIROS: Explain the general  
21 intent of the first sentence of the definition to  
22 handle.

1 DR. HUDSON: I mean to handle, we  
2 wanted to cast a wide net so that everyone after  
3 the grower who processes pecans for sale or to  
4 consume is considered handling or handler. But  
5 we also wanted to make it very clear that a  
6 grower or someone who is merely transporting  
7 pecans for a grower or who is performing a  
8 service for a fee for a grower is not a handler.  
9 Only handlers as defined are going to be  
10 assessed. This is a very important point in  
11 regards to assessment.

12 MR. QUIROS: Again, let's explain the  
13 last sentence. What were you trying to get to  
14 here?

15 DR. HUDSON: Well, here again, we just  
16 wanted to make sure that given how broad the  
17 definition is in the first sentence one could  
18 argue that a grower who sends his crop to a  
19 handler is in fact a handler as defined. So the  
20 sole purpose of the last sentence is to ensure  
21 that a grower is not assessed as a handler.

22 MR. QUIROS: Okay. Focus on the term

1 custom handling and tell us a little bit about  
2 that.

3 DR. HUDSON: Okay. Custom handling,  
4 all right, except for selling, consigning or  
5 exporting or similar activities paid for on a fee  
6 for service basis by a grower who retains the  
7 ownership of the pecans.

8 MR. QUIROS: Yes, what is that and why  
9 are you exempting it from the definition of  
10 handler?

11 DR. HUDSON: Well, under very limited  
12 circumstances, where a grower is not selling to a  
13 sheller or handler but is just paying for these  
14 services as mentioned and then in turn getting  
15 his product back. Perhaps they may sell this at  
16 a roadside stand or they may give it away. But  
17 here ultimately the grower is with the nuts.

18 And we do not want a grower assessed  
19 unless they've become a handler. So we made the  
20 limiting exception. This will rarely come up in  
21 the industry as it is structured.

22 MR. QUIROS: Could this exception lead

1 to leakage of assessments?

2 DR. HUDSON: No. In my opinion, this  
3 is why we did not include selling, consigning or  
4 exporting in this exception. This should be very  
5 limited. But certainly here again we can revisit  
6 this. The board can revisit this if there's a  
7 need.

8 MR. QUIROS: Dr. Hudson, overall how  
9 workable do you think this definition is in the  
10 industry as you understand it?

11 DR. HUDSON: I consider it to be  
12 absolutely the best solution for these services.

13 MR. QUIROS: Thank you. No further  
14 questions at this time of this definition.

15 JUDGE GUTHRIDGE: Questions from  
16 Agriculture?

17 CROSS EXAMINATION (Cont'd)

18 MS. SCHMAEDICK: Melissa Schmaedick,  
19 USDA. Thank you, Dr. Hudson. That's quite an  
20 notion there. You just gave some testimony  
21 relating to the exception from the proviso of  
22 exceptions. Let me just clarify that. You gave

1 some testimony about except for custom selling,  
2 consigning and exporting.

3 I'm wondering. Is part of your  
4 consideration in terms of accepting the  
5 activities of custom selling, custom consigning  
6 and custom exporting because even though those  
7 might be custom activities it involves placing  
8 pecans into the stream of commerce?

9 DR. HUDSON: Yes.

10 MS. SCHMAEDICK: Thank you. I have  
11 another question. You made a brief mention to  
12 growers who may use a custom service of some sort  
13 to prepare pecans, for example, to sell at  
14 roadside stands. And you do remember making that  
15 comment.

16 DR. HUDSON: Yes.

17 MS. SCHMAEDICK: So if a grower is  
18 placing product into the stream of commerce  
19 typically does that make them a handler because  
20 they're doing that function? They're selling or  
21 putting it into the stream of commerce?

22 DR. HUDSON: Yes, it does.

1 MS. SCHMAEDICK: Would that be the  
2 same for a grower that decides to export product  
3 outside the production area? Would that grower  
4 become a handler?

5 DR. HUDSON: Yes. And that is  
6 certainly a very much clearer situation.

7 MS. SCHMAEDICK: Thank you. So  
8 keeping this definition in mind and what we just  
9 discussed as far as a grower who becomes a  
10 handler by selling product, I want you to look at  
11 986.86, exceptions.

12 (Off record discussion)

13 DR. HUDSON: Yes.

14 MS. SCHMAEDICK: Do you recall the  
15 American Pecan Board's discussion about these  
16 exceptions?

17 DR. HUDSON: Yes, we did. Or, yes, I  
18 do.

19 MS. SCHMAEDICK: I want to tie this  
20 section to the definition of handle. And I want  
21 to focus on situations where a grower might  
22 become a handler. So the grower is placing

1 product into the stream of commerce. And I want  
2 to focus specifically on your comment about  
3 roadside stands. In your opinion, do roadside  
4 stands describe small grower businesses that are  
5 trying to earn some extra cash?

6 DR. HUDSON: Yes, in most cases, that  
7 is true.

8 MS. SCHMAEDICK: In the context of  
9 this Section 986.86, exceptions, you have a small  
10 grower and he's putting his product in the stream  
11 of commerce. So all of a sudden he becomes a  
12 handler. Is that correct?

13 DR. HUDSON: Possibly yes.

14 MS. SCHMAEDICK: But under this  
15 exemption, would that grower be subject to  
16 regulation or would he be exempted if that grower  
17 is selling let's say 450 pounds of product on the  
18 side of the road?

19 DR. HUDSON: Right. He is exempted.  
20 We have a 1,000 pound exemption level. So he's  
21 exempted up to 1,000 pounds.

22 MS. SCHMAEDICK: And why did the board

1 contemplate this type of exemption? What was the  
2 purpose?

3 DR. HUDSON: Here again, as a grower,  
4 I have given away a lot of nuts. So what it did  
5 was allow for a handler to have at least some  
6 way, a leeway, in regards to those types of  
7 circumstances.

8 MS. SCHMAEDICK: And, in the industry,  
9 are you aware of some grower operations who also  
10 have roadside stands but they sell more than  
11 500,000 pounds?

12 DR. HUDSON: Right. In that case,  
13 they would be a handler and would be expected to  
14 pay the assessment.

15 MS. SCHMAEDICK: And I'm curious. I  
16 want to just carry this one step further. In  
17 paragraph (c) of 986.86 you have mail order  
18 sales. And they're not exempt. Why are mail  
19 order sales not exempt?

20 DR. HUDSON: Here again, that is a  
21 very high end trade and small amounts of pecans  
22 and large amounts of money. And so we felt like



1 that they should not be exempt.

2 MS. SCHMAEDICK: So if you have a  
3 grower that uses a custom harvester and a custom  
4 cleaner and a custom whatever and that product  
5 comes off the trees and get prepared for the  
6 market by a custom service and then that grower  
7 decides to sell all of that product through the  
8 mail, does that grower become a handler?

9 DR. HUDSON: Under that scenario, yes.

10 MS. SCHMAEDICK: Thank you. I believe  
11 that is the extent of my questions regarding  
12 handling and handler. Thank you.

13 JUDGE GUTHRIDGE: Ms. Chilukuri, you  
14 look like a question.

15 MS. CHILUKURI: Yes.

16 CROSS EXAMINATION (Cont'd)

17 MS. CHILUKURI: Dr. Hudson, I just  
18 have a question regarding testimony as it relates  
19 to pecan handling transfers just in terms of when  
20 a transfer takes place what is your understanding  
21 of who will be assessed.

22 DR. HUDSON: The receiver shall be

1 assessed, but both shall be -- There will be  
2 documents tracking these pecans.

3 MS. CHILUKURI: And just to clarify,  
4 you may want to take a look at both 25 and 62.  
5 Is this an absolute in the sense that the  
6 receiving handler must always be assessed or is  
7 this permissive?

8 DR. HUDSON: I would rather take a  
9 field on this one. But here again inner handler  
10 transfer occurs in our system. And we have  
11 facilitated that transfer.

12 I don't think that it will be a  
13 process that will be used extensively. And again  
14 it will require record keeping to track those  
15 pecans as they are accumulating and then transfer  
16 at some point to a handler at a point in time  
17 that the product, I mean, the provided product  
18 and the money is changed from the two parties.

19 Now the entities that are responsible,  
20 the handlers that are involved in inner handler  
21 transfer would require record keeping on the  
22 loads that were in fact handled in that manner.

1 And at a point in time that the load is  
2 delivered, then that person, that sheller or that  
3 handler, would then pay the assessment. That is  
4 my understanding. Now if it's different now, I'm  
5 sure you'll quiz me on it and find out.

6 MS. CHILUKURI: Okay. Thank you.

7 JUDGE GUTHRIDGE: Any more Agriculture  
8 questions?

9 (No verbal response)

10 REDIRECT EXAMINATION (Cont'd)

11 MR. QUIROS: Dr. Hudson, thank you.

12 This is a bit like a jigsaw puzzle and every  
13 piece of the testimony for the next seven days  
14 will all fit together at some point. Then we'll  
15 all have a better understanding. You've done a  
16 great job.

17 I'd like you to turn though to Section  
18 986.62 in response to that question from the  
19 USDA. And I'd like you to take a minute to read  
20 that section and then let's have a quick  
21 clarification. Tell me when you're ready after  
22 you've had a chance to read it.

1 DR. HUDSON: Thank you. Yes.

2 MR. QUIROS: Okay. Dr. Hudson, would  
3 you like to change your answer with regard to the  
4 inner handler transfer with regard to especially  
5 focusing on the intent there and the last  
6 sentence?

7 DR. HUDSON: On the intent, I don't  
8 understand. But the assessment would be assumed  
9 by the receiving handler if that clarifies it.

10 MR. QUIROS: Please read that last  
11 sentence.

12 DR. HUDSON: "The assessor must state  
13 which handler has the assessment  
14 responsibilities."

15 MR. QUIROS: And again I want to ask  
16 you to take a look at that and correct the  
17 answer. Isn't it true that either handler could  
18 agree to pay that assessment. And in some  
19 situations where there is a multiple stream of  
20 handlers, there may be more than just two that  
21 are involved. But there may be multiple  
22 handlers. Is that correct?

1 DR. HUDSON: Yes.

2 MR. QUIROS: So in a situation when  
3 each handlers hands it off to the next handler,  
4 there is a transaction that needs to be  
5 documented according to this section. Isn't that  
6 correct?

7 DR. HUDSON: That is correct.

8 MR. QUIROS: And either of those  
9 handlers can determine who pays if an assessment  
10 has not been yet paid. Isn't that correct?

11 DR. HUDSON: That is correct.

12 MR. QUIROS: Doesn't the last sentence  
13 indicate that either handler may in fact pay the  
14 assessment as long as the forms reflect which  
15 handlers paid that assessment?

16 DR. HUDSON: Yes, it does. Thank you.

17 MR. QUIROS: Thank you. And are you  
18 aware that Mr. Wilson will give testimony on this  
19 section in Tifton, Georgia in approximately a  
20 week?

21 DR. HUDSON: I was not aware of that,  
22 but I assumed that someone more qualified than

1 myself would.

2 MR. QUIROS: Thank you, Dr. Hudson.

3 No more questions on this section.

4 JUDGE GUTHRIDGE: Any follow-up?

5 (No verbal response)

6 Can we go off the record for a minute?

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

9 JUDGE GUTHRIDGE: Back on the record  
10 for a minute. We've been off the record for a  
11 minute and reached a consensus that it's now 6:11  
12 p.m. and we're going to recess until tomorrow  
13 morning at 8:00 a.m. and resume Dr. Hudson's  
14 testimony.

15 MR. QUIROS: Thank you, Your Honor.

16 JUDGE GUTHRIDGE: Off the record.

17 (Whereupon, at 5:36 p.m., the above-  
18 entitled matter went off the record.)

19  
20  
21  
22

<b>A</b>	
<b>\$1</b> 151:13	162:5 166:2 208:9,20
<b>\$1,000</b> 54:21	210:13 211:15 212:12
<b>\$1.00</b> 140:4	215:2 236:15 311:4
<b>\$1.3</b> 242:4	331:12 332:1 340:17
<b>\$1.30</b> 59:3	389:8 393:4 432:3
<b>\$14</b> 151:15	444:12
<b>\$1400</b> 54:17	<b>absorbing</b> 48:5
<b>\$15,000</b> 51:19 53:7	<b>abundance</b> 51:14
<b>\$150</b> 53:22	<b>accept</b> 123:6 328:21
<b>\$1500</b> 54:22	352:17 361:16
<b>\$2.00</b> 243:14	<b>acceptable</b> 315:14
<b>\$2.12</b> 365:9,9	<b>accepted</b> 174:19 237:9
<b>\$2.45</b> 150:18	358:11 385:21
<b>\$20,000</b> 51:19 54:7	<b>accepting</b> 358:15 445:4
<b>\$200</b> 48:19 50:6 53:22	<b>access</b> 50:21 207:3
<b>\$25</b> 49:3 50:10 54:15	210:3 211:16 440:18
<b>\$25,000</b> 53:8	<b>accomplish</b> 345:16
<b>\$293,333.92</b> 364:21	<b>accomplished</b> 283:9
<b>\$3.65</b> 150:20 157:20	358:17
<b>\$350</b> 27:14	<b>account</b> 79:8 406:6
<b>\$4</b> 150:22	<b>accountability</b> 121:4
<b>\$40</b> 49:3	<b>accounting</b> 407:16
<b>\$50,000</b> 289:8	<b>accounts</b> 233:22
<b>\$600,000</b> 54:9	<b>accumulate</b> 154:1
<b>\$621,869.90</b> 365:11	350:1
<b>\$7</b> 300:22	<b>accumulated</b> 338:19
<b>\$750,000</b> 139:9 177:16	375:4 376:7
199:10 250:14 300:14	<b>accumulates</b> 306:19
365:13	<b>accumulating</b> 450:15
<b>\$80</b> 48:13 50:10	<b>accumulator</b> 299:2
<b>\$800</b> 27:14	305:9,22 306:17,18
<b>A-L-B-E-R-T</b> 176:22	307:8 308:2,4 309:17
<b>A&amp;M</b> 80:3	309:22 310:11 349:18
<b>A&amp;P</b> 137:21 138:1,19	349:20 350:5 360:17
139:9 140:20 142:22	<b>accumulators</b> 307:1,13
162:1,2 169:2	307:18,19 308:12,15
<b>a.m</b> 1:12 4:2 135:4,22	309:1,11 431:18
136:1 197:6 454:13	434:16,18 435:6
<b>ability</b> 30:3 57:22 69:18	439:13
153:8 194:16 240:6	<b>accurate</b> 11:12,22
249:21 342:20 409:22	17:12 28:15 35:11
440:19	57:21 73:20 74:4
<b>able</b> 29:18 30:5 97:6	110:13,19 141:14,20
121:9 124:11,15	152:11,14 153:3,8
164:10 173:13 211:12	158:20 195:20 200:21
221:15 249:20 258:19	201:5 215:15,17
274:8 279:14 280:21	220:13 228:20 229:2
292:7 326:17 329:4	239:1 260:11,16
419:15 439:19,21	340:15 398:8 407:1
<b>above-entitled</b> 136:2	<b>accurately</b> 356:17
224:4 296:8 392:11	393:19 441:12
454:7	<b>achieve</b> 179:8 193:2
<b>absence</b> 190:16 397:2	211:12
<b>absolute</b> 41:22 450:5	<b>Acknowledging</b> 262:20
<b>absolutely</b> 19:20 26:7	<b>acquire</b> 126:21
29:15 52:10 98:19	<b>acre</b> 41:16 48:13,19
104:11 160:4 161:4	49:3,5 50:7,9,10
	51:18,19 53:8,22
	54:16,17,21,22 84:17
	91:16 93:18 137:22
	157:4 243:13 354:2
	356:4 357:2 361:10
	364:19 399:9,11,13
	399:21,22 400:1,6,13
	401:9,10,16 418:19
	418:19 420:11,12
	<b>acreage</b> 84:8 85:1
	160:10 215:6 226:8
	226:10 242:16 243:4
	288:16 353:19 356:3
	363:20 401:13 419:11
	420:20 421:9,11,13
	<b>acres</b> 6:21 7:1 12:9
	22:19 53:4 54:5 61:3
	63:1 73:3 74:12 75:7
	84:11,11,13 85:4,4
	87:2 97:12 108:5,6
	111:5 115:3,4,9 139:2
	139:4,5,8 142:7,13,20
	168:4 177:6,10 199:2
	199:5 201:14 205:14
	214:19 215:1 226:3
	226:10 229:11 243:6
	244:8 249:7,8 256:15
	256:17,20,20,21
	263:22 288:16,17
	299:6 353:17,18,20
	354:1,8,10,13 355:7
	355:11,16 356:11,17
	357:4,6,8 361:7,22
	362:16 363:5,10,21
	364:2,3 399:17,18,19
	400:6,7,8 401:4,13
	402:6 419:17 420:4,4
	420:18 421:3,14
	422:16 425:4
	<b>act</b> 4:7 35:11 102:10
	104:11 129:9 306:3
	310:17 330:11 347:5
	417:3 432:7
	<b>action</b> 129:11 158:21
	<b>actions</b> 188:20 189:1
	<b>active</b> 138:3 146:7
	226:13 302:10 360:14
	<b>activities</b> 36:4 66:14
	95:17 120:3 181:9
	182:16 206:22 207:6
	212:11 384:10 436:16
	436:20 440:14 443:5
	445:5,7
	<b>actual</b> 241:10 305:2
	400:7
	<b>Adams</b> 10:11 113:2
	125:12 139:15 233:7
	275:16 345:5 350:8
	<b>add</b> 309:19 337:10
	<b>added</b> 50:12 338:14
	342:8 377:5
	<b>addition</b> 115:6 116:22
	226:9
	<b>additional</b> 57:18 69:6
	90:8 97:12 125:22
	199:4 214:19 215:1
	370:22
	<b>Additionally</b> 200:21
	<b>address</b> 217:5 261:16
	309:15 327:3 429:15
	<b>addressed</b> 125:20
	217:12 222:6 340:2
	367:1 368:20 394:14
	422:21
	<b>addresses</b> 109:19
	340:2
	<b>adequately</b> 188:20
	343:4 419:1
	<b>administer</b> 194:4
	<b>administered</b> 187:8,19
	194:7
	<b>administering</b> 189:9
	194:2
	<b>administration</b> 10:1
	61:5 73:5 108:15
	139:11 177:18 199:12
	227:12 250:15 260:5
	300:12,21 356:13
	365:17 366:1 385:17
	406:7
	<b>administrative</b> 1:14,18
	119:11,17 120:4
	121:9 129:19 140:18
	145:17 147:1 179:2
	185:11 233:15 234:3
	<b>admitted</b> 13:16 65:10
	77:10 114:4 143:20
	180:2 204:21 230:20
	252:6 266:2 319:10
	326:15
	<b>adobe</b> 46:11
	<b>adopting</b> 351:10
	<b>adoption</b> 413:1
	<b>ads</b> 151:22
	<b>advance</b> 145:20 159:8
	<b>advantage</b> 58:14 141:2
	274:14 280:15
	<b>advantages</b> 26:16
	<b>adverb</b> 379:7
	<b>adverse</b> 405:1
	<b>adversity</b> 158:14
	<b>advertise</b> 158:10
	<b>advertising</b> 151:22
	152:1
	<b>advocating</b> 329:1
	<b>affair</b> 7:5
	<b>affect</b> 102:17,19 290:18
	<b>affiliate</b> 255:2
	<b>affiliated</b> 139:6 232:3
	249:8,12 253:5

274:17 312:12 439:13  
**affiliates** 138:1  
**affiliation** 147:10,22  
 253:13 311:12,17  
 312:1  
**afford** 12:22 382:15  
 440:17  
**afraid** 5:2 166:1  
**African** 273:22  
**afternoon** 105:7 214:15  
 224:20 238:21 247:16  
 248:21 252:18 296:19  
**agency** 398:5,7 399:12  
 400:13 402:2 419:9  
**agency's** 401:15  
**ago** 27:4,19 103:3  
 138:19 159:18,21  
 161:16 163:10 221:8  
 225:22 240:4 242:3,3  
 290:6,7 297:22 302:2  
**agree** 28:1 35:22 75:13  
 88:4 98:22 120:17  
 129:22 239:11 317:11  
 322:13 345:12 398:2  
 452:18  
**agreeable** 305:6  
**agreeing** 302:17  
**agreement** 1:5 4:5,7,20  
 331:14  
**agricultural** 4:6 51:2  
 117:2 179:8 260:21  
**agriculture** 1:1 2:2,4,9  
 4:18,21 13:11 14:4  
 27:18 32:10 65:19  
 77:20 79:21 80:1  
 81:14,15,16 95:3  
 104:19 108:1 113:20  
 128:13 132:15 143:14  
 144:8 145:1 157:2  
 175:3 179:19 180:12  
 196:6 202:16 204:12  
 205:9 218:8 222:7  
 223:9 225:19 226:22  
 227:5 230:14 231:7  
 232:13 233:1 234:16  
 246:1 249:3,6,18,19  
 250:3,13 251:22  
 252:15 256:12,18  
 257:4 265:18 266:11  
 287:4 294:17 304:3  
 314:14 340:21 342:2  
 350:15 366:8 367:7  
 389:16 398:19 408:19  
 444:16 451:7  
**AgriLife** 83:7  
**ahead** 6:13 34:17 103:4  
 103:6 146:17 150:2  
 175:21 258:11 294:9  
 294:10 361:11 382:2

391:9  
**air** 373:21  
**akin** 91:3  
**ALABAMA** 1:6  
**Alamo** 177:4,5,15  
**Albert** 3:5,18 175:15  
 176:1,21 179:16  
**alert** 333:6  
**alfalfa** 46:5 52:15  
**all-inclusive** 405:15  
**allied** 437:17  
**allocated** 281:20 349:6  
 349:8 353:17,19  
 357:19,22 363:20  
**allow** 22:2 23:15 24:22  
 212:8 255:19 280:9  
 313:3 352:6 448:5  
**allowed** 12:11 22:21  
 62:10 74:15 111:7  
 142:9 185:19 188:22  
 201:16 229:13 264:2  
 273:11 422:7  
**allowing** 354:9  
**allows** 34:16 187:22  
 407:14  
**alluvial** 46:9 51:9  
**almond** 127:16 138:7  
 150:21 151:21 153:18  
 155:16,21 156:4  
 158:5 162:18 163:2,5  
 165:18 228:12 240:21  
**almond-pistachio**  
 150:17  
**almonds** 85:11 138:2  
 138:14 140:13 141:1  
 145:7,10,14,15 156:7  
 157:15 158:22 159:16  
 163:18 165:13 221:8  
 226:11 231:14,15,17  
 231:18,21 241:14,21  
 242:20 243:12 244:10  
 249:7 256:15,20  
**alright** 105:15 285:6  
**alternate** 189:22 190:7  
 190:8,9,13,19 309:13  
**alternates** 172:4 190:14  
 190:22 193:1 359:7  
**alternatives** 312:7  
 322:21,22 346:11,14  
 346:19 351:15  
**altitude** 86:20  
**amazing** 127:16 157:7  
 157:13  
**amendments** 192:1  
**America** 85:19 97:17  
 215:22 422:21  
**America's** 85:19  
**American** 10:3,10 13:5  
 63:20 64:2,5,8 76:6,8

76:10,13,17,21  
 109:22 110:10 112:21  
 113:6,13 139:16  
 143:9 145:21 146:1,3  
 151:5,17 178:2  
 179:13 202:8 203:3  
 209:12 222:11 229:20  
 230:1,6 233:6 235:21  
 251:5,14 264:15,19  
 265:12 274:12 275:6  
 291:22 293:16 303:7  
 303:10,22 315:12  
 319:21 320:1,9  
 323:19 328:19 330:14  
 330:17 331:19 332:17  
 333:8 340:14 345:7  
 350:21 351:7,11  
 363:8 405:5 446:15  
**amount** 23:5 55:3 58:6  
 85:1 110:8 116:20  
 138:22 149:7 212:12  
 238:15 243:21 244:17  
 312:10 366:22 386:18  
 390:2,2,3 407:14  
 418:3,6 421:20  
 428:21 439:14  
**amounts** 448:21,22  
**analysis** 6:4 10:12 63:3  
 64:15 72:15 75:9  
 108:21 137:10 139:21  
 144:15 176:14 178:4  
 198:12 199:21 227:18  
 250:18 262:6  
**analyze** 409:3  
**analyzing** 240:10  
 400:14  
**and/or** 412:1  
**anecdotal** 83:18  
**angle** 89:17  
**animal** 298:9  
**announcements** 100:5  
 131:16 132:4  
**annual** 139:10 177:16  
 199:11 250:14 300:14  
 301:1  
**annually** 183:14 299:8  
**answer** 13:6 41:13 64:6  
 64:12 76:15,22  
 113:14 143:10 146:18  
 162:11 171:1 174:20  
 179:14 230:8 251:15  
 254:3 265:13 281:12  
 290:17 307:14 319:4  
 322:1 325:16 326:3  
 329:11 336:10 337:8  
 362:3 364:4 367:20  
 368:9 389:22 396:12  
 424:17 452:3,17  
**answering** 145:20

256:3 425:7  
**answers** 17:18 56:11  
 411:20  
**anticipate** 92:19 324:12  
 403:9  
**anticipated** 11:13 73:21  
 110:14 141:15 200:22  
 228:21 239:5 260:12  
 324:14  
**antiquated** 409:20  
**anybody** 93:22 151:11  
 154:16 165:14 237:14  
 289:12 295:21 318:20  
 423:1 426:19  
**anymore** 51:18  
**anyway** 154:2,14 324:2  
**APG** 151:14,16 172:13  
**apologies** 78:20  
**apologize** 254:16 399:3  
 399:7  
**apology** 392:21  
**apparent** 302:12  
**appear** 55:22  
**appearance** 18:14  
**APPEARANCES** 2:1  
**appears** 64:17  
**applied** 275:14 357:18  
 374:2  
**applies** 367:14  
**apply** 356:16 368:17,22  
 374:12 436:11  
**appoint** 190:18  
**appointed** 146:11  
**appointment** 129:18  
**appreciate** 106:16,17  
 223:2 233:2,6 257:10  
 360:5 372:19 391:11  
**appreciated** 292:11  
**approach** 4:21  
**approached** 210:18  
**appropriate** 142:17  
 198:18 321:14 340:13  
 348:21 402:2 415:8  
 425:5  
**appropriately** 342:12  
**approval** 328:20 424:11  
 425:19  
**approve** 183:15 304:1  
 413:4  
**approved** 99:16 170:8  
 182:14 292:2 328:18  
 412:16  
**approximately** 8:19  
 46:20 49:5 54:9 139:4  
 226:3,6,10 249:8  
 298:1 420:11 453:19  
**approximation** 421:4  
**arbitrarily** 187:19 194:4  
 194:7



**Arbor** 226:18 249:13  
**area** 35:10 39:15 45:7  
 45:14 46:1,1,4 62:21  
 66:13,18 75:6 79:2  
 112:5,8,16 142:19  
 147:21 160:17 192:19  
 213:5,16,21 245:3,5  
 307:3,9,13 357:4  
 364:18 365:6 382:6  
 435:5 436:13 446:3  
**areas** 46:6 79:15,16,18  
 121:14,15 127:21  
 213:17 235:3 401:8  
 417:16 419:3  
**argue** 442:18  
**Arizona** 1:6 46:2 86:14  
 108:7 139:7 160:11  
 160:14,21 165:3  
 167:7 169:2 177:6  
 272:3  
**ARKANSAS** 1:6  
**Arnold's** 380:16  
**arrange** 123:19  
**arrangement** 40:22  
**arrangements** 417:1  
**arrives** 21:21  
**Artesia** 108:4  
**articulated** 318:21  
**ascertain** 195:8  
**Asia** 156:7  
**Aside** 149:11 221:22  
**asked** 8:22 55:13,14  
 102:6 106:3,12  
 130:22 317:13 318:9  
 321:11,12 323:11,15  
 331:15 364:9 388:20  
 394:16 416:2 418:18  
**asking** 105:21 198:9  
 215:11 307:12 309:16  
 317:7,22 318:6 320:3  
 320:5,17,17 321:20  
 327:4 332:7 333:1,6  
 346:18 363:22 373:3  
**asks** 332:12 362:14  
**aspect** 133:3 239:9  
 286:5,11 386:17  
**aspects** 128:4 271:3  
 361:4  
**aspirations** 64:1 141:12  
**aspirator** 314:22  
**assess** 122:21 328:20  
**assessed** 43:8 366:22  
 380:5 442:10,21  
 443:18 449:21 450:1  
 450:6  
**assessing** 403:6  
**assessment** 21:13,16  
 25:2 43:14 44:11,12  
 44:15 93:9,17 94:4,10

102:7,7,11,11 103:13  
 103:17 104:9,12  
 110:6,9 116:10 123:2  
 125:11 182:13,22  
 183:8,15 184:1  
 193:20 275:16 335:1  
 432:1,21 442:11  
 448:14 451:3 452:8  
 452:13,18 453:9,14  
 453:15  
**assessments** 21:3  
 42:21 102:16,18  
 103:5,9 104:8 123:13  
 129:19 182:6,18  
 183:3,17 193:5  
 262:21 263:1 275:14  
 314:9 335:10 421:11  
 444:1  
**assessor** 452:12  
**asset** 174:5 226:17  
**assign** 350:5  
**assignment** 416:3  
**assist** 66:8  
**associated** 10:22 45:21  
 50:15 63:14 75:20  
 109:16 140:13 178:19  
 185:20 200:9 251:3  
 262:18 373:2 378:14  
 390:14  
**association** 63:16,16  
 63:19,22 66:4,15 67:4  
 75:22 76:1 78:8,11,13  
 78:17,19,22 79:7 86:4  
 86:8,12,13 95:10  
 211:19 277:20 287:22  
 301:10,12,13,14,16  
 302:19 353:22  
**associations** 95:11,12  
 206:17  
**assume** 163:16 170:12  
 242:11 318:19 319:1  
 319:14 324:3 358:19  
**assumed** 452:8 453:22  
**assuming** 185:2  
**assumption** 152:18,18  
 395:15  
**assure** 338:16  
**astray** 440:1  
**Atlanta** 2:17  
**attached** 6:19 64:20  
 108:2 138:5 177:14  
 199:9 210:15 221:20  
 250:7 260:3  
**attack** 87:18  
**attempt** 316:9  
**attend** 64:5 76:14  
 423:20  
**attendant** 283:6  
**attended** 10:1

**attending** 127:14  
 191:18  
**attention** 12:7 25:11  
 74:10 95:18 111:3  
 133:1 142:4 147:4,10  
 171:13,20 188:8  
 191:7,12 201:11  
 213:3 267:13 310:17  
 311:12 313:19 341:9  
 357:16 373:18 379:15  
 384:4 394:20 409:13  
 416:11 417:19 427:18  
 429:6  
**attorney** 232:16 250:8  
 254:17  
**attorneys** 304:11 351:3  
 362:6,12  
**attracted** 81:1  
**attribute** 98:11  
**attributes** 272:9  
**audience** 32:11 59:9  
 65:7 71:11 77:7  
 104:21 114:1 134:19  
 143:17 175:8 179:22  
 196:13 204:18 223:11  
 230:17 246:7 252:3  
 257:13 265:21 294:19  
 325:1 326:17 332:4  
**audit** 129:20  
**Auditorium** 1:12  
**audits** 193:13  
**August** 21:4,11,18 22:4  
 34:8 37:15 43:13 44:4  
 44:15,21 218:17  
 407:5 409:1  
**authorities** 36:3 61:19  
 69:7,9,12,15 99:3  
 187:10 292:3,4  
**authority** 36:4 81:6  
 95:16 120:1 145:21  
 193:16,21 194:1  
 310:22 317:16 360:7  
 360:7 414:16  
**authorized** 202:12  
 337:3  
**automation** 157:4  
**available** 44:21 58:11  
 105:20 209:2 218:4  
 261:12 391:18  
**Avenue** 2:5,10  
**avenues** 282:18  
**average** 10:14,16 12:10  
 22:20 41:15 42:7 62:9  
 63:1,5,6 74:13 75:8  
 75:11,12 109:1,3  
 111:6 139:22 142:8  
 178:6,8 200:1,3  
 201:15 227:20,22  
 229:12 250:20,22

262:11 264:1 364:18  
 419:22 420:3,10  
**averaging** 23:4  
**avoid** 280:21  
**avoiding** 272:12  
**aware** 10:17 17:20 21:6  
 62:21 63:8 67:16  
 68:21 75:5,15 93:3  
 99:4,7 100:1,13,17  
 101:20 102:10,12  
 109:10 110:3,6 112:4  
 120:12 122:10 123:18  
 127:19 130:10 133:5  
 140:7 148:10 164:22  
 178:13 200:4 202:5  
 228:1 262:13 271:15  
 272:9 276:4 287:11  
 287:16,17 341:3  
 350:7 427:3 448:9  
 453:18,21

---

**B**


---

**b** 171:21 172:3 223:4  
 332:18 353:11 387:7  
 387:9,15,18,19  
 395:18,18  
**B-E-N** 225:16  
**b)Subsection** 349:2  
**back** 27:19 57:2 69:4  
 106:4 135:5 152:4  
 153:2 166:10 190:4  
 243:8 250:10 285:6  
 292:15 296:11 302:19  
 306:21 321:1 332:8  
 332:13 380:10 384:8  
 384:18 392:13 415:3  
 416:8 417:9 430:5,14  
 433:18 434:12 443:15  
 454:9  
**background** 83:17  
 233:9 268:1 297:9  
**backwards** 426:12,14  
**bad** 16:15 37:18 98:1,5  
 152:2 164:4,13  
 241:18  
**bagged** 431:1  
**bags** 38:10,11 309:8  
 343:21,22 344:12,13  
**Bakersfield** 158:8  
**balance** 234:9 286:1  
 340:13  
**balances** 279:9  
**band** 161:5  
**bankrupt** 16:14  
**bare** 41:22 240:10  
**barrier** 52:18  
**base** 54:7 140:5 354:4  
**based** 26:6 27:18 42:13  
 67:9 98:16 147:15

152:6 172:6 182:12  
 188:11 220:16 226:18  
 226:20 240:6 245:16  
 252:22 255:11 279:18  
 354:13 366:17 379:21  
 386:12 397:3 400:12  
 412:15,17 421:9,11  
 422:14 423:10 440:14  
**basic** 253:21  
**basically** 23:3 31:4  
 84:14 158:1 181:21  
 186:3 187:22 191:13  
 193:22 194:2 242:1  
**basis** 73:12 99:14  
 150:11 152:6 236:17  
 273:20 321:9,10  
 326:21 328:15 337:19  
 343:19 375:18 381:15  
 384:11,15 385:2  
 413:22 443:6  
**beat** 91:17  
**becoming** 29:12  
**beginning** 47:1,13  
 284:20 403:2 422:8  
**begins** 34:6 233:17  
 404:16 405:3 435:12  
**behalf** 2:2,13 143:1  
 202:13,15 290:8  
**belabor** 373:5  
**belief** 303:3  
**believe** 10:19,20 23:21  
 26:4 31:13 34:10  
 55:17 56:13 63:10,12  
 64:17 70:12,21 75:17  
 75:18 79:1 88:2 91:5  
 92:17 93:5,10 94:3  
 98:8 109:13,14  
 110:10 112:2,8,12,17  
 114:19 115:22 116:11  
 119:4 121:7 123:12  
 123:17 127:21 133:16  
 140:3,9,10 150:6  
 167:2,11 169:10  
 176:12 178:15,16  
 184:3 187:12 200:6,7  
 206:13 208:4,10,20  
 209:16,22 210:14  
 218:18 222:19 228:3  
 228:8 230:2 235:2  
 236:15 251:1,7  
 262:15,16 270:16  
 273:4 320:8 322:17  
 355:6 399:8 407:8  
 413:12 449:10  
**believed** 149:4  
**believes** 140:20 320:10  
**believing** 89:10  
**belt** 404:15 405:2  
 430:10

**Ben** 3:6,20 224:10,17  
 225:16 230:11 249:12  
 253:5 254:20  
**beneficial** 26:16 98:17  
 169:18 284:17  
**benefit** 11:22 12:2 32:3  
 74:5,7 75:18 81:19  
 87:12,16 110:19,22  
 116:13 128:9 141:21  
 142:1 150:6 152:10  
 152:14 155:8 163:18  
 194:8 201:6,8 215:17  
 216:18,22 229:3,5,17  
 260:17 261:19 271:2  
 276:7 278:22 280:3  
 283:2 285:15 292:9  
 329:3,4  
**benefits** 10:20 45:11  
 63:12 68:21 109:14  
 109:22 127:8,10,13  
 140:11,19 141:11  
 149:3 162:20 163:3  
 178:17 179:7 200:8  
 212:6 215:5,12,14  
 216:14 251:1 260:7  
 260:22 262:16 272:2  
 275:2 278:12 285:7  
**benefitted** 208:14,17,18  
**Bermuda** 177:1,2  
**best** 19:20 20:5 29:4,5  
 47:22 52:21 84:3  
 89:16 96:5 110:1  
 151:9,9,10 268:5,7,15  
 268:16 282:13 292:6  
 293:12 294:8 295:14  
 342:19 344:4,18  
 347:1 350:2 356:5  
 379:4 444:12  
**better** 11:19 14:15 15:2  
 29:7,7 39:13 47:15  
 50:21 61:15,17 69:3  
 84:19 89:11 95:20  
 155:10 166:4 169:20  
 216:9,10 217:2,2  
 261:9,10 271:9  
 279:10,20 280:19  
 330:2 406:16 414:19  
 451:15  
**beyond** 149:8 165:3  
 250:7 326:6 352:6  
**big** 19:15 48:9 52:22  
 192:21 196:1 345:21  
 435:10  
**bigger** 99:20  
**biggest** 207:8  
**billed** 93:13  
**binding** 189:5  
**bit** 14:13 15:1,5 17:5  
 20:17 33:10 34:18

37:4 45:7,9,12,18  
 46:19 48:20 59:15  
 84:9 92:1 96:13 97:11  
 101:6,7 135:5 150:16  
 154:10 208:7 233:4  
 266:17 278:20 382:2  
 418:18 440:1 443:1  
 451:12  
**bitty** 53:3  
**blame** 58:1  
**blanket** 320:20  
**block** 46:12 249:20,21  
**blood** 97:22  
**blowers** 371:19  
**blown** 371:18  
**blowout** 313:20 314:18  
 314:20 315:5 317:22  
 322:7 323:5,6,6  
 333:11  
**blowouts** 317:15 318:1  
 320:8,10,12 321:21  
 332:9 333:15 370:17  
 370:19 371:1,14,21  
 372:14 430:22  
**Blue** 158:5,7  
**blurry** 433:22,22  
**board** 10:3,11 13:5 64:2  
 64:5,7,8 76:10,13,16  
 76:17,21 112:21  
 113:7,13 120:4,22  
 121:12 130:2,10  
 139:16 140:17 143:9  
 152:19 172:16 178:1  
 178:2 179:13 180:22  
 182:14 183:13,18  
 189:15 192:20 202:8  
 202:12 203:3 209:12  
 222:12 229:20 230:2  
 230:6 233:7 235:21  
 236:20 251:5,14  
 264:15,16,19,20  
 265:12 274:18 275:9  
 275:15 276:19 277:16  
 277:21 287:20,22  
 288:3,11,13 289:8  
 300:4 301:11,12  
 303:6,7,10,11,17  
 304:1 311:21 314:5  
 315:12 317:15,17  
 318:13 319:21 320:1  
 320:10 323:19 328:19  
 329:20 330:14,17  
 331:6,19 333:8 342:7  
 342:12 346:10,18  
 347:7,13 351:7 352:1  
 352:14,15 354:6,12  
 358:7 363:8,12 387:2  
 405:5,17 406:6  
 417:21 418:1 421:10

444:6 447:22  
**board's** 131:14 332:17  
 446:15  
**boards** 291:4  
**body** 121:9 185:12  
**bollworm** 80:17  
**bone** 240:10  
**bonus** 51:15  
**bookkeeping** 121:4  
 234:19  
**books** 22:2  
**boom** 140:15  
**born** 298:2 300:9  
**borne** 103:11 119:18  
**borrow** 221:18  
**borrowing** 103:22  
**boss** 360:3  
**bottom** 119:2 162:19  
 215:10,13 355:17  
 359:5 384:5 412:12  
 412:13  
**bottoms** 401:9  
**bought** 9:8 434:8  
**boundaries** 244:21  
**boundary** 432:20  
**bounds** 67:2 94:19  
**box** 344:14  
**brand** 151:18  
**break** 105:10 135:5  
 245:15 256:16 315:5  
 315:6 323:17 369:8  
 373:19 391:1,3 392:7  
 416:14 424:19,20  
**breakdown** 29:14  
**breaking** 322:11  
**breakthrough** 84:19  
**Brian** 2:3 161:8  
**brian.hill@usda.gov**  
 2:7  
**bricks** 46:12  
**brief** 22:12 173:3 296:4  
 445:11  
**briefly** 136:3 193:5  
 296:9 371:13 392:12  
 438:19 454:8  
**bring** 67:1 82:2 153:9  
 170:14 171:20 173:18  
 174:3,14 250:5  
 282:19 324:15 439:15  
**bringing** 168:10 169:13  
 283:22  
**brings** 20:21 170:17  
 171:5 217:1 271:2  
**broad** 67:9 343:16  
 354:4 442:16  
**broader** 384:14  
**broken** 371:2 378:19  
 395:17  
**broker** 382:20

**brought** 190:6 216:16  
378:16  
**Bruce** 358:6  
**BS** 297:10  
**bud** 268:13  
**budget** 151:13,15  
182:14,16 183:15,16  
184:1 189:13 289:7  
406:8,12 409:4  
**budgets** 129:19  
**build** 198:8 330:8  
**Building** 2:5  
**built** 298:2  
**bulk** 218:20  
**Bulldog** 297:14  
**bunch** 170:16 174:9  
354:6  
**burden** 153:22 165:13  
325:9,18  
**burdens** 141:11  
**burdensome** 10:20  
63:11 75:18 92:18  
93:5 109:13 110:12  
116:1,6 140:10  
178:16 200:7 228:4  
262:16 263:9 439:18  
**burn** 48:6  
**business** 7:4 9:22 35:9  
36:5 37:2 56:5 61:5  
73:5 74:2 108:4,15  
110:17 112:7,11  
115:18 116:21,21  
120:16 124:10 139:11  
139:13 141:18 152:2  
170:16,18 177:17  
178:20 199:12,14  
201:3 219:19 227:11  
227:13 234:5,8,18  
235:1,20 249:11  
250:3,15,17 251:2  
260:4,15 263:6 267:1  
267:1,3 279:20  
297:19 298:4,22  
300:11,21 307:8  
312:19 338:13 356:13  
359:2 365:16 366:1  
389:2,2 411:19 439:9  
**businesses** 168:18,19  
356:14,15 447:4  
**Butte** 49:14  
**buy** 9:2 27:13,19 51:18  
54:14 58:7,11 241:9  
306:19,22 307:1  
412:8 434:22 439:11  
**buy-in** 347:20  
**buyer** 16:8 194:5  
216:10 433:9  
**buyers** 222:21 272:1  
**buying** 58:8 71:2

187:16 439:11,12,19  
**buys** 308:4  
**bylaws** 120:1,9 129:18

---

**C**


---

**c** 70:20 191:7 343:19  
347:18 448:17  
**calculated** 391:22  
**calculating** 55:14  
**calculation** 110:9  
**calculator** 364:7  
**calendar** 402:17  
**California** 1:6 86:15  
137:20 138:9 156:8,9  
165:4 177:1,3 179:2  
181:9 186:6 187:5  
188:12 192:13 193:7  
221:8 225:19,20  
226:4,6,9,16 227:9  
228:14 232:8,12  
242:14,22 243:3,15  
243:17 245:8 249:2,5  
249:14  
**call** 59:20,22 93:15 99:3  
136:5 189:20 197:2  
197:11 224:8,10  
246:19 257:22 261:20  
289:11 290:11 295:7  
383:14  
**called** 7:18 226:18,19  
226:22 272:13 316:18  
317:9 318:17 399:9  
418:12  
**calling** 100:9 136:8  
**canal** 48:20 49:13,18,19  
50:1  
**canals** 49:20,22  
**cane** 250:11  
**cantaloupes** 290:6  
293:2  
**capacities** 108:1 255:8  
**capacity** 143:3 146:7,19  
190:15,20 202:20  
232:6 234:3 312:5  
417:2,7  
**capital** 55:4 58:7  
226:16 228:10,18  
241:8 275:5  
**capitalized** 52:3  
**capricious** 330:11  
**capture** 23:15 81:3  
253:22 254:2 328:13  
342:16 344:7 401:12  
**captured** 277:2 384:21  
**captures** 329:6  
**capturing** 427:11  
**cardboard** 9:15  
**care** 30:9 54:20 339:9

**career** 37:2 40:2  
**carefully** 372:22  
**cares** 237:1  
**Caris** 358:6  
**Carolina** 1:7,7 206:14  
**carried** 22:7 82:20  
**carrier** 383:19  
**carry** 11:14 20:21 22:13  
33:2,6,15 34:2,8,13  
35:12 94:18 216:4,8,9  
217:19,20 218:18,21  
240:1 269:11 271:17  
340:8 366:10 448:16  
**carrying** 22:9 217:18  
**carryover** 216:1  
**case** 20:6 60:13 125:8  
149:8 161:4 186:22  
190:11 212:16 321:9  
321:9 339:6 359:1  
380:14 383:20 435:5  
436:9 439:17 448:12  
**cases** 310:3 344:16  
372:15 401:7 431:19  
434:11 439:5,12  
447:6  
**cash** 447:5  
**cast** 442:2  
**cat** 94:14  
**catch** 84:15  
**catchall** 344:2,18  
**categories** 278:18  
**category** 43:9 124:19  
125:13,17,22 370:16  
384:14  
**cause** 424:12  
**caused** 16:12 221:3  
**causes** 48:6 367:12  
**cease** 44:6  
**Cedar** 259:22  
**cell** 4:12,12  
**cellophane** 38:9  
**cent** 289:5  
**center** 245:16 270:16  
**centers** 271:21  
**central** 90:16,19 91:2  
134:9 260:1 421:4,7  
**cents** 10:15,16 27:20  
27:21 40:4,4 56:14,18  
56:20 57:7 63:5,6  
75:12,13 109:2,3  
110:5 140:1,2 144:16  
149:8 150:5 157:19  
178:7,8 200:2,3  
227:21,22 250:21,22  
262:9,11 263:3,12,12  
**century** 250:6  
**certain** 35:6 71:3 95:19  
127:20 238:14 245:17  
270:22 271:3 326:19

371:10 390:1,2,3  
408:8 412:19  
**certainly** 22:8 121:15  
242:17 258:3 294:10  
329:1 330:21 339:5  
339:11,14 347:8  
353:4 362:18 364:14  
376:12 377:1 393:9  
410:18 413:17 425:8  
425:14 438:16 444:5  
446:6  
**certification** 336:15,17  
336:21  
**certified** 338:2  
**certify** 182:2 334:5  
335:8,9,22 336:14  
371:6  
**certifying** 336:7 373:7  
**CFO** 107:18 116:16,17  
129:22  
**chain** 308:10 309:18  
377:7 396:9 407:20  
432:19  
**chairman** 186:1  
**chairperson** 179:4  
181:8  
**challenge** 46:14  
**challenges** 26:22 51:13  
91:1 160:14 235:16  
261:22  
**chance** 6:1,8 25:20  
72:12 120:21 233:10  
233:14 259:10 267:19  
281:9 410:15 451:22  
**Chances** 51:22  
**change** 31:9 33:13  
58:20,20 83:14  
203:16 204:6 241:7  
377:21 403:9,17  
424:12,13 425:6,10  
452:3  
**changed** 42:20 135:10  
363:9 364:1 450:18  
**changes** 362:9 424:10  
435:16,18  
**changing** 203:21  
243:19 276:9 330:2  
363:15  
**channels** 414:7  
**chapters** 383:4  
**characterize** 123:12  
414:11  
**charged** 104:13  
**charts** 98:2,9  
**Chase** 107:19,21 108:3  
108:12,13 113:2  
116:16 117:1  
**cheaper** 58:13  
**check** 59:14 71:14

105:3 134:22 137:6  
175:11 196:16 246:10  
257:17 295:3  
**check-off** 141:4  
**checked** 176:4  
**checker** 275:16  
**checking** 404:14  
**checkoff** 93:16,18  
**checkout** 94:10  
**checks** 185:22 186:4  
**cherry** 238:8  
**chew** 80:9  
**Chicago** 225:17 226:18  
**chicken** 103:19  
**chief** 1:18 116:18 119:8  
259:19  
**children** 8:17 9:14  
425:15  
**chilling** 82:4 161:2  
**Chilukuri** 2:8 90:10,15  
90:18,22 91:22 92:10  
92:14 93:1 94:22  
164:17 165:8,17  
166:6 179:20 306:7  
306:16 310:10,14  
311:10 314:17 326:9  
327:10,15 334:2  
339:2 361:20 362:4,8  
377:20 378:10,20  
379:2 398:20 399:2  
415:17 416:5,7  
449:13,15,17 450:3  
451:6  
**Chilukuri's** 325:5  
**China** 207:8,15 344:18  
**Chinese** 99:19 274:1  
**chlorophyll** 163:12  
**cholesterol** 98:1,1,5,6  
**choosing** 332:18  
**chose** 331:6  
**chromosome** 269:8  
**circumstance** 402:19  
**circumstances** 81:17  
443:12 448:7  
**cities** 53:20  
**City** 232:17  
**clarification** 144:10  
273:10 287:20 337:8  
346:18 357:16 451:21  
**clarifications** 105:4  
246:12  
**clarified** 223:16 391:13  
**clarifies** 452:9  
**clarify** 64:15 85:22  
104:16 126:1 135:2  
203:7 217:17 237:7  
268:22 288:10 316:7  
328:4 338:2 377:20  
378:7 384:20 393:12

408:22 426:4 433:1  
444:22 450:3  
**clarifying** 115:1 148:19  
362:9 363:21  
**classification** 89:13  
**classifications** 372:17  
**classified** 61:4 73:4  
139:12 177:18 250:16  
310:11 370:14  
**Clay** 1:14,18  
**clean** 299:18,19 390:8  
391:14,14,17,18  
395:5 396:7,7 397:7  
428:12,21 439:15  
**cleaned** 22:2 381:12  
382:19 394:14,15,20  
395:3,9 397:5 430:18  
434:20  
**cleaner** 299:21 381:22  
449:4  
**cleaning** 299:17,18  
314:21 368:4,4  
369:19 376:10 383:6  
395:11 430:15,18,21  
437:8 440:13  
**clear** 45:4 104:11 327:5  
332:20 380:3 436:15  
442:5  
**clearer** 363:3 446:6  
**clearly** 119:15 120:22  
273:2 310:21 385:16  
**clerical** 377:21  
**clients** 272:1  
**climb** 195:18  
**climbing** 238:7  
**close** 53:19 125:18  
271:20  
**closer** 140:4  
**cloud** 53:1  
**co-counsel** 131:10  
258:1  
**co-founded** 226:19,21  
**co-founder** 249:3  
**co-founders** 227:4  
**co-op** 158:6,6,9  
**co-owner** 249:2  
**co-sign** 185:22  
**coal** 8:15,20  
**Cochise** 177:5  
**coffee** 154:22 155:1  
**cohesive** 156:10  
158:21  
**cold** 11:18 15:13 16:17  
29:21 35:16 36:8  
39:10,20 40:14,21  
58:2 88:5 216:3  
218:22 239:14 279:5  
279:8,14 280:7,9  
339:10 372:2 440:16

**collaborate** 82:8 234:15  
**collaboration** 212:7  
**collect** 80:18 123:3,13  
381:3 386:20 428:21  
**collected** 9:17 182:18  
239:12 422:14 428:22  
**collection** 123:14  
239:10  
**collective** 158:21 227:7  
234:7,11 338:18  
**Collectively** 339:10  
**collects** 104:2  
**college** 170:5  
**colloquial** 100:22  
**color** 29:14,19 31:9  
39:3 411:11  
**Colusa** 227:2 232:8  
249:1,4  
**combination** 171:2  
268:21 269:7 270:18  
**combine** 269:5  
**combined** 139:5 212:1  
**come** 4:4 57:2,4 60:1  
80:9 135:5 136:5  
147:2 168:6,11 176:7  
181:19 183:14 190:4  
190:19 206:14 212:15  
216:14 229:19 244:16  
245:14 275:12 292:6  
296:11 329:3 331:21  
332:13 344:4 355:20  
371:21,22 372:10  
381:7 382:16 396:3  
430:14 443:20  
**comes** 54:17 165:12  
171:5 187:11 217:4  
244:13,19 245:7  
312:14 354:18 449:5  
**comfort** 131:3 155:20  
**comfortable** 21:8 24:1  
41:7 68:1 134:3 154:3  
**coming** 15:6 33:8 83:19  
84:2 85:9,14 173:15  
198:3 247:20 257:11  
285:11 371:15 375:8  
375:10 389:7 419:15  
**comment** 22:12 116:2  
123:11 148:13 152:13  
155:14 163:1 173:4  
215:16 279:1 280:2  
305:6 373:5 415:4  
424:11 445:15 447:2  
**commenting** 162:17  
**comments** 56:12 59:19  
117:13 215:11 313:11  
318:22  
**commerce** 29:22  
308:10 309:12 407:20  
432:19 436:5,9 445:8

445:18,21 447:1,11  
**commercial** 12:15,22  
23:5 55:2 62:13,19,22  
74:18 75:3,6 111:11  
111:18 112:7,11,14  
125:4 142:12,17,20  
201:19 229:16 264:5  
264:12 270:7,9  
271:12 287:15 355:6  
355:7 399:18 414:8  
418:3,9,11,14 423:10  
**commercially** 89:19  
112:17 213:18 267:4  
267:5 271:13  
**Commission** 1:19  
421:9  
**commit** 11:20 432:17  
**committed** 188:21  
**committee** 120:4  
140:18 146:7,12,21  
147:1 166:11,13,17  
166:22 167:3,13  
168:16 169:14,19  
170:3 179:3 182:3,8  
182:11,13,20 184:7,8  
185:21 186:21 187:22  
188:13 189:15,16  
190:11,12 191:14  
194:16 233:15  
**committees** 173:4  
232:6  
**commodities** 232:5  
293:1  
**commodity** 179:8  
211:16 310:2 421:8,9  
432:20 435:13 438:10  
**common** 148:10 154:9  
159:6,7 239:16 245:1  
254:8,13 255:12,15  
255:18 256:3 417:2  
417:10 434:16  
**communicate** 291:17  
291:18  
**communication** 274:7  
276:4  
**communications** 286:6  
**communities** 166:16  
169:4  
**community** 131:17  
169:7 174:15 187:18  
207:19 216:6 232:18  
234:10 235:8  
**companies** 139:6  
226:14 228:5 245:12  
249:9 370:21 439:4  
**company** 122:8 158:1  
170:6 177:4,5,15  
226:18,19,20,22  
245:14 249:19 253:3

255:22 263:8 305:22  
343:20 349:22 439:7  
**comparable** 197:8  
**compare** 155:1 249:22  
**compared** 70:19 228:11  
240:21 243:1 406:17  
**comparing** 346:13  
**comparison** 69:2  
**compatible** 402:18  
**compensate** 283:5  
**compensated** 119:19  
283:3,6,15,20  
**compete** 12:6 74:9  
111:2 142:3 201:10  
229:7  
**competing** 52:16  
320:13 332:15  
**competition** 69:22  
276:20  
**competitive** 274:14  
**compilation** 342:9  
**compile** 434:17 439:15  
**compiler** 310:1  
**compiles** 308:7  
**compiling** 439:7  
**complete** 235:7  
**completed** 404:17,22  
**completely** 104:6  
140:19 173:19 277:7  
**complex** 150:16  
**compliance** 129:20  
193:6,7,10,12,12,16  
193:21 194:3,9,13,17  
294:10 335:6 337:15  
**complicated** 309:15  
390:13  
**complimentary** 64:1  
76:9 86:18 202:10  
277:12  
**comply** 285:13 438:13  
**component** 20:22  
24:13 34:2 39:17  
115:17,17 193:8  
331:11 372:20  
**components** 233:16  
**composed** 344:15  
345:21 346:9  
**comprise** 79:6  
**comprises** 86:13  
**compromise** 369:8,9  
369:11 373:20 377:2  
**computer** 170:15  
**concentrated** 138:14  
159:15  
**concept** 17:16 20:20  
23:19 133:20 289:1  
357:18 380:3 397:21  
417:7 432:1,11,13,14  
435:10 437:17

**concepts** 303:1  
**concern** 123:7 273:5  
279:17 286:13 323:14  
338:12  
**concerned** 67:20 80:1  
276:20 286:6 312:3  
**concerns** 67:17 71:1  
109:18 122:14,17  
124:11,18 126:10  
130:22 195:19 210:17  
210:18 338:16  
**concludes** 68:10 175:1  
212:18  
**conclusion** 13:2 64:9  
76:18 113:10 143:6  
179:10 202:22 230:3  
251:11 265:9  
**conditions** 42:6 273:2  
405:1  
**conduct** 195:6 212:9  
**conducted** 207:6  
**conducting** 193:13  
**conference** 191:16,17  
275:10  
**conferecing** 192:4  
**confidence** 87:21 160:2  
187:12,13,17 188:2  
220:12 235:7 239:20  
334:20  
**confident** 71:2,4 126:12  
141:11 228:22  
**confidential** 154:18,21  
338:8 339:3,21  
340:10  
**confidentiality** 338:10  
339:15 340:13  
**confine** 344:1  
**confirmation** 191:18  
**confirming** 334:22  
**conflict** 102:3 157:8  
**confused** 374:22  
391:11  
**confusing** 288:6 368:13  
**confusion** 391:12  
409:21 414:6  
**connect** 371:5  
**connected** 407:8  
**connecting** 255:7  
**connection** 372:19  
399:10  
**connotation** 375:19,20  
**conscious** 432:6  
**consensus** 130:17  
132:3 412:8 454:11  
**consequence** 85:9  
**conservatism** 235:10  
**conservative** 140:3  
149:5 172:5  
**consider** 130:2 282:21

283:5 300:13 301:2  
305:16 312:6 346:11  
346:19 354:11 421:17  
444:11  
**considerable** 312:10  
346:22 352:8 418:6  
421:20  
**consideration** 352:21  
426:18 445:4  
**considerations** 365:20  
**considered** 9:21 79:4  
108:14 111:10 125:1  
194:7 199:13 227:12  
255:2 260:5 312:9  
313:1,2 322:21 323:8  
333:17 342:7,11  
351:16,19 369:15  
400:1 416:17 418:5,9  
419:18 423:10 427:7  
437:8,10 441:6 442:4  
**considering** 214:22  
**consigning** 443:4 444:3  
445:2,5  
**consist** 130:11  
**consistent** 305:13  
310:20 314:2 335:5  
341:13 366:16 379:20  
386:12 399:14 402:14  
420:14 421:15 428:16  
**consistently** 274:6  
**constant** 222:15  
**constituents** 83:8 88:4  
206:8,9  
**constitute** 129:9 422:18  
436:17  
**constraint** 105:9  
**constraints** 45:17 47:8  
105:13  
**consult** 295:12 362:6  
**consume** 442:4  
**consumed** 209:2 218:4  
**consumer** 12:7 30:4,19  
31:14,15,22 74:10  
87:21 111:3 142:4  
238:14 250:4 260:19  
261:18 334:20  
**consumer's** 201:11  
**consumers** 61:21 62:6  
70:14 71:1 222:16,22  
267:4 335:4  
**consumption** 33:9  
277:6  
**Cont'd** 18:9 56:8 68:11  
83:12 87:9 90:9  
126:18 145:2 148:17  
149:18 153:14 160:8  
161:7 162:15 164:16  
166:8 212:19 214:13  
238:20 240:15 256:13

278:5 281:5 310:15  
314:16 333:14 335:20  
337:22 339:1 341:7  
342:3 343:7 345:2  
350:16 361:19 362:13  
363:2 367:8 369:4  
373:13 377:19 379:13  
380:20 384:2 385:10  
389:17 393:11 397:19  
398:21 399:5 401:21  
404:2 406:1 408:20  
409:11 412:10 415:16  
416:9 424:6 426:10  
427:16 428:10 444:17  
449:16 451:10  
**contact** 165:3  
**container** 341:9 343:9  
343:19 344:3,8,9,12  
344:13,15,16,17,20  
375:5  
**containers** 306:22  
342:7,13 343:5,17  
416:2  
**containing** 304:19  
**contains** 72:8 198:5  
258:21  
**contaminants** 370:9  
**contamination** 370:7  
370:22 371:1 372:8  
**contemplate** 448:1  
**contemplating** 397:17  
**contemplation** 374:17  
**contend** 236:22  
**content** 29:11 89:21  
90:3 91:14  
**constraint** 184:5  
**CONTENTS** 3:1  
**context** 254:18 289:4  
309:8 321:14 370:12  
372:21 378:5 447:8  
**continuance** 195:9  
**continuation** 4:4 97:1  
**continue** 9:20 69:20  
109:21 127:8 320:17  
384:7 396:10  
**continued** 210:8 232:19  
**continues** 222:12 384:9  
**continuing** 209:14  
276:16 321:17  
**continuous** 194:19  
284:16  
**continuously** 270:9  
**contract** 26:12 383:19  
434:3  
**contracts** 274:9  
**contractual** 308:16  
**contribute** 222:20  
275:5,17 276:6  
277:16 289:17,22

- contributed** 162:2,3  
 230:1 289:9  
**contributing** 289:13,16  
 289:21  
**contribution** 236:21  
 237:15 275:20  
**contributions** 161:10  
 162:11 184:6 235:21  
 236:8,9,14 237:2,5,8  
 275:12  
**control** 9:5 80:15 81:17  
 81:20 254:10 255:6  
 286:8 417:4 433:10  
 433:17 435:22 436:2  
 440:22 441:19  
**controlling** 84:18  
**controversy** 311:2  
 316:6 335:16 385:20  
 398:11 403:13 410:9  
 411:3,3,4 424:1  
**conversation** 285:3  
 316:19 358:9  
**conversations** 139:14  
**converted** 225:22  
**cool** 47:1  
**cooperation** 155:4  
 211:11  
**cooperative** 209:18  
**copy** 5:19 6:18 61:6  
 102:8 117:4,8 136:21  
 138:5 147:5 177:13  
 199:8 202:18 210:14  
 221:19,21 222:3  
 258:20 260:3  
**corner** 53:3  
**cornerstone** 234:22  
**corporations** 312:16,17  
**correct** 18:16,17 20:2  
 21:11 24:10 34:4 41:8  
 56:15 57:14 64:21,22  
 66:5 78:15 90:16  
 95:12 101:18,19  
 107:13 109:8 114:20  
 115:19,20 116:4,22  
 117:16,17 121:11,22  
 123:15,21 124:1,14  
 125:19 130:8,19,20  
 131:22 132:1,5,6  
 144:20 145:8,14  
 147:13 150:1,9 155:6  
 155:11,12,17 159:3  
 159:19 183:1 205:14  
 206:18 207:1 209:4  
 209:20 214:19 219:2  
 248:1,11 266:19  
 288:4 291:5,6 319:17  
 330:5,10,18 335:10  
 335:11 336:4 337:15  
 343:11 355:8 376:11  
 376:22 377:14,15  
 385:3,4 388:4 393:18  
 394:17 395:12 402:3  
 420:22 427:4,7 428:3  
 429:18 431:6,7 432:2  
 434:9 447:12 452:16  
 452:22 453:6,7,10,11  
**correction** 397:13  
**correctly** 217:7 254:4  
 331:3 336:1 433:6  
**corroborating** 182:7  
**cost** 10:16,17 11:10  
 12:17 45:19 48:9 49:4  
 50:7,11,22 51:15,16  
 63:7,9 73:19 74:20  
 75:13,15,20 91:21  
 92:16,18 93:8 103:9  
 109:4 111:13 140:2  
 142:14 144:16 150:6  
 166:2 178:8 200:4,17  
 200:17 201:21 228:1  
 234:8,13 243:18  
 244:21 251:1 262:22  
 263:5,12 264:7  
 376:19  
**costs** 10:19,22 23:9,11  
 27:4,9,16,19 45:21  
 50:12,14 52:3 54:8,18  
 62:15 63:10,14 75:17  
 92:19,20 93:3,5,6,7  
 102:20 109:11,13,16  
 110:4,7,11 115:22  
 116:7,11 119:18  
 123:3 140:7,9,12  
 149:3 167:20 178:14  
 178:18 200:4,6,9  
 228:1,3,15 251:3  
 262:13,15,18 263:2  
 370:12  
**cotton** 46:5 47:12 52:11  
 52:12 80:17 89:10,11  
 89:13  
**cottons** 89:15  
**council** 35:6 63:20 68:3  
 68:5 76:3,7,8 92:2,5  
 92:11 101:5,17 110:1  
 110:10 112:2 117:20  
 118:2 119:19 120:20  
 122:5 123:8 126:11  
 126:14 129:6,10,11  
 131:21 133:17 172:4  
 174:3 186:22 187:18  
 188:1 202:2,9,13  
 203:12,14,22 204:1,4  
 204:9 206:3,4,10,21  
 208:1 209:14 210:10  
 210:19 211:9 212:2  
 212:22 221:14,15  
 222:9 223:1,5 233:17  
 254:19 255:20 275:6  
 275:7 281:9 282:6,8  
 284:18 285:12 291:22  
 301:17 340:10,14  
 345:4,7,9,13,17 346:4  
 346:14,20 347:6  
 350:9,19,21 351:12  
 359:9 360:1 386:20  
 388:7,16 406:7 410:3  
 410:5 412:16,20  
 414:16 424:9,12  
 425:18 427:21 428:21  
**council's** 174:4 191:15  
**councils** 403:16  
**counsel** 2:4,9 4:8 113:3  
 185:16 322:10 374:7  
 385:8  
**count** 80:19 84:21  
**counted** 407:18  
**counties** 79:3,5,9 80:2  
**countries** 86:14 207:11  
 273:19,21  
**country** 8:6,17 15:10  
 28:2,3 209:1 213:15  
 213:17 214:6 242:18  
 307:2,3 350:4 355:3  
**County** 61:2,3 73:2,3  
 108:8 177:6  
**couple** 24:3 38:11  
 89:12 95:9 97:13  
 115:1,13 136:20  
 205:20 272:4 287:8  
 300:12 380:21 406:3  
**coupled** 262:2  
**course** 69:17 71:7 96:6  
 96:9 99:19 101:11  
 130:12 131:13 239:18  
 410:2 423:5  
**courses** 170:16  
**courtesy** 106:17  
**cover** 186:4 213:17  
**covered** 100:4 192:12  
 380:15 385:1 418:21  
 419:1  
**covering** 367:19  
**covers** 233:18 343:4  
**crack** 366:12 367:12,14  
 367:18 369:7,8,16,17  
 369:21 371:8 372:9  
 373:19,19 374:1,5,19  
 375:14,17,17 376:22  
 377:9 378:1,11,13,14  
 379:5,12  
**cracked** 370:4,7 375:5  
 431:11  
**cracking** 368:1,9,17  
 374:13,13 377:11  
 379:2 436:16  
**cracks** 125:2 366:12,21  
 367:21 368:3,18  
 370:16,18,21 371:8  
 371:13,22 372:1,11  
 373:6,8 375:3,4 376:4  
 376:14,18,19 377:10  
 378:1,15,21,22  
 430:22  
**crafting** 329:14  
**create** 23:7 26:10 47:9  
 120:1 125:16 331:18  
 334:9 347:13 414:18  
**creating** 318:10 334:12  
**creation** 104:5 303:19  
 406:11  
**creation** 345:6,16  
**creator** 157:6  
**Credit** 107:22  
**credits** 279:18  
**Creek** 259:22  
**criteria** 42:4 354:12  
**critical** 34:2 192:18  
**crop** 11:2,3,14,17,18,20  
 14:20 15:8,19,20 16:1  
 16:1,6 21:21 22:9  
 33:5,6,7,16 39:10  
 40:19 41:1 42:13 49:6  
 52:6,21 53:1 54:12  
 58:3,3,7,8,11 61:12  
 73:15,22 74:1 82:5  
 104:6 110:15,16  
 131:15,17,20 140:21  
 141:16,17 150:18,18  
 150:20 157:3 200:13  
 200:20 201:1,3  
 208:11,22 215:20  
 216:7,11 219:6,8,9,15  
 220:8 221:9 226:8  
 228:22 234:12 239:6  
 239:22 240:4 260:12  
 260:14 262:11 278:17  
 293:3 380:13 381:1  
 389:6 398:9 408:2,6,8  
 417:11,12 418:7  
 433:4,17 434:9  
 438:11 442:18  
**crops** 9:6 17:1 46:6,19  
 62:3 83:20 220:20  
 243:20 245:9  
**cross** 3:2 14:5 18:9  
 65:20 68:11 78:1  
 83:12 87:9 90:9  
 114:15 126:18 144:11  
 145:2 148:17 149:18  
 153:14 160:8 161:7  
 162:15 164:16 166:8  
 180:13 182:8 205:10  
 212:19 214:13 231:8  
 238:20 240:15 252:16  
 256:13 266:12 278:5

281:5 306:15 314:16  
 335:20 339:1 342:3  
 343:7 350:16 361:19  
 362:13 367:8 369:4  
 380:20 384:2 389:17  
 393:11 399:5 404:2  
 406:1 408:20 412:10  
 415:16 424:6 426:10  
 432:19 444:17 449:16  
**Cruces** 1:13 6:17,21  
**cultural** 51:12 243:19  
 244:6,21  
**culture** 51:17 244:7  
**cumbersome** 153:22  
 351:22  
**curious** 252:21 448:15  
**current** 44:5 55:20 56:3  
 99:4 101:2 141:7  
 219:8 279:18 291:2  
 337:11 389:8 409:19  
 413:20 421:7  
**currently** 6:22 30:3  
 82:11 108:5,6 115:4,8  
 115:10 127:1 139:3  
 141:14 151:14 155:8  
 163:17 177:7 179:3  
 190:13 191:20 199:3  
 222:11 225:17 226:5  
 343:10,10,13 390:17  
 397:22 411:8,9  
 413:22  
**curriculum** 64:20  
 113:17 179:17 251:20  
**custom** 243:8,9 244:2,3  
 244:4,5,7 245:7  
 299:20 379:15 380:3  
 380:11,22 381:2,11  
 381:12,21 382:8,10  
 382:11,12,16,19,20  
 383:1,5,5,5,6,8,9,12  
 383:18 384:6,13,21  
 384:22 426:17 437:4  
 440:12,15 441:2,6  
 443:1,3 445:1,5,5,6,7  
 445:12 449:3,3,4,6  
**customer** 381:4 440:20  
**customer's** 381:17  
**customers** 261:2  
 299:10 339:14  
**cut** 84:14 361:10  
**cutoffs** 348:8,19 417:22  
**CV** 230:12  
**cycle** 46:20 47:4 403:1  
 403:7  
**cyclical** 23:16

---

**D**


---

**d** 195:3 218:16 284:9

**D-A-V-I-D** 6:16  
**D.C** 2:6,11 101:13  
**dad** 8:7 53:5 298:2  
**Dallas** 259:19 277:4  
 350:9  
**Dam** 49:14  
**damage** 9:5 153:4  
**damaged** 369:15  
**dams** 49:17  
**dangerous** 160:21  
**dark** 37:18 52:22  
**darker** 39:3  
**data** 11:14 14:11 15:13  
 16:2 17:14 57:22  
 61:16 69:17 83:21  
 94:21 153:2,3,8,19,20  
 154:1,4,15,20 155:3,7  
 155:9 183:5,7,11  
 239:9 260:11 278:19  
 278:21 286:14 338:8  
 338:17,19 339:3,5  
 340:15 386:18,21  
 388:19,22 398:9  
 408:13 409:3 422:14  
 428:21,22  
**date** 21:19 22:5 43:10  
 43:16 66:11 179:2  
 180:20 181:3,9,11  
 182:3 185:2 186:6  
 187:5,18 188:12  
 190:11 193:7 408:22  
**dated** 222:5  
**dates** 178:21,21 179:3  
 179:6 181:13 192:13  
 405:6,7 406:5,7,11  
 407:12 408:1  
**David** 3:3,13 5:13 6:15  
 6:18,20 280:16 420:7  
**Davis** 2:15 5:10 59:22  
 60:15,17,21 64:14  
 65:1,16 70:8,9,12,21  
 71:8 72:11,18 77:16  
 105:6,14 106:15  
 107:4,7,9,14 109:5,9  
 112:10,14 113:15  
 114:10 117:9,11  
 118:5,19 119:5  
 128:15,16,20 130:6  
 130:21 131:10 132:2  
 132:7,12 134:16  
 135:18,20 136:5  
 175:14 176:2,4,20  
 178:9,12 179:15  
 180:9 184:17 185:17  
 196:8,9,22 197:4  
 224:8,9,20 225:1,5,9  
 225:13 230:9 231:4  
 232:12 236:4 246:3,4  
 246:16 247:1,4,14,16

247:19,22 248:3,6,9  
 248:13,16,20 251:16  
 252:12 253:16 257:6  
 257:7,10 258:5 280:7  
 296:15,16 311:15  
 316:12 322:9,13  
 324:5 325:4 387:4,9  
**day** 29:5 52:22 170:3  
 278:2 282:15 286:15  
 371:17  
**days** 19:15 47:5 50:4  
 158:17 408:12 423:13  
 451:13  
**De** 7:18  
**deal** 52:3 146:16 150:8  
 192:21  
**dealing** 213:14 235:3  
 406:14  
**deals** 284:15  
**dealt** 146:14  
**Dear** 222:8  
**debate** 312:10  
**debated** 346:22 352:9  
**decade** 27:19 85:7  
 147:21 232:21  
**decades** 7:12  
**December** 37:19  
 404:18  
**decent** 239:18  
**decide** 73:10 96:8  
 271:17 410:16  
**decided** 138:17 172:19  
 352:14  
**decides** 446:2 449:7  
**decision** 19:8 41:5  
 126:12 131:19 152:2  
 174:4 189:4 215:6,8  
 235:9 279:20 282:14  
 283:2 324:18 326:13  
 342:11 347:16 358:14  
 389:2,2 405:14,15  
**decisions** 14:20 16:3  
 61:18 70:15 74:2  
 110:17 126:13 131:6  
 141:18 189:1 201:3  
 215:1 260:15 267:6  
**decline** 135:8  
**declines** 228:17  
**decrease** 57:8  
**deduce** 397:3  
**deduction** 124:6  
**deep** 93:12  
**default** 356:15  
**defect** 373:8  
**defects** 371:10 373:1  
**deferred** 358:9  
**define** 17:5 218:1 244:1  
 311:22 314:5 320:12  
 321:21 332:9 344:18

366:19 380:1 385:12  
 386:15 398:5 425:6  
 428:19  
**defined** 67:22 214:3  
 314:7 315:12 316:4  
 316:10 317:17 318:1  
 335:13 338:4 346:14  
 366:20 385:13 386:5  
 389:20 398:6 400:13  
 406:4 417:4 428:20  
 429:17 442:9,19  
**defines** 376:6  
**defining** 345:9 374:19  
 408:7  
**definitely** 31:11 33:21  
 34:22 39:16 71:7  
 167:2 236:17 250:5  
 276:15  
**definition** 25:19 26:1  
 32:19 34:6 61:5 73:6  
 90:5 147:11 213:16  
 214:2 255:3 267:14  
 267:20 269:9 296:21  
 299:9 305:12,21  
 306:4,5,10 307:22  
 310:18,19 311:3,18  
 312:7 314:1,13 316:7  
 317:14,22 318:9  
 319:8,16 320:9  
 321:10,10,13 323:1,2  
 323:5,19,21 324:20  
 325:2,21 328:1 329:8  
 329:10,13 330:2,3,4  
 331:5,7,15,16,18,22  
 332:15,18,18 333:2,3  
 333:8 334:10,11  
 335:8 336:13 337:1,6  
 338:2,9,14,21 340:1  
 340:19 341:12,17,18  
 341:22 342:5,8 343:2  
 345:13 350:12 355:6  
 356:13,16 360:22  
 361:5 366:15 367:1,5  
 367:18 368:16 369:6  
 374:11 375:22 377:18  
 379:19 380:19 384:6  
 385:20 386:11 388:12  
 391:2,15 392:4  
 394:11,22 395:9,15  
 395:17 397:22 398:2  
 401:15 402:1,2,10,13  
 403:10,21 412:13  
 416:13 417:20 424:5  
 424:10,13 425:4  
 426:15 427:9 428:2,6  
 428:15 429:3,21  
 432:6,11 437:21  
 438:21 441:21 442:17  
 443:9 444:9,14 446:8

- 446:20  
**definitional** 332:22  
**definitions** 108:16  
 250:16 304:7 305:1,2  
 305:17 309:16 314:8  
 315:16 316:1,2,3,10  
 316:21 317:1,4,5,8,18  
 318:20 319:3 320:1,2  
 320:4,13,18 321:3,7  
 321:12 323:16 324:9  
 324:16 325:11 326:1  
 326:5,11,12,19,21  
 327:7,12 331:1  
 365:16 378:1 391:13  
 394:14,16 410:4  
 429:7,10 430:6  
**definitively** 336:11  
**defrost** 20:12  
**degradation** 19:21  
 20:13 35:18 37:3,5,6  
 37:22 38:18  
**degrade** 36:9 38:2 88:6  
**degree** 37:16 170:14  
 232:13 280:8 297:10  
 297:12  
**degrees** 19:2 20:8  
 35:17  
**delegates** 86:11  
**deliberation** 425:22  
**deliver** 60:19 137:17  
 176:18 434:8  
**deliverable** 240:8  
**delivered** 40:20 451:2  
**deliveries** 63:8  
**demand** 33:19 109:20  
 211:5 389:3 390:1,3  
 392:1  
**demarcating** 355:11  
**democracy** 312:14  
**denominator** 240:7  
**Department** 1:1 2:2,4,9  
 4:18,21 13:11 14:4  
 32:10 65:18 77:19  
 80:1 81:14,14,15,16  
 114:11 144:7 179:19  
 180:12 204:12 205:8  
 218:7 223:9 230:14  
 231:7 234:15 246:1  
 251:22 252:14 256:12  
 265:18 266:10 287:4  
 294:16 319:5 350:14  
 366:7 385:12  
**Departments** 79:20  
**dependent** 48:7  
**depending** 33:7 49:1  
 53:19 57:9 126:6  
 157:10 245:5  
**depends** 31:10 47:7  
 58:21 235:6 327:10
- 423:8  
**deployment** 265:8  
**deposit** 80:9  
**depth** 49:1  
**describe** 78:8 83:2  
 120:16 149:2 158:20  
 160:16 289:7 297:18  
 301:7 344:2 356:18  
 429:22 434:13 447:4  
**described** 158:20 322:1  
 342:13 353:15 378:4  
 378:5 396:17  
**describes** 186:21 187:8  
**description** 356:11  
**descriptions** 95:18  
 100:2  
**descriptors** 342:6  
**desert** 53:15 86:20  
**designates** 359:2  
**designation** 305:4  
**desirable** 315:4  
**detail** 233:21 260:10  
 278:18,20,21 279:2  
 308:12 345:5  
**details** 57:18 69:9  
 285:19 304:10  
**determination** 134:4  
 361:16 400:22 414:5  
**determine** 33:20 46:15  
 361:14 383:3 395:5  
 422:11 453:9  
**determined** 219:19  
 358:11 400:10  
**determining** 183:19  
 406:5  
**deterrent** 228:17  
**detrimental** 151:4  
**develop** 195:21 272:10  
 274:3 275:1 277:17  
 285:20 286:17 322:16  
 413:7,14  
**developed** 30:18 87:15  
 98:16 163:9 343:1  
**developing** 52:14  
 237:19 271:7 426:14  
**development** 122:2  
 249:11 270:10 271:8  
 273:12,21 274:9,11  
 304:7 327:20 331:10  
**deviation** 241:11  
**devices** 4:13  
**dialogue** 303:19  
**Diamond** 158:5,7  
**dictate** 215:20  
**die** 19:16 300:9  
**died** 232:19  
**diesel** 27:10,15 50:16  
**difference** 15:8 29:19  
 31:19 54:1 70:20
- 88:10 91:5,6 150:5,7  
 268:3,7 290:2 389:22  
 390:20 391:16,22  
 392:5 393:14 395:10  
 397:4,6  
**differences** 149:3  
 160:14  
**different** 44:2 46:13,19  
 53:21 56:17 66:11  
 67:1 82:20 127:14  
 154:12 159:9 160:15  
 165:15 166:15 173:19  
 173:19 217:3 235:4  
 245:8,9 269:6 271:11  
 277:7 280:8 282:18  
 291:19 313:6 318:4  
 318:11 320:5,11  
 322:22 351:18 353:6  
 355:2 370:20 373:1  
 375:13,18 381:5  
 382:9 406:22 413:7,9  
 413:11 419:3,3  
 426:17 434:13 451:4  
**difficultly** 173:16  
**difficult** 11:6,15 19:14  
 73:16,22 80:14 81:1  
 110:15 141:16 189:12  
 191:5 200:14 201:2  
 228:22 260:13 407:1  
 439:18  
**digging** 298:6  
**direct** 3:2 5:17 60:14  
 72:5 107:6 110:4,11  
 136:17 176:3 198:1  
 224:19 247:15 258:16  
 296:17 310:15 333:14  
 337:22 341:7 345:2  
 373:18 379:13 385:10  
 394:20 397:19 398:21  
 409:11 416:9 428:10  
**direction** 99:21  
**directions** 370:20  
**directly** 123:2 127:22  
 208:21 255:7 372:2  
 435:4  
**disagree** 423:17  
**disappear** 387:22  
**disappearance** 386:8  
 386:16 388:9 389:4  
 389:20,21 390:4,14  
 391:12,16,21 392:5  
 393:2,20,22 397:2,6  
 398:1  
**disappears** 386:18  
**disaster** 290:5 292:8  
**discarded** 368:6 372:11  
**disclosed** 338:14,18  
 340:11  
**discuss** 67:1 362:8,10
- 422:2 426:3  
**discussed** 292:7 304:9  
 359:9 366:1 423:21  
 446:9  
**discussing** 432:6  
**discussion** 42:19 99:1  
 131:9 132:11 147:8  
 154:8 171:16 189:4  
 206:7 209:21 258:4  
 266:20 284:13 288:22  
 296:5 302:21 304:18  
 316:14 322:5 335:15  
 338:11 348:5 353:2  
 353:21 356:6 358:3,6  
 385:19 398:10 401:5  
 402:6 403:13 410:18  
 415:7 416:20 421:20  
 425:22 426:15 427:1  
 446:12,15  
**discussions** 122:4,11  
 133:6 303:16 351:10  
 351:16 352:20 365:21  
 389:5 392:16 406:5  
 407:11 412:18 415:11  
**disease** 261:10 273:12  
 370:9  
**disjointed** 302:13  
**dispersion** 242:8  
**distinct** 369:16  
**distribute** 428:22  
**distribution** 207:20  
 214:5 277:3  
**district** 48:13 49:22  
 167:4,5,6,6,6 183:10  
 183:11,12  
**diverse** 282:6 352:5  
 354:5,22  
**diversion** 49:16  
**diversity** 166:13 282:8  
 345:19,22 348:12,12  
 352:7 356:7 359:20  
 413:15  
**divide** 57:3  
**divided** 214:9,10 401:3  
 420:15  
**dividing** 364:13  
**doctor** 98:7 366:5  
**document** 13:18 60:6  
 65:12 72:1 77:12  
 106:20 114:6 136:10  
 143:22 175:17 180:5  
 197:20 205:1 224:12  
 230:22 247:7 252:8  
 258:8 266:4 368:19  
 378:4  
**documentation** 439:20  
**documented** 453:5  
**documents** 225:7  
 246:20 247:4 450:2



**dog** 94:15  
**Doggone** 302:1  
**doing** 41:20,22 51:20  
 56:4 81:11,17 110:1  
 121:1 154:11 155:8  
 184:8 244:19 283:21  
 293:7 306:12 406:11  
 445:20  
**dollar** 16:11 57:13  
 58:19 149:21 152:5  
 157:19  
**dollars** 149:7 151:20  
 157:6 167:21 365:1  
**domestic** 61:12,21  
 69:14 73:11 85:18  
 101:21,22 178:21,21  
 179:3,6 202:6,11  
 209:6,13 210:7 211:2  
 222:16 261:17 303:4  
**domestically** 209:3  
 308:21 416:2  
**Don** 56:9 68:12 87:10  
 126:19 149:19 162:16  
 214:14 238:21 256:14  
 278:6  
**DONALD** 2:20  
**dots** 371:6  
**double** 27:15 85:8  
 108:9  
**downhill** 50:17  
**Dr** 3:8 10:13 63:4 64:16  
 67:1 72:14 75:10  
 108:22 123:18 137:12  
 139:21 178:5 198:14  
 199:22 225:6 227:19  
 248:10 250:19 259:6  
 262:7 263:11 288:20  
 295:9 296:13,18  
 297:2,4,6,10,15,17,20  
 299:1,5,13,16,22  
 300:8,10,16,19 301:4  
 301:6,9,20 302:5,10  
 303:8,13 304:4,9,16  
 304:22 305:7,8,11,15  
 305:18 306:1,2,5,16  
 306:18 307:5,6,10,17  
 308:4,14 309:3,6,9,14  
 310:7,13,16,19 311:4  
 311:11,13,20 312:1,8  
 313:10,18,22 314:4,7  
 314:17,19 315:17  
 316:6,18 317:4,13  
 319:7,13,16,19  
 320:22 321:10,20  
 322:15 324:2,19  
 326:10 327:11 331:15  
 332:2,7 333:15,19,20  
 334:4,7,11,19 335:5  
 335:11,14,17,22

336:5,8,18 337:5,10  
 337:16 338:1,6,7,10  
 339:2,5,19 340:4,16  
 341:2,5,8,11,15,18  
 342:4,10,19 343:3,9  
 343:12,15 344:10  
 345:3,11,14,18 346:5  
 346:12,21 347:4,22  
 348:6,7,11,16,22  
 349:4,11,16,19  
 350:10,18 351:2,8,13  
 351:17 353:4 354:3  
 355:9,12,15 356:20  
 357:1,10 358:5  
 359:11,14,19 360:2  
 360:12 361:9,13,21  
 362:2,5,11,17 363:4,6  
 363:11,22 364:4,8,14  
 364:17,21 365:2,11  
 365:14,18 366:3,11  
 366:14,18 367:20  
 368:15,18 369:2,6,13  
 370:2,13,18 371:12  
 373:4,16 374:15,21  
 375:9,12 376:2,5,8,12  
 376:16,19 377:1,4,8  
 377:12,15 378:3,13  
 378:22 379:4,7,14,18  
 379:22 380:2,9,17  
 381:4,14,20 382:12  
 383:11,22 384:4,17  
 385:4,11,13,21  
 386:10,14,16 387:1  
 387:11,14,17,19,21  
 388:5,10,13,17  
 389:12,19,21 390:10  
 392:2,8,18,20 393:19  
 394:1,5,8,12,18  
 395:13 396:1,5,22  
 397:8,11,14,20 398:3  
 398:6,12,15,22 399:8  
 399:13 400:16,19,21  
 401:6,17,22 402:4,8  
 402:12,16,22 403:11  
 403:15,19 404:4,9,12  
 405:10,13,16 406:2  
 406:10 407:3,6,9,13  
 408:4,9 409:5,12,18  
 410:12 411:6 412:3  
 412:12 413:1,12  
 414:2,13,20 415:10  
 415:17,21 416:10,15  
 416:16,19,22 417:8  
 417:17 418:1,22  
 419:8,13,21 420:6,8  
 420:13,17 421:1,6,14  
 421:19 422:5,15,15  
 422:20 423:3,15,18  
 423:22 424:3,8,14,17  
 424:22 425:7 426:2,7  
 426:22 427:5,8,13,17  
 428:4,11,14,18,20  
 429:5,14,19 430:1,7  
 431:7,10,15,16 432:3  
 432:9,14 433:11,13  
 433:14,18 434:4,10  
 434:15 435:8,12,18  
 436:1,6,10,14,18,22  
 437:4,10,19 438:2,5,9  
 438:14,16,22 439:3  
 439:22 440:2,8,11,15  
 441:2,8,13,17 442:1  
 442:15 443:3,11  
 444:2,8,11,19 445:9  
 445:16,22 446:5,13  
 446:17 447:6,13,19  
 448:3,12,20 449:9,17  
 449:22 450:8 451:11  
 452:1,2,7,12 453:1,7  
 453:11,16,21 454:2  
 454:13  
**draft** 303:14 341:20  
 412:18  
**drafting** 124:12 303:11  
**dramatic** 31:19  
**dramatically** 11:10 42:1  
 56:7 73:18 200:16  
**draw** 83:15 132:22  
 181:3,21 212:21  
 213:3 332:2 341:9  
**drawing** 242:14  
**dried** 167:19,22  
**drip** 28:12 46:3  
**Dripping** 1:13  
**Drive** 297:7  
**driven** 422:8  
**driving** 15:22  
**drop** 195:22  
**drought** 27:3,3 50:3,8  
 91:13 272:22 273:8  
**droughts** 42:6  
**dry** 396:10  
**dryland** 89:10  
**due** 84:10 212:9 249:15  
 273:1  
**dumped** 430:17  
**dumping** 430:19  
**Dunes** 177:1,2  
**duplicate** 63:20  
**duplicity** 209:19  
**dust** 40:8 163:20  
**Dutch** 298:15  
**duties** 185:21 187:2  
 233:18 249:10 303:9  
 345:9  
**duty** 117:21 388:7  
**DWIGHT** 2:15  
**dynamically** 425:9

**dynamics** 425:9

---

**E**

---

**e** 120:15  
**E-D-U-A-R-D-O** 259:18  
**E-R-I-N** 248:22  
**earlier** 26:8 88:4 130:21  
 316:19 342:9 361:2  
 390:16 407:4 426:16  
**early** 9:7 272:14 283:12  
 326:20 403:3 404:14  
 404:16,22 430:9  
**earn** 447:5  
**earth** 104:2,3  
**easily** 154:16  
**east** 91:7 310:3 399:22  
 404:12,20 421:2,4,7  
**Eastern** 206:11  
**easy** 190:1 429:15  
**eat** 52:17  
**eating** 39:8  
**economic** 6:4 10:12  
 63:3 64:15 72:14 75:9  
 80:20 108:21 137:10  
 139:20 144:15 176:14  
 178:4 198:11 199:21  
 225:6 227:18 248:10  
 250:18 259:5 262:6  
 283:1 289:14  
**economics** 232:13  
 243:12  
**edible** 37:17 315:6  
**Eduardo** 3:7,22 258:13  
 259:17  
**educate** 30:22  
**educated** 172:14  
**educating** 85:19  
**education** 31:12 81:22  
 82:14,18 170:8  
 207:17,21  
**educational** 207:14  
 297:9  
**effect** 116:13 193:12  
 194:3,16 336:3 396:4  
 396:18,20  
**effected** 395:21  
**effective** 82:21  
**effectively** 265:6  
**effects** 272:17  
**efficiency** 228:19  
**efficient** 285:21 324:1,8  
**efficiently** 265:3  
**effort** 76:11 131:15  
 195:15 196:1 222:14  
 229:21 276:10 277:5  
 286:16  
**efforts** 64:3 76:7 112:22  
 251:6 264:17 302:8

- egg** 80:10 103:20  
**eight** 20:16 51:21 54:12  
 97:21 172:8,17  
 274:21  
**either** 23:7 92:19 141:1  
 174:1 254:2 268:12  
 319:12 349:21 403:4  
 452:17 453:8,13  
**EI** 8:21 9:2,4,13,16 46:8  
 61:1,3 73:2,3 86:5  
 91:14 108:7 226:20  
**elect** 86:11 301:16,18  
**elected** 112:1 300:4  
**electricity** 27:10  
**electronic** 163:11,12  
 164:9 371:18  
**element** 148:10 324:6  
 325:9  
**elements** 234:4 312:18  
**Elephant** 49:14  
**elevated** 430:20  
**elevation** 161:3  
**eligibility** 398:8  
**eligible** 44:6 111:22  
**eliminates** 163:19  
**elucidate** 359:16  
**email** 154:2  
**embracement** 82:13,15  
**emergency** 191:12  
**emerges** 80:8  
**emigrated** 250:11  
**employees** 121:10  
 340:10  
**empowerment** 234:14  
**encompass** 356:2  
**encourage** 13:3 64:11  
 113:12 143:8 179:12  
 193:12 203:2 230:5  
 251:13 265:11  
**encouraged** 10:8  
**encouraging** 262:8  
 318:8  
**encumbrances** 237:10  
**ended** 293:7  
**endorse** 353:7  
**ends** 34:7 409:1  
**enduring** 235:7  
**energy** 50:22 62:4  
**enforcement** 412:7  
**engage** 239:15  
**engaged** 133:12  
**English** 9:13  
**enhance** 82:10 238:15  
**ensure** 30:3 188:19  
 189:16 238:13 348:12  
 354:4 356:6 415:8  
 442:20  
**ensures** 354:10  
**ensuring** 335:1,6
- entail** 125:6 339:4  
**enter** 52:18 218:4  
 329:12  
**entered** 159:18 325:12  
 328:6 364:16 365:4  
 432:18  
**enterprises** 425:15  
**entire** 35:10 86:2  
 128:21 153:5 261:21  
 290:18 317:18 325:12  
**entities** 166:22 254:12  
 298:19 312:17 313:5  
 313:6 450:19  
**entitled** 194:22 198:11  
 253:13 454:18  
**entity** 182:6,7 307:8  
 313:3,9 357:5  
**entomological** 95:20  
**entomology** 297:14,16  
**environment** 222:21  
**equal** 349:9 353:17  
 358:1 362:15  
**equally** 122:18 192:14  
**equation** 34:9  
**equipment** 12:22  
 112:19 200:18 382:15  
 418:6 440:18,19  
**equitable** 134:2  
**equivalent** 91:16  
 391:20  
**era** 164:9  
**Erin** 3:7,21 227:4  
 247:12 248:22 251:19  
**erratic** 16:4 40:5  
**especially** 10:11 48:2  
 68:21 83:19 85:13  
 91:13 109:18 122:6  
 153:6 165:11 189:17  
 191:2 242:12 244:14  
 285:10 452:4  
**ESQ** 2:3,8,14,15,15  
**essential** 186:20  
 187:13,16 188:5,6  
 192:9 194:15 219:17  
 398:7 415:12  
**essentially** 125:18  
 172:7 262:22 395:19  
**establish** 54:13 129:18  
 188:14 191:2 311:1  
 325:18  
**established** 28:11 46:4  
 99:16 179:1 192:17  
 226:11,17 302:9  
 409:16 410:11  
**establishing** 51:17  
 54:22 226:14 245:13  
 398:7  
**establishment** 97:4  
**estate** 53:13
- estimate** 33:7 97:11  
 131:15 218:16 219:4  
 388:9  
**estimated** 131:17,20  
 219:7 226:7  
**estimates** 15:6,8,17  
 16:6 389:10 390:14  
**estimation** 220:2  
**evaluate** 285:2  
**evened** 89:5,14  
**evenly** 214:9,11  
**event** 191:11,15 336:2  
**eventually** 113:5  
**everybody** 15:11 19:13  
 47:11 94:13 98:20  
 153:1 154:6,6,13  
 155:9 167:15 169:1  
 275:17 289:16,21  
 293:8 361:3  
**evidence** 13:21 65:15  
 77:15 83:19 114:9  
 144:3 180:8 205:4  
 231:3 252:11 266:7  
 319:10 328:6 374:16  
**evidenced** 399:15  
**exact** 163:16 307:20  
 320:14  
**exactly** 116:5 118:1  
 120:6 153:3 303:20  
 308:1 323:12 332:19  
 420:19  
**examination** 14:5 18:9  
 32:16 55:12 56:8  
 65:20 68:11 70:11  
 78:1 83:12 87:9 90:9  
 95:7 114:15 126:18  
 128:19 132:16 136:17  
 144:11 145:2 148:17  
 149:18 153:14 160:8  
 161:7 162:15 164:16  
 166:8 180:13 205:10  
 212:19 214:13 218:11  
 231:8 238:20 240:15  
 252:16 256:13 266:12  
 278:5 281:5 287:6  
 296:17 306:15 310:15  
 314:16 333:14 335:20  
 337:22 339:1,18  
 340:22 341:7 342:3  
 343:7 345:2 350:16  
 361:19 362:13 363:2  
 367:8 369:4 373:13  
 377:19 379:13 380:20  
 384:2 385:10 389:17  
 393:11 397:19 398:21  
 399:5 401:21 404:2  
 406:1 408:20 409:11  
 412:10 414:4 415:16  
 416:9 424:6 426:10
- 427:16 428:10 444:17  
 449:16 451:10  
**example** 15:5 29:11  
 69:15 81:7 87:13,19  
 100:4 124:10,16  
 127:9 156:22 174:11  
 188:15 211:19 216:18  
 217:3 254:19 268:15  
 272:11 274:12 276:11  
 278:16 328:6 340:7  
 344:11 349:22 352:21  
 395:8 400:4 401:14  
 412:21 413:8,10  
 439:8 445:13  
**examples** 68:17 339:3  
**exceed** 353:20 363:21  
 364:2  
**exceeds** 353:18 362:15  
 362:16  
**excellent** 174:11 372:7  
**exception** 241:21  
 441:10 443:20,22  
 444:4,21  
**exceptions** 400:3 430:8  
 444:22 446:11,16  
 447:9  
**exchange** 435:15  
**exchanged** 204:15  
**Excited** 31:16  
**exclude** 418:11 426:19  
 427:2  
**excluding** 151:18 427:1  
**exclusive** 277:8,10  
**exclusively** 368:19  
**Excuse** 42:18 353:10  
**excused** 59:11,12  
 71:14,16 105:2,5  
 134:22 135:3 175:11  
 175:13 196:15,18  
 223:15,17 246:10,13  
 257:17,20 294:22  
 295:5  
**executive** 6:6 72:13  
 137:9 148:21 198:11  
 248:9 259:4,20  
**exempt** 380:8 448:18  
 448:19 449:1  
**exempted** 447:16,19,21  
**exempting** 443:9  
**exemption** 447:15,20  
 448:1  
**exhibit** 5:20 6:4 13:9,16  
 13:20 16:21 24:18  
 32:18 35:3 36:2 43:1  
 43:3,20 60:7 64:17  
 65:2,10,14 72:2,7,12  
 77:2,9,14 95:15 102:8  
 106:21 109:6 113:16  
 114:3,8 117:4,9,10,11

117:15 136:11 137:2  
 137:12 143:12,19  
 144:2 175:18 176:9  
 176:15 178:10 179:16  
 180:2,7 184:10  
 197:21 198:4,10  
 203:6 204:20 205:3  
 218:13 224:13 225:2  
 225:3 230:11,19  
 231:2 233:11 247:8  
 247:20 248:7 251:19  
 252:5,10 258:9,20  
 259:4 265:15 266:1,6  
 267:13 281:10,13  
 288:21 296:20 300:1  
 304:14,18 305:5  
 307:22 315:15,18  
 316:4 318:11 319:9  
 328:6 329:15 331:2  
 336:13 339:21 349:2  
 363:17 364:16 365:5  
 387:2,11 396:17  
 398:2  
**exhibits** 3:11 246:15,16  
**exist** 80:6 344:19  
 434:14  
**existence** 160:1  
**existing** 16:17 82:9  
 104:8 138:19,20  
 329:20  
**exists** 82:11 104:4  
**expand** 124:16  
**expanding** 202:3  
**expansion** 273:21  
**expect** 108:9 197:7  
**expectation** 265:2  
 283:21  
**expectations** 211:1  
**expected** 166:5 332:1  
 420:3 448:13  
**expense** 23:11 186:2  
 263:6,9 418:4  
**expenses** 117:20 118:3  
 119:17 185:16,20  
 233:17  
**expensive** 31:4 48:9,11  
 55:1 382:15  
**experience** 33:19 37:9  
 37:11 40:16 56:1  
 116:20 119:8 129:22  
 145:6,9,12 166:11  
 172:6 179:5 181:3,8  
 186:14 187:4 188:12  
 206:2 213:14 220:19  
 242:14 249:15 263:6  
 284:22 287:10 291:16  
 292:22 301:7 305:14  
 314:3 328:5 341:14  
 366:17 379:21 386:13

402:15 428:17  
**experienced** 40:1 59:1  
 172:15 240:20  
**experiences** 228:11  
 240:21  
**experimentation**  
 154:11  
**expert** 36:22 45:5 53:13  
 138:13 160:19 238:1  
 291:14  
**expertise** 83:15 172:10  
 172:22 174:3,14  
 212:21 226:15 283:20  
**experts** 121:13 265:6  
**explain** 18:18 45:9  
 56:20 92:18 155:19  
 190:8 324:2,4 334:17  
 347:3 371:13 389:19  
 441:20 442:12  
**explained** 326:5  
**explaining** 21:8  
**explanation** 268:3  
 328:10 397:21  
**explore** 153:17 266:17  
**exponentially** 27:5  
**export** 101:14 159:13  
 446:2  
**exported** 431:20  
**exporter** 308:17 343:17  
**exporting** 443:5 444:4  
 445:2,6  
**expose** 373:21  
**exposed** 370:8  
**exposing** 376:1,2  
**expound** 241:3  
**express** 41:15  
**expressed** 338:12  
**extend** 19:9  
**extended** 19:4  
**extensive** 56:10 225:18  
 270:4 370:5 425:22  
**extensively** 304:10  
 352:9 380:15 450:13  
**extent** 238:12 281:21  
 291:1 299:3 325:14  
 325:22 340:9 449:11  
**external** 42:13 292:20  
**extra** 447:5  
**extrapolate** 124:3  
**extreme** 27:3 28:14  
 228:11,14 240:20  
 422:13  
**extremely** 52:17 73:16  
 119:14 121:5 200:14  
 308:15 309:15 401:17  
 439:17  
**eye** 79:21  
**eyes** 371:18

## F

**fabulous** 151:2,2  
**face** 27:1 91:1 151:6  
 222:12 261:21 328:18  
 328:21  
**facilitate** 212:11 304:17  
**facilitated** 450:11  
**facilities** 82:9 169:2  
 372:2 393:4 436:13  
**facility** 236:19  
**fact** 17:9 98:19 101:1  
 113:1 131:1 157:12  
 165:21 171:20 215:4  
 302:12 332:2 347:13  
 360:6 361:15 367:22  
 369:17 375:14 389:5  
 393:2 399:15 409:5  
 411:13,17 414:3  
 417:9 421:19 440:9  
 442:19 450:22 453:13  
**factored** 33:18  
**factors** 11:15 42:14  
 53:21 214:22 215:20  
 219:5,13  
**Fahrenheit** 280:9  
**fail** 93:14  
**failures** 170:21  
**fair** 11:7 41:9 42:7,11  
 55:3 74:1 110:16  
 112:2 116:20 124:2  
 134:2 141:17 166:14  
 166:21 182:18 201:2  
 260:14 270:6 312:12  
 312:20 332:15,16  
 335:2 347:12 401:11  
 406:13 421:22 423:14  
 423:17  
**fairer** 421:4  
**fairly** 37:20 120:3 270:4  
 270:11 283:19 352:11  
 417:17  
**fairness** 235:5 422:17  
**fall** 22:8 90:15,18  
 195:22 359:1 384:14  
 390:18 404:16 430:9  
**falling** 261:8 279:5  
**falls** 49:15 80:10 91:12  
**familiar** 7:19 21:3 23:19  
 24:11 32:20 35:3  
 79:11 99:4 100:10  
 117:15 133:2,18  
 146:18 147:17 157:11  
 185:7 220:9 221:7  
 233:19 263:10 288:18  
 289:1 383:11,12  
 431:22  
**familiarity** 372:21  
**family** 7:4,17 9:11,17

71:5,6 177:4 178:20  
 199:1 226:1,12 250:9  
 303:2  
**family's** 205:18 297:19  
**far** 79:4,22 80:3 81:9  
 85:18 88:14 89:22  
 90:1,4 91:20 93:8  
 96:6 97:18 144:13  
 145:5 146:17 154:15  
 155:2 157:2,6 160:16  
 172:20 267:4 271:4  
 274:14 286:13 287:10  
 287:15 321:5 347:10  
 389:7 411:14 422:9  
 446:9  
**farm** 1:13 6:20 7:3,9  
 8:11 9:8,9 10:18,21  
 11:8 12:1,1 13:1 27:1  
 37:11,12,14 50:19  
 52:7,9 53:2,4,19  
 54:14,19 61:2,17  
 62:20,22 73:2 74:3,6  
 75:4,6,16,19 92:17  
 93:4 96:19 98:18  
 107:22 108:11 109:12  
 109:15 110:20 111:19  
 116:11 140:9,12  
 141:19,22 142:18,20  
 177:5,12,19 178:15  
 178:18 199:1,7 200:6  
 200:9,15 201:6,7  
 215:9 228:3 229:3,4  
 232:15,19 245:11  
 249:10 253:2 255:21  
 260:2,6,17 264:13  
 292:9 297:21 361:7  
 381:21 398:5 399:11  
 400:9,13 401:1,15  
 402:1 407:17 419:8  
 430:22  
**farmer** 12:21 42:12  
 47:12,14 54:7 55:3  
 62:19 70:2 75:2,6  
 93:13 94:12 104:5  
 111:17 142:16,19  
 264:11 297:21 353:19  
 393:6 399:17 420:21  
**farmers** 14:15 86:10  
 89:8,9 94:9 100:22  
 140:15 418:12  
**farming** 46:14 86:19  
 87:11 115:17 141:21  
 205:17 215:18 216:18  
 232:13 238:6 243:9  
 244:2,3,4,5,7 250:6,9  
 251:2  
**farmland** 51:16 84:12  
**farms** 6:18,20 52:6,6  
 73:17 74:5 107:19,21

- 108:3,12,13 116:16  
117:1 126:21 132:20  
169:5 198:22 199:1  
199:10 242:22 259:20  
259:21 260:1,16  
262:15,17 264:18  
312:18  
**farther** 90:13 368:12  
**fashion** 187:20  
**fast** 159:17  
**faster** 324:1  
**father** 7:5 52:5,20 138:7  
159:14 232:18  
**favor** 81:5 223:2 358:15  
**favorable** 82:12 222:21  
**favorably** 184:7  
**favorite** 15:17 238:6  
**fax** 2:7,12,18  
**fear** 165:10 166:2  
**federal** 1:19 6:5 10:3,6  
10:18,21 57:17 61:7,8  
61:9 62:7 63:13 64:10  
72:9,15 73:8 75:16,19  
76:12,19 81:10,19  
82:10 85:12 92:16  
93:3,10 101:21  
102:20 103:10 108:18  
109:11,14,19 113:5  
113:11 128:4 136:22  
137:1,11 139:17  
140:8,11,19 141:3,7  
141:10 143:2,4,7  
145:13 160:1 164:21  
165:12 176:10 177:21  
178:14,17,22 179:6,9  
179:11 181:15 184:11  
184:14 198:6,12  
199:16,18 200:5,8  
202:5,14,17,20 203:1  
209:11 210:11 211:1  
212:7,10 217:12  
222:10,19 227:15  
228:2 229:19,22  
230:4 233:11 248:1  
251:2,7,12 258:21  
260:8 261:6 262:14  
262:17 264:17 265:10  
276:20 291:9 292:1  
300:2 302:8 304:1,20  
311:1 315:12 317:19  
318:12 319:22 325:9  
331:1 334:13 335:13  
338:15 345:10 385:14  
385:18 386:19 398:14  
409:15  
**federal/state** 292:5  
336:9 337:2,12  
**fee** 380:13 381:14  
384:10,15,17,19  
385:1 440:13 442:8  
443:5  
**feed** 298:8,9,10  
**feedback** 124:11  
173:14 352:20 353:3  
**feel** 10:5 24:1 35:20  
108:17 139:16 161:20  
177:20 183:2 184:6  
199:17 227:14 228:22  
264:20 284:17 289:22  
305:6 313:7,7 350:4  
362:9  
**feeling** 33:10 276:5  
**feelings** 96:4  
**feels** 317:8  
**feet** 48:14 49:5 50:9  
**felt** 35:17 39:12 125:21  
209:17 312:11 325:11  
351:21 352:11 356:2  
409:21 422:13,16  
448:22  
**fertilize** 200:18  
**fertilizer** 75:3 111:19  
142:18 264:12  
**fewer** 347:19  
**fiduciary** 237:4  
**field** 89:5,14 90:6  
173:15 450:9  
**fields** 49:8,12 91:9  
250:12  
**fifth** 106:6  
**Fifty-two** 118:5,6  
**figure** 25:4 62:2 170:9  
**figured** 38:2  
**filed** 315:18  
**filing** 318:21  
**fill** 15:15 101:11  
**filling** 47:9  
**filtration** 28:14  
**final** 16:6 261:19  
**finally** 62:1 284:3  
352:14  
**finance** 191:14 235:1  
**financial** 116:18 119:8  
232:17 233:9  
**financially** 229:22  
**find** 24:16 37:15 184:16  
234:4 244:20 245:10  
272:7 293:22 303:20  
382:3 451:5  
**finders** 159:21  
**finding** 271:8 279:15  
**fine** 68:7 197:10 242:11  
307:6 362:15  
**finish** 26:14 317:1  
408:11  
**finished** 333:11  
**finite** 58:6  
**firm** 303:3  
**first** 5:11 17:15 22:1  
37:20 40:11,13 43:7  
44:9 61:11 76:2 82:16  
92:1,9 107:12 109:20  
112:4 115:2 129:21  
135:6 136:21 144:14  
156:12 159:12 171:21  
172:3 191:15 198:3  
207:14 210:17 213:15  
234:7 254:9 255:5  
264:19 270:21 278:15  
281:17 286:15 287:9  
295:15 298:14 304:11  
310:1,3 318:17 347:4  
373:17 375:21 392:20  
407:13 416:16 429:16  
441:21 442:17  
**fiscal** 32:20 34:6 44:5  
399:1 402:10,18  
403:10 406:4 409:1,3  
**fit** 286:3 361:8 372:16  
417:7 451:14  
**fits** 402:22 403:5,6  
**five** 8:9,19 17:15 25:16  
46:13 49:5 53:4 79:3  
79:5 80:2 85:2 86:14  
138:18 168:5 195:7  
195:14 284:16,22  
295:13 296:4 298:19  
313:6,8 391:3  
**flavorful** 37:19  
**flexibility** 342:22  
403:17 425:16  
**flip** 164:1  
**flood** 9:5 28:7 46:1,4,6  
**flooded** 9:7  
**FLORIDA** 1:6  
**floundered** 388:20  
**flow** 50:17,19 322:4  
**flowers** 269:5  
**fluctuation** 23:15 221:4  
**FMO** 140:6,14 225:3  
324:6  
**focus** 76:1 95:17  
101:16 108:1 202:3  
209:5,13,15 233:15  
327:12 438:18 439:1  
442:22 446:21 447:2  
**focused** 92:5 101:22  
174:11 202:10,11  
207:17 234:9 238:11  
260:19,22 276:13  
**focuses** 63:16 76:4  
206:22  
**focusing** 452:5  
**foliage** 47:3  
**folks** 146:11 169:13  
212:8 272:9  
**follow** 51:6 56:11 58:18  
70:9 87:1 120:12  
129:2 132:14 165:9  
188:14 217:16 240:18  
353:2 361:20 373:4  
406:20  
**follow-up** 32:14 55:11  
70:7 95:9 128:17  
132:18 218:14 223:8  
339:20 454:4  
**followed** 191:17  
**following** 14:10 129:12  
159:9 185:11 397:7  
415:19  
**follows** 320:18  
**food** 35:20 36:21 69:2  
88:5 127:14 146:15  
240:8  
**foot** 48:19 49:4 50:10  
344:17  
**forecasts** 123:19  
**foresee** 68:4 371:7  
**forever** 104:4  
**forewarning** 333:9  
**forget** 4:16  
**forgive** 393:5  
**forgot** 4:14  
**forgotten** 170:4  
**form** 183:22 316:16  
317:13 318:2,14  
332:7  
**formal** 193:20  
**formation** 241:8  
**formats** 192:6  
**formed** 298:15,19  
**former** 7:22  
**formerly** 206:3  
**forms** 453:14  
**formulated** 326:5 432:7  
**formulating** 171:7,10  
**formulation** 415:6  
**forth** 131:7 161:20  
345:10  
**forward** 59:15 62:3  
73:10 93:11 107:15  
159:17 227:7 248:18  
352:18 433:9 434:3  
**forwarded** 184:6  
338:15 393:15  
**found** 12:4 19:10 84:17  
147:17 165:17 297:22  
307:9 321:22  
**foundation** 198:9  
258:18 324:18 330:8  
**foundational** 136:20  
**four** 7:2 8:19 12:11  
16:12 17:15 22:21,22  
23:1 26:15 31:8 42:3  
42:4 46:13 48:16  
52:14 61:9 62:10

74:14 105:14 111:7  
 138:4 142:8 159:18  
 159:21 167:3,8 172:5  
 201:15 208:4,6,8  
 210:22 229:12 241:7  
 242:3 260:7 264:1,20  
 278:12 279:22 302:20  
**fourth** 106:5  
**frankly** 337:16 343:15  
 346:6 351:20 358:8  
 359:14 378:3 409:19  
 411:6 422:6 423:3  
**free** 79:4 91:12 172:18  
 237:9 288:22 289:11  
 305:6 362:9  
**freeze** 20:13 28:22,22  
**freezer** 19:2,8,19 20:8,9  
 20:16 29:16 88:16  
**freezing** 37:4  
**freight** 23:9  
**fresh** 31:14,17 88:7,10  
 88:12,18 217:9 238:7  
**front** 41:1 60:1 117:4,5  
 178:10 225:1  
**fronts** 214:8  
**frozen** 340:8  
**frugal** 174:18  
**fruit** 232:10 238:7  
 267:10  
**frustration** 328:22  
**FSA** 402:6 418:18 419:5  
**fuel** 27:13,18,18 50:16  
**fulfill** 68:5  
**fulfilling** 68:4  
**full** 26:10 50:5 51:21  
 52:1 190:14,15  
 367:10 410:2  
**fully** 13:2 64:9 76:18  
 113:10 143:6 179:10  
 202:22 230:3 251:11  
 265:9 403:3 418:21  
**function** 152:20,21  
 188:1 190:9 243:18  
 243:18 390:11,12  
 436:4,7 437:9,11  
 445:20  
**functional** 193:2  
**functioning** 193:17  
 284:18  
**functions** 209:19  
**fund** 277:21  
**funded** 128:4 181:9  
**funding** 82:10 182:19  
 202:4,5 210:3 211:20  
 212:3,13 275:6  
 277:18,20 291:5  
**funds** 119:16 120:22  
 182:15 208:2 212:15  
 265:2,8 277:15,16

**fungicides** 91:10  
**fungus** 272:16  
**funnel** 212:8  
**funny** 293:22  
**further** 10:20 32:7  
 47:17 55:7 58:16  
 63:12 70:3 71:8 75:18  
 83:11 90:8 94:22 96:8  
 104:16 109:14 112:7  
 112:16 128:8,10  
 132:13 134:16 140:10  
 148:16 152:8 153:13  
 153:17 164:15 178:16  
 185:1 196:4 200:7  
 223:7 228:20 236:2  
 238:19 240:18 266:17  
 269:20 278:4 294:14  
 294:17 310:6 314:13  
 337:21 338:20 340:2  
 340:18 341:21 344:22  
 350:11 360:21 366:6  
 367:4 370:1 373:10  
 373:17 377:17 380:18  
 382:19 385:6 389:13  
 394:10 397:15 398:16  
 401:20 402:5 403:20  
 405:19 409:8 424:4  
 426:9 428:5 429:2  
 444:13 448:16  
**furthest** 325:14  
**future** 11:8 12:2 15:3  
 61:22 73:16 74:7  
 87:14 96:11 97:14  
 110:17,22 140:5  
 142:1 160:2 162:20  
 200:14 201:4,8 202:7  
 215:6 220:8 226:17  
 228:9 229:5 262:2,4  
 280:1 342:22 360:18  
 371:9 372:5 403:18  
 410:1 425:3 426:13  
 436:20  
**futures** 329:3

---

**G**

---

**G** 1:14,18 107:17  
**G-L-O-V-E-R** 198:20  
**G.L** 3:4,16 107:3,16  
 113:17  
**game** 294:10  
**gaps** 15:16  
**gasoline** 27:15  
**gather** 15:11 324:3  
**gathering** 398:8  
**gears** 26:18 121:18  
**geeks** 174:9 361:4  
**geeky** 361:4  
**general** 2:4,9 37:1,3  
 66:17 167:10 210:10

238:2 249:10 293:20  
 327:1 330:20 345:8  
 345:15 353:6 374:11  
 375:22 377:11 407:22  
 408:10 412:8 441:20  
**generally** 86:1 183:16  
 185:8,22 225:20  
 279:7 305:9,19  
 311:19 313:20 334:6  
 341:10,13 350:2  
 366:13 370:3 376:6,9  
 379:16 386:8 399:22  
 403:1 408:2 416:4,17  
**generate** 275:9  
**generation** 155:9  
 156:12,13 297:20  
**generations** 205:21  
**generic** 141:2,8 211:18  
 310:20  
**genetically** 287:11  
**genetics** 270:17  
**gentleman** 105:15  
**geographic** 183:10  
 192:19 235:3 240:8  
 242:8 345:22  
**geographically** 214:8  
**Georgia** 1:6 2:17 81:15  
 208:11 211:18,22  
 272:3 297:6,11,12  
 298:13 301:11,15  
 313:4 337:12 362:20  
 393:7 421:8,8,13  
 422:6,8,9,15 439:10  
 453:19  
**getting** 34:13 46:2  
 48:16 50:15 94:4,14  
 97:19 152:4 157:18  
 162:9 216:3 247:4  
 268:14 272:5 367:10  
 380:13 426:1 437:12  
 443:14  
**gift** 299:10  
**gig** 151:2  
**gingerly** 368:7  
**gist** 47:16  
**give** 4:22 57:17 83:22  
 93:17,18 107:12  
 118:16 131:2,16  
 152:13 169:21 172:17  
 173:9,10,14 236:10  
 237:2 253:14 269:6  
 297:8 302:17 339:3  
 358:19 389:11 407:18  
 409:2 430:3 437:16  
 439:8 443:16 453:18  
**given** 10:7,9 17:8 57:16  
 73:22 108:19 110:15  
 119:7,9 124:21 125:7  
 126:9 127:2 139:18

141:16 153:4 177:22  
 199:19 201:1 210:21  
 213:13 227:16 233:8  
 251:9 253:8 259:5  
 260:13 264:22 267:22  
 313:8,8 390:4,6 437:3  
 442:16 448:4  
**gives** 153:1 236:21  
 269:22 342:21 354:22  
**giving** 7:16 172:21  
**glad** 13:5 52:19 143:10  
 179:14 230:7 251:15  
 265:13 321:8 325:19  
 331:22  
**global** 210:1  
**globalization** 243:21  
**Glover** 3:6,19 197:11  
 197:13,16 198:2,7,15  
 198:19,20,21 199:1  
 199:10 203:8,11,15  
 203:21 204:5,10  
 205:11,15,18,22  
 206:5,9,19 207:2,7,12  
 208:3,9,15,20 209:7  
 209:10,22 210:13,20  
 211:4,15 212:12  
 213:6,10,12,19,22  
 214:7,16,20 215:2,7  
 215:19 216:20 217:19  
 217:21 218:2,13,19  
 218:20 219:7,12,17  
 219:20 220:3,10,13  
 220:17,21 221:2,5,6  
 221:10,17 222:3  
 223:4,6,12,14 302:4,5  
**go** 6:13 8:22 11:9 16:14  
 26:18 37:14 41:2  
 42:21 46:10 47:17  
 58:10 69:8 73:18  
 80:11 84:12 86:12  
 96:8,11 104:7 106:13  
 115:21 118:19 120:14  
 121:16 125:3 144:12  
 150:2 153:2 166:10  
 168:2 171:11 175:21  
 185:1,17 189:17  
 197:7 200:15 211:19  
 216:6 223:1 225:13  
 248:18 258:11,12  
 263:7 272:21 277:22  
 280:21 285:6 286:7  
 292:15 295:2 314:21  
 314:22 315:11 317:11  
 321:16 324:19 326:19  
 329:13,22 332:8  
 357:3 361:10,11  
 370:4,19 379:8 382:1  
 391:8 392:17 396:9  
 402:10 426:13,14

430:5,16 433:20  
 434:12 439:6 454:6  
**goal** 124:7 139:4 159:6  
 159:8  
**goals** 101:8 202:7,9  
 230:2  
**gods** 172:16  
**goes** 46:17 88:15 97:7  
 129:20 154:15 157:2  
 193:13 195:10 241:20  
 244:18 250:9 283:16  
 291:15 293:19 308:6  
 321:1 326:6 337:11  
 353:18 373:8 380:10  
 384:18 404:14 417:8  
 433:18 438:10  
**going** 5:2,3 21:12 23:6  
 25:4 26:15,18 30:8  
 32:17 33:5,13 37:11  
 42:1,22 43:11 51:22  
 52:2,4,21 54:14,19,21  
 58:1,10 59:2 61:21  
 67:21 69:14,18,19  
 85:8 86:5 93:9,12  
 94:5,6,18 97:18 102:8  
 103:8 118:19 125:11  
 126:5 129:3 131:14  
 135:13 145:19 154:22  
 158:7,15 164:8  
 165:10 166:1 168:13  
 169:21 174:16 176:8  
 189:17 211:20,21  
 213:8 216:7 218:13  
 233:3 234:11 235:15  
 246:22 253:16 258:5  
 273:15 278:8 279:6  
 282:21 286:13,16  
 303:18 304:18 306:12  
 320:16,16 321:17  
 322:4,21 323:20  
 325:20 328:20,21  
 332:8 337:17 343:18  
 345:5 356:20 359:15  
 361:16 387:1 393:17  
 407:20 410:19 416:13  
 425:9 433:20 437:16  
 440:6 442:9 454:12  
**gold** 104:1,2,2 226:20  
 226:22 227:5 249:3,6  
 249:18 250:13 256:17  
**golden** 31:19  
**Gonzalez** 60:2,4 71:14  
 105:3 134:22 175:11  
 196:16 223:15 246:11  
 257:18 295:3  
**good** 6:14 14:6,7,19  
 15:22 17:16 18:11,12  
 20:11,12,17 29:8 30:7  
 30:11,11,14 33:9

35:21 41:18,19 48:14  
 49:6 50:1 60:15,16  
 65:22 66:1 68:12,14  
 78:2 81:18 82:1 83:21  
 85:18 89:22 97:17  
 98:1,6 106:12 107:7,8  
 114:16,18 120:19  
 126:19 145:18 149:20  
 162:16 164:4,12  
 173:1 176:5 180:15  
 180:16 214:14 216:3  
 216:8 217:9 224:20  
 232:14 236:17 238:21  
 241:18,19 247:16,18  
 247:19 248:21 252:18  
 261:16 270:11 271:2  
 275:22 279:16 285:20  
 290:17 337:6 339:9  
 349:22 372:6 375:2  
 392:7 404:18 406:19  
 433:7 439:8  
**good-looking** 216:22  
**goodness** 411:18  
**google** 147:2  
**gosh** 53:16 98:8 166:1  
**gotten** 53:6 94:11  
 154:16  
**government** 187:15  
 210:5  
**governments** 291:9  
 292:5  
**grade** 12:3 61:20 69:13  
 70:16 74:7 87:12 89:1  
 89:4 90:4 110:22  
 142:1 164:11 181:12  
 181:22 201:8 216:14  
 216:17 229:5 262:4  
 280:2 308:9 315:7  
 395:21 396:18 409:14  
 409:16,22 411:10  
 412:13,15 414:7  
**grade/size/quality**  
 87:14,20  
**graded** 371:15 431:1  
**grades** 89:6 162:20  
 410:10 413:7 414:18  
 415:6  
**grading** 90:1,5 99:2,5  
 99:11 100:3,15,21  
 101:2 163:8 164:7  
**graduated** 232:11  
**graft** 268:13  
**grain** 85:10  
**gram** 343:19  
**Grande** 86:6  
**grandfather** 8:13,22  
 89:6,12 232:20  
 297:22 298:5  
**grandparents** 8:5,13

250:10  
**grasp** 389:3  
**gravity** 50:18  
**gray** 157:18  
**great** 70:20 85:15 89:20  
 145:18 150:8 152:1  
 162:10 232:20 237:12  
 238:10 250:10 260:20  
 281:17 297:21 298:5  
 361:6 451:16  
**greatly** 10:22 11:22  
 63:13 74:4 75:19  
 109:16 110:19 140:12  
 141:21 178:18 200:9  
 201:6 223:2 229:3  
 251:3 260:17 262:17  
 292:11  
**grew** 9:6 232:7 298:12  
**Grill** 7:18  
**grocery** 31:1 36:18,20  
 37:9 38:5  
**gross** 139:10 177:16  
 199:11 250:14  
**ground** 80:8,11 268:20  
 269:2  
**groundwater** 48:3  
**group** 35:9 66:7 67:17  
 146:15 151:14 156:10  
 156:18 158:17 159:5  
 169:8 174:15 187:20  
 190:1 194:8 232:3  
 249:9 251:18 274:19  
 276:8 287:22 290:20  
 328:5 329:12 355:1  
 375:4 376:7 403:8  
**groups** 61:13 213:2  
 291:2,3,3,4 431:17  
 435:9 439:11,12  
**grove** 231:21 259:20,21  
 264:18  
**grow** 7:3 49:6 51:7  
 52:11,15 73:11 79:17  
 108:11 177:12 199:8  
 260:2 270:19 274:4  
 298:17,20 299:6  
 418:7 425:13  
**grower** 7:11 9:22 12:13  
 12:15,16 15:14,18  
 16:8,9 26:19,21 42:4  
 44:13,15 56:5 61:4  
 62:12,14,14 63:16  
 73:5 74:17,18,19 76:2  
 94:15 95:12,22  
 102:10 104:12 108:14  
 111:5,9,11,12 123:4  
 123:22 124:4,6,20  
 133:12,14 134:8,10  
 138:3,4 139:13  
 141:12,13 142:11,12

142:13 143:4 145:6  
 166:15,22 180:21  
 181:1 199:13 201:18  
 201:19,20 227:13  
 228:12 229:15,16  
 234:14 240:21 253:1  
 253:4,5,6 254:2,8,9  
 254:11,13,21 255:5,9  
 260:6 264:4,5,6 291:3  
 299:2 300:3,4,6,8,9,9  
 300:13,18 301:13,13  
 301:16 303:19 313:5  
 348:15 349:21 353:11  
 353:12,12 354:10,11  
 354:19,20 355:6  
 356:7 358:8 359:6  
 360:16 361:5,10,15  
 361:15,22 362:19  
 363:19,20 364:11  
 365:17,18,22 368:20  
 374:3,12 375:7  
 376:18 380:10 381:7  
 382:7 383:6 384:11  
 384:15 385:2 390:8  
 390:12,19 391:14,17  
 394:14,20 395:3  
 412:6 416:12,17  
 417:13 418:6 419:16  
 419:17 422:19 424:8  
 425:6 427:9 428:12  
 431:6 432:15 434:7  
 436:2,9,12 437:1,14  
 439:6 440:22 441:4  
 442:3,6,7,8,18,21  
 443:6,12,17,18  
 445:17 446:2,3,9,21  
 446:22 447:4,10,15  
 447:16 448:3,9 449:3  
 449:6,8  
**grower's** 231:16  
**grower/handler** 255:6  
**growers** 11:16 12:9  
 18:1,5 22:18 44:3,5  
 44:21 56:6 62:4,8  
 63:17 66:10 74:12  
 75:22 76:3,14 78:7,13  
 78:19 86:12,13,16  
 91:2 92:2,5 95:10  
 101:5,17 102:7,15  
 103:8,11 122:18  
 123:1,7,15 127:4  
 130:11,17 132:3  
 138:2 142:6 151:18  
 151:19 153:9 168:9  
 169:8 190:12 201:13  
 202:2,9,13 203:10,12  
 203:14,22 204:1,3,8  
 206:3,4,10,11,12,17  
 206:21 208:1,19,21

209:14 210:10,18  
 211:9,19 212:2  
 213:14 214:10 218:22  
 221:14,15 222:9,21  
 223:1,5 229:10 233:5  
 242:9,10 243:6  
 262:21 263:21 265:7  
 271:6 276:13 277:19  
 282:2,16 286:15  
 287:20,22,22 288:16  
 289:4,10,11 301:10  
 301:17 302:18 303:1  
 303:4 307:1 309:2,5  
 310:4 312:15,21  
 335:16 338:11 345:21  
 346:4,6,9 347:10,11  
 347:14,21 348:14  
 352:5,15,16 353:5,6  
 353:17 354:5 355:19  
 356:4,8 382:14  
 390:19 393:3 396:8  
 404:5 410:15 412:1,4  
 413:4 418:11,15  
 419:14 422:6 423:13  
 423:20 427:7,8 428:2  
 432:1 434:17,20  
 435:3,5,21 439:11  
 440:17 445:12  
**growing** 46:5 51:3,13  
 52:5,12 79:15 138:8,9  
 151:9 160:14 183:10  
 216:5 267:1,3 291:14  
 298:21 299:8 346:2  
 382:7 396:7 402:19  
**grown** 1:5 89:19 139:7  
 156:8,8 214:5 238:5  
 243:5 270:5 287:15  
**growth** 268:10 300:14  
 423:1 425:14  
**growth** 138:21 208:18  
 210:8 262:5  
**grub** 80:10  
**guarantee** 359:19  
**guess** 84:3 85:3 96:3  
 103:15 175:10 242:20  
 253:20 283:19 289:18  
 320:15 322:4 327:18  
 396:12  
**guesses** 61:16  
**guessing** 208:7  
**guesstimate** 241:16  
 243:5  
**guide** 189:8 360:18  
**guidelines** 10:1 139:12  
 177:18 199:13 227:12  
 260:5 300:11,21  
 378:7  
**gun** 11:4  
**gut** 40:6

**Guthridge** 1:14,18 4:3  
 5:15 13:10,13 14:3  
 25:14,18 32:9 55:9  
 58:18 59:5,8,17 60:2  
 60:9 65:3,6,9,18 70:5  
 70:7 71:10,18 77:3,6  
 77:19 78:18 87:1,7  
 90:13 95:2 104:18  
 105:12,17,21 106:3,9  
 106:12 107:1,4  
 113:19,22 114:11  
 118:12,22 126:17  
 128:12 130:4 132:14  
 134:13,18 135:10,16  
 135:18,22 136:4,13  
 143:13,16 144:7,22  
 151:16 166:7 175:2,7  
 175:20 179:18,21  
 180:11 183:4 196:5  
 196:12,19 197:2,6,14  
 203:7,13,19 204:2,7  
 204:11,17 205:8  
 217:16,20,22 218:6  
 218:10 223:8,21  
 224:2,7,15 230:13,16  
 231:6 245:22 246:6  
 246:21 247:2,10  
 251:21 252:2,14  
 256:11 257:3,12,15  
 258:3 265:17,20  
 266:10 267:7 287:3  
 294:16 295:2,8,10,15  
 295:18,21 296:3,7,10  
 306:11 310:8 311:8  
 313:14 314:14 316:11  
 316:17 318:5,16  
 319:11,14,18 320:15  
 321:15,22 322:11  
 323:22 324:7 325:6  
 326:4 327:6,13,17  
 329:19 330:7,13,16  
 331:3,10 332:14  
 333:10,22 334:3  
 335:18 336:20 338:22  
 339:16 340:20 342:1  
 345:1 346:13 350:14  
 361:1,11,17,21  
 363:14 366:7 367:6  
 373:11 379:8,11  
 383:16 385:9 386:1,4  
 387:13 389:15 391:4  
 391:8 392:10,13  
 394:3,7,9 397:10,16  
 398:18 403:22 405:9  
 405:22 408:18 409:9  
 411:2,21 416:6,8  
 427:14 428:7 433:1  
 444:15 449:13 451:7  
 454:4,9,16

**guys** 150:17 283:4

## H

**h** 43:1,3  
**H-E-U-L-E-R** 137:19  
**H-U-D-S-O-N** 297:3  
**hair** 157:18  
**half** 208:10 243:6 289:5  
**half-acre** 361:12  
**halfway** 382:4 391:5  
 417:19  
**hand** 60:10 71:19 107:2  
 136:14 176:8 197:15  
 207:20,20 224:16  
 247:11 289:20 296:12  
 364:7 381:6  
**handful** 98:20  
**handing** 175:21 437:11  
**handle** 30:6 110:8  
 111:21 113:4 116:9  
 299:6 324:8 374:4,20  
 382:3,4,5 383:13  
 384:5 406:13,19  
 407:14,18 429:8  
 439:21 441:11,22  
 442:1 446:20  
**handled** 95:21 217:7  
 367:22 368:7 371:14  
 438:4 450:22  
**handler** 23:19 24:5,7,8  
 24:21 25:1,3 26:4,8  
 26:13 42:17 43:5,6,7  
 43:13 44:6,10,13,20  
 104:13 109:12,15  
 166:16,22 167:8  
 180:21 181:1 182:12  
 190:12 218:16 219:9  
 253:4 254:10,11  
 255:5,9 299:3 300:7  
 300:22 301:2,3,3,5  
 309:13 310:12 374:13  
 377:10 382:8,10  
 383:9,14 390:8  
 391:17 393:4 394:15  
 395:9 429:8,16  
 432:18 433:17 434:8  
 434:13 435:1 437:21  
 438:7,9 440:7 442:4,8  
 442:19,19,21 443:10  
 443:13,19 445:19  
 446:4,10,22 447:12  
 448:5,13 449:8,12  
 450:6,9,16,20 451:3  
 452:4,9,13,17 453:3  
 453:13  
**handlers** 17:22 18:3  
 44:3,22 62:4 82:16,16  
 82:17,17 102:11,18  
 103:12,13 130:12,22  
 132:4,8 153:9 182:4,9  
 182:19,22 183:2  
 193:14 338:11 382:7  
 432:2 434:14 435:4,6  
 435:10 438:12,20  
 441:7,14 442:9  
 450:20 452:20,22  
 453:3,9,15  
**handles** 44:10 112:5  
 349:7,9 357:20,22  
 419:9 429:17 430:4  
**handling** 12:5 24:17  
 61:19 69:7,12 71:1  
 74:9 99:3 111:1  
 115:17 142:3 162:22  
 163:21 201:10 210:1  
 216:16 229:7 262:2  
 280:1 292:3,4 312:18  
 315:8 335:9 336:3  
 367:13 369:21 371:9  
 375:6 378:12 379:3  
 380:5 383:12 384:22  
 391:14 396:4,10,19  
 397:2 432:11 435:11  
 435:12 436:4,8,12,17  
 437:9 442:4 443:1,3  
 449:12,19  
**hands** 217:11 435:17  
 435:18,19 453:3  
**handwrite** 98:2,10  
**handy** 117:12  
**hanging** 37:16  
**happen** 12:20 50:2  
 62:18 75:1 111:16  
 117:12 118:10 159:1  
 159:5 264:10 286:19  
 309:17 376:7  
**happened** 125:9 290:6  
 290:7  
**happening** 66:18 171:4  
 241:20,21 425:10  
**happens** 30:8 58:7  
 292:14 293:2 314:22  
 375:7 376:9 430:1  
 431:8  
**happy** 11:3 48:21 64:12  
 76:22 113:14  
**hard** 14:14 39:7 93:21  
 96:8 159:4 235:18  
 378:19  
**harder** 239:20  
**harm** 36:10  
**harvest** 19:1,18 29:6  
 40:10 244:8,13,16  
 245:7 381:3,8 393:16  
 404:6,7,10,12,22  
 405:1,3 406:19  
 408:14 418:7  
**harvested** 29:5 167:19

381:10,11 393:15  
 395:4,11 397:5 403:2  
 403:4 430:2 433:11  
**harvester** 379:16 380:4  
 380:11,22 381:19  
 382:11,16 383:18  
 384:7 430:13,13  
 449:3  
**harvesting** 19:13 21:21  
 115:8,11 367:13  
 374:3 375:6 376:10  
 378:19 380:14 381:2  
 381:4,6 383:5,10  
 384:1,14,21 402:21  
 404:21 408:11 430:2  
 440:15  
**harvests** 381:21  
**haul** 381:22  
**hauling** 382:18 383:5  
 384:1  
**Hawaii** 250:12  
**head** 11:4  
**heading** 171:14  
**headlight-sort** 5:1  
**headquartered** 108:4  
**headquarters** 9:10,10  
**health** 68:21,22 127:9  
 127:13 260:22 275:2  
**healthier** 127:20  
**healthy** 62:18 127:20  
**hear** 45:12 135:9  
 149:15 313:12 322:21  
 325:4 326:8,18  
 327:16 420:6,9  
 422:22  
**heard** 83:18 96:9 100:7  
 106:7 132:9 144:15  
 160:15 173:22 266:1  
 288:20 307:10 399:9  
 407:4 423:12,16  
 433:8,12  
**hearing** 1:3,12 4:3,5  
 14:14,14 62:16 71:13  
 114:3 118:1 134:21  
 136:4 137:3,13  
 143:19 180:2 196:15  
 198:4 204:20 223:14  
 230:19 252:5 258:20  
 259:4 296:10 321:2  
**hearings** 72:8,13 227:6  
 265:16 304:15 324:13  
 350:9  
**heavily** 179:1  
**hedging** 244:16,17,17  
 244:19  
**held** 19:2 20:10,15  
 389:6 407:15  
**Hello** 205:11  
**help** 8:1 9:1 14:19 15:2

15:15 30:14,18,21,22  
 32:4 33:14 69:10 70:1  
 70:14 81:8 94:5 96:19  
 109:21 120:10 148:6  
 186:14 210:5 261:21  
 276:11 282:14 293:16  
 311:14 334:15,18,19  
 335:3 360:18 361:12  
 368:5 371:12 419:6  
 423:7 429:21  
**helped** 9:1,2 89:6,13  
 158:13 281:2 303:13  
 322:16  
**helpful** 16:17 24:14  
 35:9 36:5,12,15,17,18  
 97:3 153:6 167:13  
 168:16,19,20 195:11  
 195:12,13 219:3,14  
 236:14 261:5 273:13  
 273:15,16 284:1  
 322:1,18 330:19  
 407:21 440:3  
**helping** 96:7 207:18  
 285:13  
**helps** 33:19 189:8  
 268:17 279:20  
**heritage** 1:13 225:18  
 250:9  
**hesitate** 154:10  
**hesitation** 291:22  
**Heuler** 3:5,17 136:8,15  
 136:19 137:4,6,14,17  
 137:18,18 145:4,9,15  
 146:1,5,10,14,22  
 147:6,12,14,19 148:1  
 148:2,4,5,7,12,19  
 149:1,7 150:2,10,14  
 151:17 152:12,17  
 153:16,20 154:1,5,20  
 155:12,18 156:1,4  
 157:17 159:4,20  
 160:4,12,18 161:10  
 161:12,15 162:1  
 163:7 164:17 165:2,9  
 165:21 166:18 167:2  
 168:20 169:11,16,21  
 170:2 171:8,11,17,22  
 172:11 173:5,9,12  
 174:7 175:8,10  
**Hi** 278:7  
**high** 28:4 51:16,17  
 86:20,20 91:14 98:4,6  
 124:22 151:5 161:1  
 243:15 265:4 273:3  
 279:7 315:4 448:21  
**higher** 23:9 27:6,10  
 41:22 84:10,17 124:7  
 150:7,8 157:3 211:5  
 242:3 272:20 420:1

422:3,14  
**highest** 140:15 365:7  
**hill** 2:3 13:12 25:16  
 55:11,13,17 56:2 65:5  
 70:6 77:5 113:21  
 143:15 144:9,12,19  
 144:21 161:8,8,11,13  
 161:18 162:13 184:18  
 195:18 204:14 218:9  
 230:15 252:1 265:19  
 287:5 311:6 319:17  
 332:20 362:14,21  
 374:6 380:21 381:13  
 381:18 382:1 383:8  
 383:15,17 386:3  
 397:18  
**Hills** 325:6  
**Hinman** 2:20 56:9,9,17  
 57:11,16 58:16 68:12  
 68:12,15 69:5,12 70:3  
 87:10,10,19 88:22  
 90:7 126:17,19,19  
 127:5 128:2,10  
 149:19,19 150:4,11  
 152:8,13 153:12  
 162:16,16 164:14  
 214:14,14,17,21  
 215:4,10 216:12  
 217:14 238:21,22  
 239:4,8 240:13  
 256:14,14,22 278:6,6  
 278:8,11,15 279:21  
 281:3 365:5 366:20  
**Hinman's** 70:10  
**hire** 121:9,16 244:6  
 292:20 382:16,17,20  
 440:19  
**hired** 384:1  
**historic** 33:8 399:20  
**historically** 220:5 242:7  
**history** 7:17 84:7 147:2  
 170:19 181:11 184:4  
 297:19 346:8  
**hobby** 75:1 111:17  
 142:16 264:10 418:12  
**hog** 298:8,9  
**hold** 19:15 20:7 90:13  
 279:8,18,19 313:5  
**holding** 43:13 280:16  
**holdings** 138:13 159:15  
**holds** 271:1  
**holes** 369:10  
**home** 20:9,9 227:2  
 272:4 298:1,7,14  
**homogeneous** 158:17  
**Hondo** 1:12  
**honest** 312:8  
**honestly** 347:5 352:2  
 360:2,6,8 378:8

418:13,22  
**Honor** 13:7 42:20 58:17  
 59:13 65:1,5 71:9  
 72:4 77:1 104:17  
 105:6 107:5 113:15  
 113:21 128:16 132:12  
 134:17 135:20 136:7  
 143:11 144:6 175:6  
 179:15 180:9 196:22  
 197:4,11,18 203:5  
 205:7 223:7 224:9  
 230:10 231:4 251:18  
 252:12 257:21,22  
 258:15 265:14,19  
 294:15 295:6,12  
 296:6 306:7 314:12  
 315:10 316:12 317:10  
 321:8 322:9 325:13  
 326:9 328:4 331:13  
 332:19 333:12 350:13  
 362:22 374:6 390:21  
 424:19 433:8 454:15  
**Honorable** 222:6  
**honorary** 83:9  
**hope** 110:1 155:18  
 159:1 211:3,4 234:4  
 268:16 276:10 279:20  
 281:2 323:16 411:19  
 425:11  
**Hopefully** 276:9  
**hopes** 211:1  
**hoping** 253:9  
**horsepower** 49:2  
**horticulture** 160:17  
**hosted** 264:18  
**hour** 15:18,20,22 16:1  
 156:1 390:22  
**hours** 50:2 82:4 161:3  
 167:20 283:17 303:15  
**house** 290:12 308:20  
**Hudson** 3:8 295:8,9  
 296:13,18 297:2,2,4,6  
 297:10,15,17,20  
 299:1,5,13,16,22  
 300:8,10,16,19 301:4  
 301:6,9,20 302:5,10  
 303:8,13 304:4,9,16  
 304:22 305:7,8,11,15  
 305:18,22 306:1,2,5  
 306:17,18 307:5,6,10  
 307:17 308:4,14  
 309:3,6,9,14 310:7,13  
 310:16,19 311:4,11  
 311:13,20 312:1,8  
 313:10,18,22 314:4,7  
 314:17,19 315:17  
 316:6,18 317:4,13  
 319:7,13,16,19  
 320:22 321:10,21



322:15 324:2,19  
 326:10 327:11 331:15  
 332:2,7 333:15,19,20  
 334:4,7,11,19 335:5  
 335:11,14,17,22  
 336:5,8,18 337:5,10  
 337:16 338:1,6,7,10  
 339:2,5,19 340:4,16  
 341:2,5,8,11,15,18  
 342:5,10,19 343:3,9  
 343:12,15 344:10  
 345:3,11,14,18 346:5  
 346:12,21 347:4,22  
 348:6,7,11,16,22  
 349:4,11,16,19  
 350:10,18 351:2,8,13  
 351:17 353:4 354:3  
 355:9,12,15 356:20  
 357:1,10 358:5  
 359:11,14,19 360:2  
 360:12 361:9,13,22  
 362:2,5,11,17 363:4,6  
 363:11,22 364:4,8,14  
 364:21 365:2,11,14  
 365:18 366:3,11,14  
 366:18 367:20 368:15  
 368:18 369:2,6,13  
 370:2,13,18 371:12  
 373:4,16 374:15,21  
 375:9,12 376:2,5,8,12  
 376:16,19 377:1,4,8  
 377:12,15 378:3,13  
 378:22 379:4,7,14,18  
 379:22 380:2,9,17  
 381:4,14,20 382:12  
 383:11,22 384:4,17  
 385:4,11,13,21  
 386:10,14,16 387:1  
 387:11,14,17,19,21  
 388:5,10,13,17  
 389:12,19,21 390:10  
 392:2,8,18,20 393:19  
 394:1,5,8,12,18  
 395:13 396:1,5,22  
 397:8,11,14,20 398:3  
 398:6,12,15,22 399:8  
 399:13 400:16,19,21  
 401:6,17,22 402:4,8  
 402:12,16,22 403:11  
 403:15,19 404:4,9,12  
 405:10,13,16 406:3  
 406:10 407:3,6,9,13  
 408:4,9 409:5,12,18  
 410:12 411:6 412:3  
 412:12 413:1,12  
 414:2,13,20 415:10  
 415:17,21 416:10,15  
 416:16,19,22 417:8  
 417:17 418:1,22

419:8,13,21 420:6,8  
 420:13,17 421:1,6,14  
 421:19 422:5,20  
 423:3,15,18,22 424:3  
 424:8,14,17,22 425:7  
 426:2,7,22 427:5,8,13  
 427:17 428:4,11,14  
 428:18,20 429:5,14  
 429:19 430:1,7 431:7  
 431:10,15,16 432:3,9  
 432:14 433:12,13,14  
 433:18 434:4,10,15  
 435:8,12,18 436:1,6  
 436:10,14,18,22  
 437:4,10,19 438:2,5,9  
 438:14,16,22 439:3  
 439:22 440:2,8,11,15  
 441:2,8,13,17 442:1  
 442:15 443:3,11  
 444:2,8,11,19 445:9  
 445:16,22 446:5,13  
 446:17 447:6,13,19  
 448:3,12,20 449:9,17  
 449:22 450:8 451:11  
 452:1,2,7,12 453:1,7  
 453:11,16,21 454:2  
**Hudson's** 454:13  
**huge** 88:9 163:18  
 165:13  
**hull** 168:8  
**hulled** 167:19 168:5  
 369:22  
**hullers/processors**  
 168:11  
**hulling** 168:6 169:1  
**human** 249:11 371:19  
**humans** 165:11  
**humble** 393:6  
**humbly** 392:21  
**hundreds** 156:15  
 307:18 371:16 439:10  
**hurt** 141:9 315:7  
**husband** 61:2 66:8  
**hypothetical** 255:18

---

**I**


---

**I-V-E-Y** 61:1 73:1  
**idea** 152:1 153:10  
 210:17 282:10 285:10  
 340:5 354:9 367:10  
 375:6 407:1 430:3  
**ideas** 128:2 342:9  
**identification** 13:19  
 60:8 65:13 72:3 77:13  
 106:22 114:7 136:12  
 144:1 175:19 180:6  
 197:22 205:2 224:14  
 231:1 247:9 252:9  
 258:10 266:5  
**identified** 13:9 43:7  
 253:1 259:3 372:22  
 379:5 399:14 429:1  
 435:3  
**identifies** 356:14  
 395:10  
**identify** 300:6,6 310:22  
 385:16 422:19  
**ignore** 106:14  
**illuminating** 45:16  
**imagine** 241:12,15  
**immature** 138:11  
**immediate** 191:12  
**immediately** 19:1,19  
 26:11 401:3  
**immigrants** 8:6  
**immigrated** 8:14  
**impact** 33:22 149:22  
 150:8,12 211:2  
 262:12 277:6  
**impacted** 79:14 240:2  
**impacts** 48:6  
**implement** 13:4 64:11  
 76:20 113:12 143:8  
 179:12 203:2 230:5  
 251:13 265:11  
**implementation** 6:5  
 57:20 72:15 137:10  
 165:20 195:8 198:12  
**implemented** 68:19  
 69:16 328:15  
**importance** 120:9  
 122:20 166:13 173:7  
 237:18 249:17  
**important** 7:11 21:19  
 33:2,3,5 34:15 51:3  
 61:20 69:13 88:18  
 94:17 97:13,16 99:21  
 99:22 119:14 120:2  
 120:18 121:3,5,8  
 129:11 130:1 131:6  
 132:8 154:19 155:3  
 166:14 167:1 169:5  
 169:14 174:6 187:9  
 188:5 189:18,22  
 190:3,6,22 191:1,3  
 192:7,14 193:17,19  
 194:5,13 234:12  
 235:12 240:11 262:4  
 282:5,6,8 284:19  
 285:1,2 293:9,16  
 303:5 328:13 330:21  
 380:2 383:3 386:17  
 388:18,22 389:4  
 401:14,18 413:2  
 429:11 437:18 442:10  
**importantly** 235:2  
**imports** 390:12  
**impose** 10:18 63:10

75:16 93:4 109:12  
 110:4 140:8 178:15  
 200:5 228:2 262:14  
**improbably** 423:4  
**improve** 56:4 69:16,18  
 125:21 163:6  
**improved** 7:3 57:19  
 61:3 73:3 108:11  
 124:19,20 126:3,6  
 139:2 177:8,12 199:8  
 242:2 260:2 268:4,8  
 268:11 269:11,12,13  
 269:15,16 270:7  
 271:11 365:6,8 395:6  
 401:13 413:9,11  
**improvements** 31:12  
 156:16 262:3 280:1  
**improving** 232:20  
**in-depth** 326:19  
**in-house** 154:13  
**in-store** 207:13  
**inaccurate** 58:3  
**Inaudible** 90:12  
**inbred** 297:14  
**inches** 48:16,16 80:12  
**include** 126:2 132:20  
 178:21 192:5 234:3  
 249:9 346:1 347:14  
 369:10 382:6 384:9  
 418:10 441:11 444:3  
**included** 83:6 125:11  
 125:13 178:22 187:6  
 274:12 304:8 310:21  
 343:2 367:17 421:18  
 441:14  
**includes** 119:22 136:22  
 192:1 328:10 388:8  
**including** 269:21  
 319:22 325:10 344:6  
**inclusion** 344:6 414:14  
 414:15  
**inclusive** 344:11  
 420:20  
**income** 52:11 250:14  
 357:2 407:2  
**increase** 10:14 27:22  
 57:8 75:11,14 84:4  
 87:21 92:17 109:2,20  
 123:20 140:1,21  
 160:2 178:6 200:2,18  
 208:22 211:7 227:21  
 241:22 243:11 250:21  
 260:10,19 262:10  
 334:22  
**increased** 11:12,21  
 73:19 74:3 84:8  
 110:18 116:13 141:19  
 200:17 201:4 211:4  
 229:1,17 278:18

279:1  
**increasing** 27:13  
 334:20  
**incredibly** 16:4 51:17  
**incumbent** 182:21  
 189:14 236:19 237:3  
**Independence** 2:5,10  
**independent** 130:13  
 168:22 269:6  
**index** 184:15,17  
**India** 101:12,15 207:8  
**indicate** 102:22 103:14  
 208:10 415:5 419:22  
 453:13  
**indicated** 117:14 404:5  
**indicating** 103:8  
**indigenous** 151:7 156:6  
**indirect** 110:7,11  
**indirectly** 255:7  
**individual** 143:3 202:19  
 338:17  
**individually** 211:13  
 353:5  
**individuals** 121:12,16  
 122:7 220:6,19 353:1  
 360:13,15 423:8  
**industrial** 161:19  
**industries** 140:14  
 152:21 153:11 156:5  
 162:18 163:3,5  
 170:22 172:21 195:22  
 233:10 250:5 282:14  
 290:19 302:15  
**industry** 12:2 15:9  
 16:14 17:21 23:13  
 26:6,16,19 30:2 32:3  
 36:6 58:12,15 61:16  
 62:2 73:7,10 74:6  
 83:2 87:12,16 96:1,19  
 97:4,14 98:17 99:5,14  
 100:2 103:4,6 110:21  
 113:8 120:11 127:17  
 128:8 138:8,16 141:6  
 141:8,22 146:16  
 151:3,21 152:22  
 154:6 155:10 156:11  
 156:14,15,22 157:8,9  
 157:11 158:1,5,15  
 159:2,8,18 160:3  
 162:4,12 163:14  
 164:20 165:16 167:1  
 168:4 170:11 172:10  
 172:12 173:13,17  
 174:8,9 180:20 183:2  
 183:4,5,7,9 184:4,5  
 187:13,14 188:19  
 190:1 192:19 194:1  
 201:7 208:14,18  
 212:14 220:5 222:12

225:20 226:16 228:5  
 228:10 229:4 233:3  
 235:11 237:2 239:15  
 243:19 245:1 249:16  
 250:6 260:11 261:15  
 261:21 262:1,5 265:5  
 268:2 271:3,15  
 273:22 274:1,1,5,11  
 278:19,22 279:7  
 280:4 281:19 283:1  
 285:8,13,16 290:5,8  
 290:15,20 291:2,8,15  
 291:19 292:7,9 293:6  
 294:9 298:12 301:7  
 302:15,22 303:4,21  
 305:10,13,20 311:19  
 313:21 316:3 317:20  
 326:2 332:3,11 334:6  
 334:12,15,18,20  
 341:10 342:14,18  
 343:11 345:20 346:2  
 347:7 349:13 351:21  
 352:4,12,21 353:2  
 355:18 356:10,17,18  
 357:3,8,9 358:10  
 360:14,15,16,18  
 364:11 366:13,17  
 375:15 377:14 379:17  
 379:20 386:9,12,17  
 386:22 388:20 389:1  
 393:21 399:15 402:11  
 402:14 405:3 408:1,5  
 408:7 409:17,21  
 410:3,6 411:8 412:8  
 413:16 415:8,12,19  
 416:17 417:1,15  
 419:4,15 422:1  
 423:11 425:13 427:4  
 428:13,16 430:4  
 434:14 438:1 440:14  
 441:12 443:21 444:10  
 448:8  
**industry's** 356:10 425:9  
**inferiority** 150:16  
**inflation** 28:2  
**influenced** 237:4  
**influencing** 215:5,8  
**information** 11:13,22  
 14:10,19 15:1,3,12  
 16:15 34:12,20 35:7  
 35:12 36:11 39:13  
 41:4 55:14 66:12,18  
 73:21 74:4 110:14,19  
 120:2 124:3 131:16  
 141:15,20 152:11,15  
 154:19 182:2 200:22  
 201:5 215:15,17  
 216:4,4,8 228:21  
 229:3,18 239:2,12

240:10,11 242:8  
 260:12,17 278:16  
 279:2 326:14 328:14  
 330:22 338:9,13  
 339:4,12,13,22 340:9  
 340:15 388:15  
**informed** 10:5 61:17  
 64:3 70:14 76:11  
 108:17 112:22 139:17  
 177:20 199:16,17  
 227:14 229:21 251:6  
 251:8 264:16,21  
**infrastructure** 28:18  
 46:7 228:19  
**inherent** 12:18 74:21  
 111:14 142:14 201:21  
 264:7  
**inhibits** 222:14  
**initial** 25:3 29:6 298:4  
 326:10  
**initially** 17:14 123:7  
 207:17 298:8 351:19  
**initiative** 276:14  
**inner** 23:19 24:5,21  
 26:4,8 42:17 44:6,20  
 437:21,22 440:7  
 450:9,20 452:4  
**innocuous** 129:4  
**innovation** 275:1  
**inoperable** 351:22  
**input** 111:18 122:9  
 168:9 173:14 347:7  
 358:13 410:3,5,20  
 419:16  
**inputs** 12:22 51:2 75:3  
 142:17 264:12  
**insect** 79:3,14,16,17,18  
 79:21,22 80:7,7,15,21  
 81:17 82:1,5,19 153:4  
 164:4  
**insects** 80:16 297:17  
 369:17 370:8  
**inside** 373:21 391:1  
**insight** 180:18  
**inspection** 181:15,17  
 181:18,20 336:9,15  
 336:16,22 337:1,2,3  
 337:11,12,17,18  
 338:3,4 371:7,20  
**inspections** 334:13,14  
**inspectors** 181:19  
**instability** 222:13  
**instance** 327:5 374:4  
**instruct** 323:17 325:21  
**intake** 98:12  
**integrate** 249:19  
**integrated** 108:3  
 115:18 116:8 298:16  
**integrity** 121:6 187:19

333:7 369:14  
**intend** 199:5  
**intended** 226:15 237:15  
 318:18 326:10  
**intending** 214:18  
**intent** 261:11 275:3  
 283:11 326:18 327:4  
 328:12,16 329:5  
 359:12,14 367:13  
 368:21 418:10 427:10  
 441:21 452:5,7  
**intentional** 368:14  
**interact** 10:10  
**interaction** 240:3  
**interest** 109:12,15  
 291:4 317:7 380:12  
 383:21 426:21 427:12  
 438:19  
**interested** 4:20 81:10  
 187:15 272:12 325:4  
**interesting** 123:11  
 132:19 285:10 293:22  
 373:15  
**interests** 178:20  
**interfere** 76:7  
**interject** 306:8 383:17  
**international** 92:6  
 101:17 202:11 206:22  
 209:15 210:4,8 212:4  
**internationally** 76:4  
 202:4 211:17 308:22  
**interpret** 43:18  
**interpretation** 45:2  
**interrupt** 7:14 109:5  
 178:9 261:4 262:20  
 306:14 317:19 431:3  
**introduced** 271:16  
 305:2  
**introducing** 227:7  
 329:9  
**introductory** 359:5  
**inventories** 239:10  
 390:12 407:17  
**inventory** 33:2,15 34:2  
 34:8,14 35:13 44:9,10  
 58:14 218:16,19  
 219:10 279:19 339:7  
 339:8 340:8 407:15  
**inventory's** 44:4  
**invest** 58:8 112:18  
 245:14 286:20  
**investing** 16:7 276:12  
 276:16  
**investment** 61:18 168:7  
 228:4 262:9 422:17  
**investments** 74:3  
 110:18 140:22 141:19  
 201:4 228:18 260:16  
 418:3

**invite** 332:4  
**invoice** 182:12  
**involve** 415:7 436:20  
**involved** 23:8 49:9  
 81:20 82:14 83:16  
 116:12 120:20 122:3  
 122:8 133:6,10 138:2  
 138:15 141:9 153:1  
 157:5 162:18 163:20  
 163:21 179:2 180:20  
 205:21 231:13,16  
 236:18 265:7 302:8  
 315:7 327:20 335:2  
 351:9 356:8 358:10  
 380:4 431:21 450:20  
 452:21  
**involvement** 121:19  
 225:18  
**involves** 430:19 445:7  
**involving** 94:21  
**irrigate** 27:7,8 45:10  
 46:15 47:15,15 91:15  
**irrigated** 28:7 53:8 54:8  
 89:9,11  
**irrigating** 48:22  
**irrigation** 28:7 45:6,9  
 45:21 46:3,4,16,20  
 47:4,16,21 48:12 51:8  
 53:14,17 244:11  
**isolated** 168:22  
**issuance** 336:14  
**issue** 69:1 81:21 89:20  
 132:8,9 189:14 238:3  
 239:13 286:7,10,12  
 291:13 294:5 327:3  
 331:6 332:9 336:17  
 340:2 343:4 361:14  
 368:2,19 375:2  
 380:10 383:1 403:14  
 425:21 432:7  
**issues** 30:13 47:19  
 66:21,21,22 76:2  
 91:13 92:11 95:20  
 129:12,19 130:1,7  
 146:16 189:6 222:13  
 272:5 312:2,14 372:8  
**items** 61:22 129:15  
 130:5 192:11  
**Ivey** 3:3,4,14,15 59:22  
 60:1,11,15,16,20,22  
 60:22 64:14,22 65:2  
 65:22 66:1,5,8,17,22  
 67:7,11,14,19 68:7,14  
 68:20 69:11,17 70:18  
 71:7,11,13,17,20 72:6  
 72:10,11,17,18,19,22  
 73:1 78:3,4,10,14,16  
 78:21 79:13 81:9,13  
 82:13 83:4,14 84:6

86:3 87:5,17 88:1  
 89:3 90:10,17,21 91:5  
 92:4,12,21 93:8 95:8  
 95:13 96:3,16,21 97:7  
 97:16 98:5,13,19 99:7  
 99:9,13 100:6,12,18  
 101:3,9,19 102:1,4,13  
 103:1,15 104:14,22  
 105:2 135:15

---

**J**


---

**J** 2:15  
**J-A-Y** 198:20  
**J-E-N-N-I-F-E-R** 61:1  
**J-O-H-N** 137:19  
**January** 40:19 406:18  
**January-ish** 416:4  
**Jay** 3:6,19 197:11,12,16  
 198:19 213:8 223:4  
 302:3,5  
**Jennie** 2:22 83:13  
 148:18 160:9 212:20  
 240:16 281:6 342:4  
 367:9 406:2 426:11  
**Jennifer** 3:3,14 59:22  
 60:11,22 132:17  
**jigsaw** 451:12  
**Joaquin** 227:1  
**job** 30:10,11 81:18  
 163:20,22 283:7,22  
 451:16  
**jobs** 293:9  
**John** 3:5,17 136:8,15  
 137:18  
**joining** 78:6 136:19  
 231:12 266:15 296:19  
**Journal** 277:2  
**Judge** 1:14,18 4:3 5:15  
 13:10,13 14:3 25:14  
 25:18 32:9 55:7,9  
 58:18 59:5,8,17 60:2  
 60:9 65:3,6,9,18 70:5  
 70:7 71:10,18 77:3,6  
 77:19 78:18 87:1,7  
 90:13 95:2 104:18  
 105:12,17,21 106:3,9  
 106:12 107:1,4  
 113:19,22 114:11  
 118:12,22 126:17  
 128:12 130:4 132:14  
 134:13,18 135:10,16  
 135:18,22 136:4,13  
 143:13,16 144:7,22  
 151:16 166:7 175:2,7  
 175:20 179:18,21  
 180:11 183:4 196:5  
 196:12,19 197:2,6,12  
 197:14 203:7,13,19  
 204:2,7,11,17 205:8

217:16,20,22 218:6  
 218:10 223:8,21  
 224:2,7,15 230:13,16  
 231:6 245:22 246:6  
 246:21 247:2,10  
 251:21 252:2,14  
 256:11 257:3,12,15  
 258:3 265:17,20  
 266:10 267:7 284:10  
 287:3 294:16 295:2,8  
 295:10,15,18,21  
 296:3,7,10 306:11  
 310:8 311:8 313:14  
 314:14 316:11,17  
 318:5,16 319:6,11,14  
 319:18 320:15 321:15  
 321:22 322:11 323:22  
 324:7 325:6 326:4  
 327:6,13,17 329:19  
 330:7,13,16 331:3,10  
 332:14 333:10,22  
 334:3 335:18 336:20  
 338:22 339:16 340:20  
 342:1 345:1 346:13  
 346:17 350:14 361:1  
 361:11,17,21 363:14  
 366:7 367:6 373:11  
 379:8,11 383:16  
 385:9 386:1,4 387:13  
 389:15 391:4,8  
 392:10,13 394:3,7,9  
 397:10,16 398:18  
 403:22 405:9,22  
 408:18 409:9 410:22  
 411:2,21 416:6,8  
 427:14 428:7 433:1  
 444:15 449:13 451:7  
 454:4,9,16  
**Judge's** 218:14  
**judging** 23:12  
**July** 1:10 202:1 204:2  
**jump** 322:10  
**justified** 329:18 330:3  
**justify** 12:17 62:15  
 74:20 111:13 142:14  
 201:21 264:7 283:3  
**justifying** 330:1

---

**K**


---

**K-E-C-K** 176:22  
**K-E-V-I-N** 73:1  
**K-I-N-G** 225:16  
**KANSAS** 1:6  
**KATY** 2:21  
**Keck** 3:5,18 175:15  
 176:1,5,16,19,21,21  
 178:11,13 179:17  
 180:15,16,22 181:6  
 182:21 183:9 184:3

184:12,16,20 185:4,8  
 185:14,17,19 186:7  
 186:11,16,20 187:3,7  
 187:11 188:6,10,16  
 188:19 189:3 190:10  
 191:1,10,20 192:9,16  
 193:9,19 194:15  
 195:1,4,13 196:11,13  
 361:2  
**keep** 28:15 31:5 58:9  
 66:10 79:21 88:17  
 110:8 273:2 279:4  
 280:10,11 384:4  
**keeping** 446:8 450:14  
 450:21  
**keeps** 29:14  
**kept** 64:2 76:10 88:5,6  
 88:16 112:21 229:20  
 235:11 251:5 264:16  
 340:9,10 370:19  
 371:22 372:3  
**kernel** 47:10 57:1  
 373:21  
**kernels** 57:2  
**Kevin** 3:4,15 71:17,20  
 72:22  
**kid** 158:6  
**kids** 170:13  
**kill** 82:6  
**kills** 241:8,9  
**kind** 8:1 23:10 47:11,12  
 47:16 68:17 84:2  
 88:19 91:8,20 93:12  
 103:19 105:8 132:3  
 173:14 174:16 189:14  
 193:14 232:2 234:22  
 244:1 320:21 322:1  
 328:2 330:1,8 339:13  
 400:8 433:22  
**kindly** 362:3  
**kinds** 69:14 92:10  
**King** 2:16 3:6,20 224:10  
 224:15,17,20,22  
 225:4,8,12,15,16  
 230:9,11 231:10,11  
 231:15,20 232:2,7  
 233:13,20 234:6,21  
 235:22 236:5,9,12,15  
 237:12,22 239:3,7,13  
 240:17 241:2,5  
 242:17 243:2 244:3,5  
 245:4 246:8,14  
 249:12 253:5 254:21  
**knew** 170:4  
**know** 4:10 11:6 15:9,9  
 17:8,9,18 23:12 30:7  
 31:4 32:20 34:9 35:19  
 36:20 40:2 45:14  
 52:12 53:11,16 58:22

64:7 69:11,19,22  
 70:15 71:2 76:15  
 80:19 84:7 85:16 96:3  
 100:19,22 101:3,10  
 103:12 104:14 105:22  
 121:15 128:6,6 129:1  
 141:5 142:19 151:12  
 151:21 157:3,12  
 160:20,22 162:7  
 164:19 165:4,15,15  
 165:21 167:15 168:12  
 170:18,19,20 171:3  
 191:20 207:15 208:3  
 208:5 210:2 215:19  
 216:22 217:9 219:15  
 235:15 236:16 245:5  
 268:19,21 276:5  
 279:4,6,13 283:14  
 285:17 288:12,13,13  
 288:14 289:10 290:20  
 291:21 292:16 293:10  
 313:4 316:1 317:6  
 321:5 327:2,7,8,13,15  
 333:4 339:11 340:6  
 356:14,21 360:3  
 393:7 400:8 415:19  
 422:5,21 437:20  
**knowing** 141:5 164:19  
 235:4  
**knowledge** 17:20 24:15  
 26:6 37:1 82:18 100:6  
 140:5 145:12 147:16  
 206:15 210:20 213:19  
 213:20 245:18 270:3  
 412:17 413:20  
**known** 98:16 206:3  
**knows** 154:6,13 291:12  
 322:16

---

**L**


---

**L** 2:15 107:17  
**La** 7:18  
**labor** 23:8 27:7,9  
 382:13 383:5  
**lack** 11:12 14:18 73:20  
 110:13 141:7,14  
 200:21 212:9 228:20  
 242:7 260:11 276:4  
**lake** 50:5  
**land** 9:3 51:18 53:13,17  
 53:21 54:8,8 226:11  
 232:20 361:6 400:1,6  
 401:10 422:9  
**lands** 53:15  
**language** 16:22 133:1  
 133:12,21 147:17  
 186:9,15,18 192:1,4  
 193:2 236:3,11  
 237:13 238:2 328:7,8

328:9 329:14 333:1  
 351:11 359:10 363:9  
 364:1 412:14  
**large** 9:22 33:6 56:5  
 61:4 73:4 83:5 86:10  
 101:11 108:14,14  
 141:12 167:10 181:1  
 199:13 227:13 240:2  
 240:7 242:18 250:16  
 260:6 300:17,22  
 301:2,4 312:15,22  
 315:1 348:14 349:12  
 351:19 354:7,18,19  
 355:13 356:15,19  
 357:13 361:15 416:1  
 430:20 434:17 448:22  
**larger** 108:12 123:8  
 126:5 168:18 358:12  
 420:21 439:13,16  
**largest** 134:1 226:5,8  
 242:16 249:13 261:17  
**Las** 1:13 6:16,21  
**laser** 163:12  
**late** 78:22 80:7 403:2  
 404:17 406:12  
**Laughter** 14:16 20:19  
 203:18 288:8 290:13  
 301:22 351:4 386:6  
 392:9 393:8 424:21  
**laundry** 129:14  
**law** 1:14,18 325:18  
**lawyers** 303:16  
**lay** 258:17  
**layman** 117:2  
**layman's** 268:2 308:1  
 328:11  
**LCs** 312:16  
**lead** 443:22  
**leaders** 360:19  
**leadership** 233:6  
 291:15  
**leading** 90:3  
**leakage** 444:1  
**lean** 107:14 240:4  
**leap** 371:5  
**leaps** 94:18  
**learn** 172:10  
**learned** 242:9  
**lease** 279:14 417:10  
**leasing** 416:21  
**leave** 115:9 209:1  
 246:14,16 381:20  
**leaves** 48:6 151:8  
 244:15 381:19 430:22  
**led** 322:17 440:1  
**leeway** 448:6  
**left** 9:18 37:13 96:5  
 173:15 174:16  
**leftover** 219:9

**legal** 233:9 310:22  
**legalistic** 322:15  
**legalities** 189:9  
**legend** 85:17  
**legitimacy** 188:1 194:1  
 196:2  
**legitimate** 323:11,13  
**lending** 108:1  
**length** 346:22  
**lessee** 417:15 431:5  
**lessees** 417:6  
**lessor** 58:12 70:17  
 125:2,5 239:21  
 242:10 323:8 333:17  
 366:22  
**lessons** 242:9  
**let's** 36:19 54:6 100:3  
 129:17 175:21 185:15  
 212:8 253:20 292:14  
 292:15 296:3 306:13  
 353:9 395:8 429:11  
 429:15 434:12 442:12  
 447:17 451:20  
**letter** 202:15 210:14  
 221:12 222:5  
**letters** 66:9  
**lettuce** 19:6  
**level** 31:1 67:13 95:21  
 96:4 155:20 169:7  
 182:8,13,14 215:8  
 234:14 275:14 298:11  
 357:2,2 375:16,17  
 382:13 396:7,7  
 406:15 418:5,8 420:2  
 423:11 432:17,19  
 447:20  
**levels** 142:17 238:16  
 302:14 309:18 352:8  
 353:5 413:7  
**life** 20:5,11 45:15 55:5  
 97:20 138:16 238:6,8  
 280:20 298:22  
**lift** 50:20  
**light** 315:1  
**lighter** 315:2  
**lighter-weight** 322:3  
**lightweight** 323:6  
 333:16  
**likes** 426:13  
**limbs** 430:21  
**limitation** 57:17  
**limited** 31:5 37:9 165:2  
 183:11 267:7 269:21  
 275:4 443:11 444:5  
**limiting** 443:20  
**limits** 169:16  
**Linda** 137:20  
**line** 9:3 40:7 127:7  
 364:13 406:21

**lines** 163:4  
**link** 407:7  
**linked** 274:13  
**list** 96:13,17 129:14,20  
 211:10 270:4,7,11  
 342:12  
**listed** 119:5 130:5  
 137:2,12 278:12  
**listen** 64:6 76:14  
 319:15  
**listing** 269:22  
**literally** 154:2 315:3  
 430:14 439:10  
**little** 14:13,18,22 15:5  
 17:4 20:17 34:18 37:4  
 37:18 38:1 39:3 41:21  
 44:1 45:7,9,12,18  
 46:19,22 47:17 48:20  
 53:3 59:15 71:4 83:14  
 84:9 85:22 92:1 96:13  
 97:11 101:5,7 150:15  
 154:10 189:12 195:14  
 212:21 213:1 240:18  
 241:4 286:11 307:11  
 373:17 374:22 382:2  
 390:22 418:18 426:12  
 443:1  
**live** 6:16 28:4 61:1 73:1  
 107:18 137:19 176:22  
 177:2 198:20 249:1  
 259:19 297:5,6,21,22  
**livelihood** 418:15 423:8  
**lives** 418:15  
**LLC** 226:18  
**LLP** 2:16  
**load** 23:3,3,5,8,9 26:10  
 181:20 308:18 435:19  
 451:1  
**loads** 26:9,12,13,15  
 30:13 439:5 450:22  
**loam** 46:11  
**local** 66:10 83:7 154:22  
 169:4,5,8 183:12  
 277:5,6  
**locally** 100:22  
**located** 86:4 90:20  
 227:2 249:4 259:22  
 260:1  
**locates** 308:7  
**logic** 325:13  
**logically** 397:3  
**long** 20:10 36:7 37:4  
 51:20 105:11 128:22  
 129:14 148:12 158:12  
 159:6 161:15 205:16  
 207:22 235:12 279:19  
 303:15 315:19 329:2  
 432:15 453:14  
**long-term** 286:12

**longer** 246:18 280:16  
280:20 379:11 435:13  
**LOOFT** 2:21 149:11,14  
**look** 5:1 16:21,22 17:6  
19:3 25:8 43:2,4  
117:18 118:16 120:14  
129:18 147:17 150:17  
157:15 161:9 167:14  
173:17 185:12 186:13  
187:1 195:2 233:10  
236:11 253:12,14  
267:14,20 269:14  
281:9,18 282:9 284:3  
293:5,6,21 329:5  
333:6 347:22 348:17  
348:19 352:3 355:18  
360:2 361:5 373:17  
374:11 387:8 391:4  
395:15 410:17 430:5  
446:10 449:14 450:4  
452:16  
**looked** 20:17 34:5  
84:22 90:2 152:5  
233:20 241:10  
**looking** 34:17 50:10  
51:20 84:4,6 86:4  
88:19 94:20 129:21  
150:21 153:6 172:21  
213:15 214:1 218:15  
233:4 239:18 245:15  
272:13,15,22 284:9  
291:9 294:4 332:22  
336:12 356:1 369:6  
376:22 401:13 418:8  
**looks** 98:7 227:6 391:5  
**loop** 125:18  
**loose-tail** 312:17  
**loosely** 103:5,16 232:2  
**lose** 16:13 193:22,22  
293:3  
**loses** 383:7 417:12  
435:22 436:2  
**loss** 318:17  
**lost** 88:19 293:9 397:7  
**lot** 16:13,13 28:11  
30:21 31:16 32:5  
37:10 46:3 47:2,10  
50:11 80:5 83:18  
84:10,22 89:8,9 91:8  
135:15 150:15 157:4  
157:17 163:19,20,21  
164:13 170:4 172:18  
179:5 181:13,22  
183:17 184:3,5  
191:22 217:9 219:3  
242:9 243:4 245:6  
261:10,11 272:19  
279:5,17 288:14  
322:22 382:22 448:4

**lots** 26:15 53:20 291:19  
434:18 439:16  
**loud** 324:11  
**louder** 14:18  
**Louis** 8:1  
**Louisiana** 1:6 15:7  
165:6 206:12  
**love** 45:12  
**low** 86:20 98:4,5 124:21  
138:11  
**lower** 42:1 96:13  
103:12 263:1 286:4  
298:11 323:10 376:14  
377:3 422:3  
**Lucero** 67:1  
**luck** 52:19 293:8  
**lunch** 197:1,5

---

**M**


---

**M** 2:22  
**M-E-D-I-N-A** 259:18  
**ma'am** 78:16 92:4  
114:21 121:20 122:1  
206:5 207:2 209:11  
213:12  
**machinery** 245:18  
**Macon** 422:9  
**mail** 448:17,18 449:8  
**main** 49:19 209:15  
215:20 219:12 272:15  
**maintain** 31:2 48:13  
193:21 439:19  
**maintained** 30:4  
**maintains** 432:15  
437:14  
**major** 51:12 139:1  
167:20 189:13  
**majority** 129:8,16  
130:10,14 131:2  
134:9 219:1 347:14  
355:19 412:21 413:3  
415:4 426:5 427:20  
428:1  
**make-up** 281:8  
**maker** 324:18  
**makers** 326:13  
**making** 4:13 126:12  
131:6 142:15 237:3  
265:4 294:9 358:22  
372:19 412:20 415:5  
445:14  
**manage** 291:13,16  
293:10,16 294:8  
**management** 97:4  
182:3,7 189:15  
225:19 226:17,21  
227:9 231:20 232:15  
232:19 245:11,11,13  
245:15 249:10 253:3

255:22 261:20 285:9  
286:9 292:21 293:14  
426:16  
**manager** 6:17 249:14  
**managers** 427:4  
**manages** 249:6  
**managing** 27:1 116:21  
249:2  
**mandated** 411:7 414:1  
414:2  
**mandatory** 94:5  
**manipulate** 187:20  
**manner** 381:9 450:22  
**MAP** 202:4 207:3 208:1  
210:22 211:20 212:3  
212:22 275:5 277:18  
277:20  
**March** 46:17 405:1  
**Marco** 10:13 63:4 72:14  
75:10 108:22 137:12  
139:21 178:5 198:14  
199:22 227:19 248:10  
250:19 259:6 262:7  
**margin** 242:2 358:21  
**Maritime** 1:19  
**marked** 3:11 5:19 6:4  
13:18 60:7 65:12 72:2  
77:12 106:21 114:6  
136:11 143:22 175:18  
176:9 180:5 197:21  
205:1 224:13 230:22  
247:8 252:8 258:9  
266:4 304:14  
**market** 11:12,14,19,22  
19:3,4,9 22:6 33:13  
39:13 61:13 69:10,16  
70:19 73:20 74:4  
81:10 84:2 85:18  
87:22 88:11 93:14,15  
99:20 101:11,22  
109:20 110:13,19  
126:22 131:20 138:11  
138:18,21 141:15,20  
152:11 153:7 157:15  
163:6 181:14 200:22  
201:5 207:3 209:6,15  
210:3 211:2,15 212:4  
215:17 222:14,20  
228:20 229:2 235:15  
238:16,17 239:1,12  
260:11,16 261:17,18  
263:8 278:16 279:2,9  
280:21,22 285:22  
286:16 298:18,20  
310:21 323:8,10  
333:18 389:11 393:16  
393:17 414:4 418:13  
419:18 423:6 436:21  
437:13 439:16 449:6

**marketed** 344:19  
**marketer** 93:14 299:4  
**marketing** 1:5 4:5,7 6:5  
10:4,6,18,21 13:3  
17:14 18:22 30:21  
35:5 41:3 56:3 57:17  
61:7,9,15 63:9,13  
64:4,10 67:6 72:9,16  
73:8 75:16,19 76:4,12  
76:19 81:20 82:10  
85:12 90:11 92:16  
93:4,10,19 96:14 97:8  
101:21 102:20 103:10  
108:18 109:11,15,19  
113:6,11 121:14  
127:14,15 128:1,3,5  
131:13,14 137:1,11  
138:12 139:18 140:8  
140:11,20,20 141:2,3  
141:7,10 143:2,4,7  
145:13 146:17 147:16  
147:18,20 151:13,15  
152:15,19 154:7  
157:16,21 158:12  
159:2,13 160:1  
161:19 164:21 165:1  
165:12,18 176:10  
177:21 178:14,17,22  
179:6,9,11 181:12  
182:1 184:11 185:2  
195:16 198:6,13  
199:16,18 200:5,8  
202:5,14,17,20 203:1  
207:1 209:8,11,13  
210:4,6,7,11 211:1  
212:7,10 215:15  
217:12 222:10,19  
226:19 227:15 228:2  
229:18,19,22 230:4  
233:12 248:1 251:2,7  
251:12 258:22 260:9  
261:1,6,16,16 262:14  
262:17 263:6 264:17  
265:10 273:11 276:11  
276:14,16,21 277:17  
282:17 285:18 286:16  
286:21 292:1 300:2  
302:9 304:2,20  
309:18 311:1 315:13  
317:19 318:12 319:22  
325:10 327:18,21  
334:13 335:13 338:15  
341:20 344:8 345:10  
346:8 358:22 385:14  
385:15,18 386:20  
398:14 409:15 414:8  
416:1 417:5 425:10  
438:4  
**markets** 101:12 207:8

274:15 293:19  
**masters** 297:12  
**material** 274:3 430:22  
**materials** 30:17  
**math** 33:14 48:18 54:5  
 54:17 358:16  
**matrix** 390:13  
**matter** 16:12 45:9 136:2  
 164:10 221:12 224:4  
 296:8 308:20 326:10  
 343:21 358:7 392:11  
 454:7,18  
**matters** 5:4  
**mean** 15:5 18:19 19:6  
 20:8 26:7 29:11 30:10  
 50:9 52:9,16 53:16  
 70:18 88:14 101:1  
 116:6 130:4 151:6  
 155:3 164:10 183:5  
 190:8 217:18 265:3  
 278:20 286:15 289:3  
 293:17 308:5 309:18  
 318:3 320:4,6 323:16  
 327:2,4 332:21 333:4  
 333:16 344:11 365:2  
 369:10 375:13 442:1  
 450:17  
**meaning** 129:7 159:14  
 315:18 321:13 328:11  
 329:7,20 332:3  
 396:17  
**meanings** 332:4 419:3  
**means** 155:4 194:3  
 265:6 316:1 317:20  
 317:20 318:6,8 323:6  
 330:20 331:16 336:14  
 337:2 369:8 373:19  
 374:4 391:16 395:4  
 395:20 397:3 399:11  
 429:16 439:5  
**meant** 316:8 338:4  
 374:18 418:14 440:5  
**measure** 56:18 400:9  
**measured** 394:3,4,5  
**meat** 315:5,6 358:22  
 376:1,2 377:3 411:11  
**meats** 150:22 358:20  
**meaty** 130:7  
**mechanical** 381:5  
 430:11,13  
**mechanically** 381:10  
**mechanisms** 212:3  
**media** 291:13 293:10  
 293:20  
**median** 357:2,2  
**medical** 275:2  
**medicine** 306:21 309:8  
**Medina** 3:7,22 257:22  
 258:13,17 259:1,8,11

259:15,17,18 261:3,7  
 261:13,14 262:19  
 263:4,14,16,20  
 266:14,21 267:2,9,16  
 267:18,21 268:5  
 269:4,12,17 270:2,6  
 270:15 271:19 272:11  
 273:6,14 274:20  
 275:10,15 276:3,22  
 277:12,14 278:7,10  
 278:14 279:3 280:5  
 281:11,15,21 282:3,7  
 283:11 284:6,12,19  
 285:17 287:2,8,13,17  
 288:1,4,6,18 289:2,6  
 289:18 290:1,10,22  
 291:6,10 292:10,13  
 292:18 293:5,17  
 294:12,13,20 295:1,4  
**Medina's** 265:15  
**medium** 357:12,14  
**meet** 62:2,13 74:17  
 111:10 142:11 164:9  
 191:5 192:6,20  
 201:18 229:15 264:4  
 396:17 427:9 438:7  
**meeting** 129:8 168:19  
 189:17,22 190:4,17  
 191:13,19 193:2  
 203:16 264:19 277:22  
 283:17 302:20 303:15  
 395:20 409:6  
**meetings** 10:2 64:6  
 66:10 76:14 113:1  
 188:13 189:6,7  
 303:19 335:16 347:1  
 352:10,10 353:1  
 359:10 423:20  
**Melissa** 2:21 18:10  
 65:21 77:21 114:13  
 145:3 153:15 166:9  
 180:14 205:12 252:17  
 266:13 307:4 335:21  
 341:1 343:8 350:17  
 369:5 384:3 389:18  
 399:3,7 404:3 408:21  
 412:11 424:7 426:13  
 444:18  
**member** 65:7 140:17  
 146:7,20 174:2  
 179:22 181:1 190:10  
 190:13,15,16,17  
 192:10 264:14 276:18  
 283:10 287:21 288:2  
 301:9,11,11,12 303:7  
 303:10  
**member's** 190:19  
**members** 10:10 64:8  
 66:16 67:5,10,18

76:16 79:7 83:3,4  
 86:9 119:18 129:7,8  
 130:11 131:21 133:9  
 145:17 146:9 166:16  
 167:10 172:4 173:4,8  
 178:2 183:11 185:21  
 186:1 189:16,16  
 190:2,12 191:18  
 193:1 274:21 303:17  
 347:12 355:1 359:7  
 360:1 427:21  
**membership** 83:7,9  
 254:18 352:7  
**Memorial** 52:22  
**memories** 238:8  
**memory** 59:3 238:7  
 429:9  
**men** 354:7 399:21  
**MENDEZ** 284:10  
**mentality** 47:13  
**mention** 4:14 18:15  
 152:10 215:13 216:13  
 278:16 279:22 445:11  
**mentioned** 4:15 14:18  
 16:17 19:22 35:16  
 57:12 66:2,20 68:15  
 69:6 78:6 83:3 87:11  
 89:1 99:1 101:4 102:5  
 102:15 103:2 116:16  
 145:6,12 153:16  
 162:20 169:10 180:19  
 190:7 191:5 205:13  
 206:21 211:9 212:14  
 214:18 219:3 231:13  
 235:20 237:18 239:1  
 239:5 240:19 242:15  
 243:22 256:15 266:18  
 270:13 274:17 280:12  
 280:16 283:13 340:6  
 345:19 347:7 352:22  
 370:11 404:7 433:4  
 443:14  
**mentioning** 97:11  
**merchantable** 391:19  
 391:19 394:17 395:16  
 395:20 396:2,6,16,20  
**merely** 111:15 264:9  
 442:6  
**merged** 181:17  
**Mesila** 7:7 9:9,18 26:21  
 45:8  
**message** 151:8 286:8  
 293:18  
**met** 71:2 113:2 264:20  
 353:1 412:19 413:22  
**methods** 97:21  
**metrics** 389:9  
**Mexican** 273:22  
**Mexico** 1:7,13,13 6:17

6:21 7:12 51:7 81:15  
 86:2,15 107:18,22  
 108:5,7 160:16 167:7  
 198:21 199:2 206:12  
 216:1  
**Michelle** 231:9  
**microphone** 107:15  
 137:5  
**mid** 138:10 404:17  
**mid-sized** 312:21  
**middle** 46:17 191:8  
 237:7 400:5  
**midnight** 47:15  
**midpoint** 54:7  
**mike** 10:11 59:14 113:1  
 113:3 139:15 233:7  
 275:16 350:8  
**mile** 15:18,20  
**miles** 15:22 16:1 49:15  
**million** 15:7 16:6 58:4,5  
 85:6 108:9 111:21  
 112:5 125:8 151:13  
 151:15 226:7,7  
 242:19,19 299:7,7,12  
 299:14 301:1 349:7,9  
 357:20 358:1,3,18,20  
**millions** 151:19,20  
 167:21  
**mind** 25:8 106:5 135:11  
 181:2 209:12 217:4  
 237:20 279:3 290:7  
 293:15 294:8 332:10  
 433:2 446:8  
**Mine** 146:10  
**miner** 104:1  
**mines** 8:15,20 104:2  
**minimum** 42:1 47:16  
 395:21 396:18 421:12  
**minute** 32:19 35:4  
 135:21 171:17 247:3  
 279:15 371:16 391:3  
 391:6 451:19 454:6  
 454:10,11  
**minutes** 103:3 295:13  
 296:4 390:22  
**misappropriation**  
 120:21  
**misinformed** 119:1  
**misquoting** 393:1  
**missed** 89:20  
**missing** 192:10 282:11  
 388:21  
**mission** 159:7,10  
**MISSISSIPPI** 1:7  
**MISSOURI** 1:6  
**misspoke** 112:15  
 144:17  
**mistake** 170:6 302:17  
**misunderstanding**

392:22 393:1  
**mix** 343:18  
**mixture** 170:12  
**mode** 344:15 347:15  
**model** 51:9  
**moderate** 354:11  
**moderately** 354:19  
**modern** 163:10  
**modified** 287:11  
**modifying** 428:1  
**moisture** 372:4 411:14  
**mold** 372:3  
**mom** 298:1  
**moment** 8:12 43:21  
 117:7 118:16 184:10  
 186:13 197:18 236:11  
 253:14 258:1 339:22  
 348:1,3,19 416:12  
 425:2 429:9  
**monetary** 435:14  
**money** 16:7,13 58:10  
 61:14 93:17,19  
 158:11 162:3 165:12  
 166:2 181:10 233:4  
 238:15 265:4 285:19  
 286:20 376:20 406:14  
 432:13 435:16,18  
 437:3 448:22 450:18  
**monitor** 80:16 249:22  
**monitoring** 81:18  
**month** 292:16,18 409:2  
**monthly** 17:7  
**months** 19:9 20:1 29:17  
 29:17 31:8 34:17  
 35:18 280:10  
**monumental** 170:21  
**morning** 6:15 14:6,7  
 18:11,12 60:15,16  
 65:22 66:1 68:12,14  
 78:2 98:21 105:10  
 107:7,8,10 114:16,18  
 114:20 126:20 149:20  
 162:17 176:5 180:15  
 180:16 277:4 280:12  
 280:17 283:13 420:7  
 454:13  
**mother** 7:8,10 38:1  
**motivation** 289:15  
**motor** 49:2  
**move** 40:3 59:14 62:3  
 73:10 84:13 85:12  
 93:11 94:6 103:4,6  
 119:22 391:2,13  
**moved** 92:9  
**moving** 102:16 406:18  
**multi-states** 86:17  
**multiple** 96:4 199:15  
 365:9 430:20 452:19  
 452:21

**multiply** 57:7 358:21  
 364:20  
**Museum** 1:13  
**mushrooms** 23:10  
**mutually** 277:7,10  
**MYERS** 2:15

---

**N**


---

**N.E** 2:16  
**name** 6:15 60:22 72:22  
 107:16 137:18 147:2  
 163:13 176:21 198:19  
 203:16,20 204:6  
 225:16 248:22 259:17  
 297:1,2  
**names** 167:4 269:22  
**narrow** 161:4  
**nation** 127:15  
**national** 202:8 203:14  
 203:22 204:3 206:3  
 212:22 221:14 222:8  
 222:22 223:5 234:12  
 277:3 279:17 346:1  
**nationwide** 87:3 212:15  
**native** 79:16 85:20  
 124:20 125:21 126:3  
 156:16 395:6 400:14  
 400:17 401:3,12  
 413:8,11  
**natives** 241:6 365:8  
 413:18  
**natural** 165:11  
**nature** 23:16 38:1 234:7  
 350:3 401:6  
**near** 27:6 140:16 176:8  
**nearly** 382:13  
**nebulous** 419:2  
**necessarily** 289:22  
 384:21 401:10  
**necessary** 12:5 14:12  
 66:13 186:18 228:18  
 319:9 321:2 340:17  
 350:5 378:9 439:20  
**necks** 9:16  
**need** 4:9 12:14 26:10  
 34:9 61:11,14,15,16  
 61:22 62:1 68:15  
 109:20,21 121:15  
 127:7 154:21 189:13  
 217:8 234:6 235:16  
 258:1 260:22 261:16  
 279:16 291:11,12  
 292:16 300:12 311:18  
 311:21 317:3,8 320:7  
 324:17 326:20 329:4  
 329:6 340:14 341:16  
 341:18 342:8 360:7  
 380:3 389:10 390:15  
 403:9 409:22 411:18

412:6,7,19 413:3,17  
 424:20 444:7  
**needed** 125:21 303:3  
 325:11 385:16  
**Needless** 138:15  
**needs** 63:17 73:7  
 181:14 189:18 223:16  
 235:9 282:10 283:2  
 291:10 386:17 411:15  
 411:16 415:1 453:4  
**negative** 164:2 375:20  
**negotiate** 11:16 74:1  
 110:16 141:17 201:2  
 216:10 260:14  
**neighbors** 299:19  
 306:20  
**neither** 253:3 255:4  
 321:5 383:20  
**net** 442:2  
**network** 15:9  
**never** 9:18 31:17 68:8  
 94:7,11 98:6 165:14  
 286:19 380:11 381:15  
 381:15,18 383:6  
 423:4 426:22 441:18  
**nevertheless** 229:17  
**new** 1:7,12,13 6:17,21  
 7:1,7,11 8:11 21:21  
 22:3 29:18 33:5 51:7  
 81:15 83:19,20 84:20  
 85:1,13 86:1,15 91:8  
 92:6 94:21 97:15  
 103:20,20 104:5  
 107:18,22 108:4,7  
 146:9 156:5 160:16  
 167:7 169:13 171:4,5  
 177:10 192:2 198:21  
 199:2,6 203:20  
 206:12 226:14 232:17  
 243:14 244:1 268:13  
 268:14 270:9,10,13  
 270:13,19 271:16  
 329:10,12 330:2  
 332:22 343:1 411:16  
 419:14,16  
**News** 277:4  
**newspapers** 286:8  
**nice** 46:11 180:17  
**night** 7:18  
**nine** 130:11  
**Ninety-four** 284:10  
**nitrogen** 27:19,21  
**noise** 4:13  
**nominate** 112:1 134:1  
**nomination** 146:8  
**nominations** 133:17  
**nominees** 133:2,11  
 359:8 360:9,11,12  
**non** 309:5

**non-branded** 261:15  
**non-quarantiners** 82:3  
**noncommercial** 418:5  
**normal** 431:4  
**normally** 38:9 39:2  
 125:3 328:1  
**north** 1:7 49:15 206:13  
 215:22 297:7 357:5  
**northern** 227:3  
**note** 64:19  
**notice** 72:7 136:21  
 150:14 184:14 198:5  
 258:21 282:16 304:14  
 318:14 374:1 382:9  
**noticed** 28:6 323:2  
**notion** 444:20  
**noun** 378:21,22  
**November** 8:15 404:17  
**NP** 331:5,7  
**number** 10:9 17:7 23:12  
 33:3,6 34:8 41:18,19  
 57:6 68:22 85:8,15  
 138:17 140:3 149:4  
 149:14 159:9 184:18  
 184:21 214:10 217:18  
 217:20 218:2 219:4  
 219:21 256:17 261:14  
 278:22 279:21 284:6  
 302:11 305:4 307:20  
 351:19 352:3,10,17  
 356:1,3,3 358:3 359:1  
 363:14,16 365:10  
 421:15  
**numbers** 17:11 35:1  
 55:15,18,20 56:4 98:3  
 98:10 149:5 155:1  
 211:6 216:9 219:22  
 220:12 239:14,17  
 351:18 355:14,19  
 364:8 422:13,16  
 423:9  
**numerical** 118:20 131:4  
**numerous** 139:14  
 178:2 307:17,19  
 346:22 431:17  
**nurseries** 83:17 270:5  
 287:15  
**nursery** 259:21,21  
 261:8 264:18 266:19  
 267:8,10 268:1  
 269:11  
**nurseryman** 287:10  
**nut** 61:13 80:9,10 85:20  
 88:11 89:18,21,22  
 97:17 138:3,16  
 140:22 150:22 226:20  
 226:21 227:8 243:20  
 244:15 430:1,3  
 438:10

**Nutrio** 226:18 249:13  
**nutritional** 97:2,5 98:14  
 127:10,13  
**nuts** 12:6 15:21 47:8  
 48:7 69:2 74:10 82:2  
 82:6 111:2 124:20  
 125:1,10 139:1 142:4  
 151:6 201:11 229:8  
 240:6 267:11 280:8  
 302:14 306:19,20  
 309:17 314:20 315:1  
 315:2,3,8 323:7  
 333:17 354:14 371:3  
 381:17 383:3,7  
 384:19 413:15 417:9  
 431:5 432:12,16,18  
 433:19,20 434:8,22  
 437:15 439:21 443:17  
 448:4  
**nutting** 245:10

---

**O**

---

**object** 318:15 320:6  
 321:9,11,19 363:8,9  
 374:7  
**objecting** 316:15 318:4  
 318:5 332:6  
**objection** 13:11,12,13  
 65:4,5,6,9 77:4,5,7,9  
 113:19,21,22 114:3  
 143:15,16,19 179:19  
 179:20,21 204:20  
 230:14,15,16,19  
 251:21 252:5 265:18  
 265:20 266:1 319:3  
 320:19 321:6 362:18  
**objections** 143:13  
 204:13,14,18 252:1,2  
 325:16  
**obligation** 110:7  
**observed** 38:17 39:4  
 228:13  
**obtain** 210:3 268:9  
**obtained** 420:2,3  
**obtaining** 50:22  
**obvious** 434:19  
**obviously** 116:8 121:13  
 298:10 309:19 326:15  
 326:20 351:17 355:15  
 357:6 369:18 433:10  
**occasion** 433:5  
**Occasionally** 185:4  
**occasions** 404:21  
**occur** 367:19,21 372:6  
 383:1 400:22 433:15  
 437:22 439:4 440:14  
**occurred** 383:17  
 408:14 414:22

**occurs** 361:6 381:5  
 382:13 393:3 450:10  
**October** 22:1 34:6  
 46:18 403:2 404:7,8  
 404:11,14,21 405:6  
**odd** 316:2  
**offer** 392:21  
**offered** 229:1 328:8  
**office** 2:4,9 171:15  
 172:6 204:14  
**officer** 63:18 66:3 67:4  
 76:5 116:18 119:8  
 259:20  
**offices** 227:1 249:4  
**Officially** 290:10  
**offset** 116:12  
**Oh** 67:7 105:21 165:21  
 166:1,5 174:7 301:20  
 330:11 426:2  
**oil** 29:11,14 89:21 90:3  
**okay** 26:20 35:15 45:22  
 54:4 67:3 68:9 71:21  
 72:22 78:10,14 86:3  
 89:3 107:16 117:11  
 118:7,14,18 119:3,6  
 134:6 135:16 144:19  
 146:6,13 147:3 148:7  
 148:15 149:1,10,15  
 150:14 156:3 161:13  
 161:18 173:11 181:5  
 185:14 191:10 195:1  
 195:4 197:13 198:19  
 204:7,11 213:10  
 217:16 219:22 220:18  
 224:2 231:19 232:4  
 253:11,19 254:22  
 255:11 256:7,9 257:2  
 269:13 278:14 281:15  
 281:17 286:22 296:3  
 299:20 301:9 313:17  
 319:18 328:18 334:3  
 337:20 351:1,2,5  
 356:22 359:18 367:20  
 369:3 373:9 375:11  
 382:1 387:21 392:13  
 394:2,9 399:3 416:5  
 416:15 425:1 429:14  
 431:8 436:3 437:16  
 437:19 441:15 442:22  
 443:3 451:6 452:2  
**Oklahoma** 1:7 399:16  
**old** 8:10 20:10 29:17,18  
 62:17 151:22 163:8  
 170:2 191:21 327:19  
 330:3,4 354:7  
**older** 12:19 74:22  
 111:16 264:9  
**once** 30:6 38:3 97:17  
 131:19 132:2 158:15

167:21 172:11 199:6  
 270:22 292:13 293:2  
 308:18 309:17 323:1  
 432:18  
**ones** 67:22 158:10  
 170:13 191:3 324:21  
**ongoing** 277:18  
**open** 273:18  
**operate** 155:15 323:21  
**operating** 208:1 228:15  
**operation** 18:20 73:17  
 110:5,12 112:18  
 116:3 121:22 141:21  
 186:19 200:15 201:22  
 205:19 212:1 215:18  
 216:19,21,21 260:18  
 283:21 345:6  
**operations** 182:20  
 183:12 244:8 298:21  
 376:11 448:9  
**opinion** 12:12 24:1  
 38:21 41:15 62:11  
 67:8 74:16 82:12  
 111:8 120:15 142:10  
 166:12,14,21 169:22  
 172:7 173:7 183:20  
 186:8 188:4 190:21  
 192:13 193:15 194:13  
 195:11 201:17 209:5  
 211:11 212:5 213:17  
 220:3 229:14 234:1  
 236:13 264:3 273:10  
 276:1 282:5 336:7,8  
 342:15 344:5 355:22  
 372:10,12 384:13,22  
 401:22 403:11 414:12  
 418:14 425:21 426:5  
 444:2 447:3  
**opportunities** 10:9  
 19:11 199:15 309:19  
 382:22 431:20  
**opportunity** 10:7 67:5  
 72:7 82:8 108:19  
 137:9 139:19 177:22  
 198:4,10 199:19  
 225:7 227:16 230:7  
 233:2 243:18 248:4  
 248:14 251:9 264:22  
 296:1 298:16 306:9  
 319:2 354:18,22  
 359:20 389:10 410:20  
 413:13 414:18 425:18  
**oppose** 141:6 164:20  
**opposed** 23:1 42:8 44:3  
 164:22 165:5,19  
 174:4 371:1 377:4  
**opposite** 318:7 377:5  
**opted** 421:22  
**orange** 225:22

**orchard** 52:10 54:22  
 138:19,20 142:15  
 225:19 226:1,21  
 227:9 228:18 231:20  
 232:9 245:11,13  
 249:14,20,20 400:4,7  
 417:11  
**orchards** 28:6 108:6  
 232:10,10,11 243:16  
 274:3 400:18  
**order** 1:5,12 4:4 5:5 6:6  
 10:4,6,18,21 12:8,12  
 13:3,4 15:2 16:21  
 17:15 28:14 30:22  
 49:22 56:3 57:17,20  
 61:7,9 62:8,11,15  
 63:9,13 64:4,10,11  
 67:6 68:18 72:9,16  
 73:8 74:12,15 75:16  
 75:19 76:12,19,20  
 81:10,20 82:10 85:13  
 87:15 90:11 91:18  
 92:16 93:4,10 94:13  
 97:6 101:21 102:21  
 103:10 106:8 108:19  
 109:11,15,19 110:4  
 111:5,8 113:6,11,12  
 118:20 122:21 124:18  
 128:5 130:18 136:5  
 137:1,11 139:18  
 140:8,11,20 141:3,7  
 141:10 142:6,10  
 143:2,4,7,8 145:13,21  
 147:16,18,20 152:16  
 152:19 157:21 158:13  
 159:3 160:1 161:14  
 164:21 165:1,12,20  
 176:10 177:21 178:14  
 178:17,22 179:6,9,11  
 179:12 181:12 182:1  
 184:11 185:3 191:21  
 194:14 198:6,13  
 199:16,18 200:5,8  
 201:13,17 202:6,14  
 202:17,21 203:1,2  
 209:8,12 210:12  
 211:2 212:7,10 215:5  
 215:12,14 216:16  
 217:13 222:10,20  
 223:2 227:16 228:2  
 229:10,14,19,22  
 230:4,5 233:12 248:1  
 251:2,7,12,13 258:22  
 260:9 261:6 262:14  
 262:17 263:21 264:3  
 264:18 265:10,11  
 273:11 276:11,15,16  
 276:21 285:18 292:1  
 296:11 300:2 302:9



303:12 304:2,8,20  
 315:13 317:19 318:12  
 319:22 325:10 334:13  
 338:15 341:20 345:10  
 352:18 385:14,18  
 386:20 389:11 398:14  
 409:15 417:5 418:13  
 419:18 423:7 438:4  
 448:17,19  
**orders** 157:16 161:14  
 165:18 310:21 311:1  
 327:18,21 335:13  
 346:8 385:15 425:11  
**organization** 62:1 64:3  
 76:9,11 78:8 83:9  
 94:5 119:10,11  
 138:12 159:13 202:16  
 203:15,17 204:16  
 229:21 236:14 251:6  
 264:16 274:22 294:3  
 302:13 312:22  
**organizations** 15:15  
 63:22 76:1,5 102:3  
 206:11 210:1 301:8  
 312:12  
**organize** 66:9 302:11  
**organized** 61:13 294:2  
 298:15  
**organizer** 310:1  
**organizing** 94:3 302:22  
**original** 9:10 57:3  
 124:17  
**originators** 103:16  
**Osala** 297:6  
**ought** 88:5  
**ounce** 343:21,21  
 344:12,13  
**ounces** 38:10 97:21  
**outcome** 82:12 84:19  
 240:1  
**outdated** 414:12  
**outer** 369:9,10 373:20  
 378:19  
**outlined** 386:22 410:7  
**outsell** 88:11  
**outside** 51:8 101:10  
 173:13 174:3,13,14  
 187:13 213:21 247:3  
 282:20 283:1,8,22  
 293:6 371:11 373:21  
 435:4 446:3  
**outsiders** 282:12  
**outweigh** 10:22 63:14  
 88:11 109:16 140:12  
 141:11 178:18 200:9  
 251:3 262:18  
**outweighs** 75:20  
**overall** 10:17 22:5 32:3  
 63:8 67:14 75:15

92:16 93:3 109:10  
 124:5 140:7 178:13  
 200:4 228:1 239:19  
 242:6 262:13 312:19  
 432:10,14 444:8  
**overcome** 69:8 122:19  
**overhead** 119:5,17  
 148:3,6 222:1 253:17  
**overlapping** 209:19  
**overly** 17:11 109:13  
 322:14  
**overseas** 208:8,12,22  
**overseeing** 179:3  
**oversight** 119:11  
 234:18 385:17  
**oversupply** 33:10,12  
**owned** 431:5  
**owner** 6:17 142:22  
 198:21 226:8 271:15  
 417:10,13  
**owners** 113:2 137:20  
 417:6 418:12  
**ownership** 183:21  
 313:6 381:16 383:2,7  
 384:11,16,19 385:2  
 417:3,12 437:5,14  
 441:4,18 443:7  
**owning** 137:21 416:21  
**owns** 177:4 383:2 417:9  
 432:15 433:19

---

**P**


---

**P-R-O-C-E-E-D-I-N-G-S**  
 4:1  
**p.m** 223:18,19,20,21  
 224:2,5,6 454:12,17  
**pace** 19:17  
**Pacific** 226:20,22 227:5  
 249:3,6,17 250:13  
 256:17  
**pack** 299:10  
**packaged** 38:8 344:3  
**packaging** 12:3,4 61:20  
 69:8,13 74:8 87:13  
 88:14 89:2 111:1  
 142:2 162:21 201:9  
 209:13 216:15 217:1  
 217:3 229:6 237:19  
 262:3 280:2,19 344:7  
**packed** 88:16 429:11  
**packing** 30:17 237:20  
 436:17  
**page** 22:13 87:11 92:15  
 115:2,14 118:11  
 119:2 127:5 148:21  
 152:9 159:12 162:19  
 164:18 184:13,15,18  
 184:21 203:8 214:17  
 215:10,13 216:13

278:15 279:1,22  
 387:16  
**pages** 93:1 158:20  
 311:15  
**paid** 25:3 39:15 56:21  
 102:7 104:9 123:4  
 124:6 162:10 219:6  
 228:7 263:1 282:22  
 384:10,15 443:5  
 453:10,15  
**palette** 344:12  
**Palma** 10:13 63:4 64:16  
 72:14 75:10 108:22  
 137:12 139:21 178:5  
 198:14 199:22 225:6  
 227:19 248:11 250:19  
 259:6 262:7 364:17  
 422:16  
**Palma's** 123:18 263:11  
 288:21  
**panel** 249:22  
**paper** 20:18 302:18,22  
**papers** 175:21 277:5  
**paragraph** 22:14 89:1  
 127:6 144:13 152:10  
 171:21 172:3 191:7,8  
 195:3 237:8 269:14  
 269:15,16 284:9  
 314:10 347:18 353:10  
 354:4 359:5 367:2  
 448:17  
**paragraph(a)** 353:10  
**paragraphs** 120:15,16  
 395:18 410:8  
**parallel** 329:8 331:15  
 331:18  
**Pardon** 90:17 99:9  
 408:4  
**part** 15:11 17:19 28:3  
 34:9 36:3 39:11,12  
 41:1 42:5 47:3 50:1  
 66:15 72:12 81:22  
 102:20 103:3 113:5  
 119:14 129:11 148:20  
 161:21 166:19 183:18  
 195:8,9 218:18 233:2  
 239:11 242:5 244:6  
 254:9 255:5 261:6  
 267:1,2 268:1 270:1  
 271:19 285:13 289:18  
 292:4 303:9 308:18  
 309:22 310:2 312:22  
 315:18 326:22 329:20  
 331:7 351:7 360:14  
 360:15 365:19 368:13  
 378:11 379:3 384:5  
 388:6 389:4 398:1  
 400:1 406:22 427:20  
 434:3 445:3

**partial** 26:9  
**PARTICIPANT** 133:15  
**participants** 211:10  
**participate** 10:7 93:22  
 94:1,2 108:20 139:19  
 177:22 194:10 199:19  
 227:17 251:9 264:22  
 303:11 304:7 345:8  
**participated** 94:12  
**participating** 94:9  
 276:8 303:18  
**particular** 15:17 67:17  
 70:15 121:13 128:17  
 160:13 161:21 220:8  
 225:21 242:15 304:6  
 317:8 325:2 348:8  
 360:21 414:15 426:20  
**particularly** 68:20 122:7  
 303:18 310:3 312:2  
 368:8 372:4 382:14  
 401:8 415:22 419:14  
 440:17  
**parties** 450:18  
**partner** 23:7 26:14  
**partners** 138:17 187:14  
**parts** 50:19 82:20 245:2  
**party** 4:20 283:6 339:14  
**Paso** 8:21 9:2,4,13,16  
 46:8 61:2,3 73:2,3  
 86:5 91:14 108:7  
 226:20  
**pass** 44:22 106:10  
 130:18 181:15 189:13  
 195:16 347:15  
**passed** 7:10 52:21  
 131:21 363:11 432:17  
**passes** 181:22  
**passing** 7:8  
**patent** 274:9  
**patented** 271:10  
**PAUL** 2:14  
**Paulina** 7:8  
**pay** 21:12 43:8,14 44:10  
 44:15 45:19,20 52:4  
 93:9 102:11 103:8  
 123:1,3,13 182:22  
 183:17 262:21 303:5  
 381:7 432:1 448:14  
 451:3 452:18 453:13  
**paying** 50:9 70:16,17  
 94:9,10 102:16 103:5  
 103:13 116:10 183:3  
 443:13  
**payment** 102:18 104:7  
 124:4  
**payments** 103:18 335:1  
**pays** 102:10 104:12  
 335:2 453:9  
**peach** 232:11

**Peachtree** 2:16

**pecan** 6:20,22 7:1,4,5,9  
 7:11,18 9:22 10:3,10  
 11:13 13:5 20:5,12  
 23:16 28:6 29:17,18  
 29:20 31:2,14,17 37:1  
 37:12,15,22 46:18  
 49:6 51:7,13 52:7,10  
 61:4 63:15,18,20,21  
 64:2,5,8 66:3 70:16  
 70:20 73:4,7,11,15,21  
 75:5,6,21,22 76:2,3,6  
 76:8,10,13,17,21 78:7  
 78:10,12,17,19,19,21  
 79:2,6,11,13,14 80:6  
 80:17,22 81:7 82:22  
 83:2 84:7,8 85:16  
 86:3,8,12,13,16 88:7  
 88:8,10 89:6 90:3  
 92:2,4 95:10,11 97:17  
 100:9 101:5,17 104:8  
 108:4 110:1,10,14,21  
 112:21 113:7,8,13  
 128:8 137:22 138:4  
 138:10,13,18 139:12  
 139:16 141:6,13,16  
 143:3,9 150:15,18  
 151:3,12 152:15,18  
 155:15 156:14 157:8  
 158:15 159:2,8,15,18  
 160:3,19,20 163:8,14  
 164:20 165:16 172:12  
 174:8 177:5,11,19  
 178:2 179:13 192:14  
 194:14 199:1,5,6  
 200:13 201:1 202:2,8  
 202:9,12 203:3,10,11  
 203:14,22 204:1,3,8  
 206:2,4,10,11,12,21  
 207:15 208:1,11  
 209:12,14 210:10,18  
 211:9,18 212:2  
 213:14 217:10 219:19  
 220:5 221:14,15  
 222:9,11,22 223:5  
 225:20 226:9,16,19  
 228:16,21 229:20  
 230:1,6 232:21 233:3  
 233:6 235:7,21 239:6  
 242:9,22 243:7,19  
 244:17 249:13 250:5  
 250:16 251:5,14  
 259:20,21,22 260:6  
 260:12,19 261:15  
 264:15,16,18,19  
 265:12 267:1,2,8,9  
 268:1 269:1,11  
 270:19 272:14 274:18  
 275:8 276:19 277:19

278:17 280:3 287:11  
 287:19,22 288:3,11  
 289:8 291:22 297:19  
 297:21 298:3,4,12,15  
 298:21 301:10,11,13  
 301:13,16,17 302:18  
 303:7,10 304:1  
 305:10,22 311:19  
 313:21 315:4,12  
 319:21 320:1,9 323:7  
 323:19 328:19 330:14  
 330:17 331:19 332:17  
 333:8,16 340:14  
 342:13 345:7 346:2  
 349:8 350:21 351:7  
 351:11 353:18,20  
 354:1,1 355:11 357:7  
 362:16,19 363:8,21  
 364:2,3 367:21 370:4  
 373:20 377:9,10  
 378:15,17 382:13  
 389:6 390:8,18 393:6  
 399:9,11,15,16,17,20  
 400:4,8,13,14,17  
 401:15 402:6 405:2,5  
 412:1,4,5 414:6  
 418:14,19,19 419:4  
 421:10 422:7,10  
 438:1 446:15 449:19

**pecans** 1:5 4:6 6:6 7:4

7:12 11:9 12:9,19  
 13:3 16:11 19:1 20:1  
 20:16 21:12,22 22:19  
 24:22 26:12 28:21,22  
 31:1,9 33:9 36:7 37:5  
 38:4,17,18 40:17,19  
 40:20 43:6,7,9,13,15  
 51:3,4 56:22 58:9,13  
 61:3,21 62:17 64:10  
 69:3 72:9,16 73:3,17  
 74:13,22 76:4,19  
 79:17 84:7 85:7 87:22  
 88:2 91:7 92:6,13  
 97:6,21 98:12 99:6,15  
 99:20 101:10,15  
 102:21 103:18 108:9  
 108:12,13 109:22  
 111:15,22 113:4,11  
 115:9 116:9 121:19  
 124:13 125:17 126:2  
 126:3 127:8,10,13,20  
 133:13 137:1,11  
 138:3,9 139:5,6,8,10  
 141:10 142:7 143:2,5  
 143:7 145:7 151:7  
 160:11 163:6 167:17  
 168:1 170:12 177:6,8  
 177:13,16 179:11  
 180:19 181:5 184:11

192:19 198:6,13  
 199:2,4,11 200:15  
 201:14 202:3,6,14,21  
 203:1 205:14 209:1,2  
 211:22 213:18 214:4  
 214:19 217:6 218:3  
 218:17 221:4 222:10  
 222:15 226:2,3,6,9  
 227:8 228:7,15 229:1  
 229:11 230:4 231:17  
 231:18 238:4 239:22  
 240:5,20 241:13  
 242:1,19 243:2,15  
 244:9 245:7,16 249:7  
 250:14 251:12 256:16  
 256:17,21 258:22  
 260:2,9 261:1,6  
 263:22 264:9 265:10  
 267:15 269:15,16  
 275:2 276:14 291:14  
 292:2 293:18 298:10  
 298:10,14,14,17,18  
 298:20 299:4,6,8,15  
 299:16 300:3,15  
 301:1 302:9 304:2,20  
 308:5,7,7,8,19 309:8  
 309:11 310:4 314:9  
 319:22 322:3,4  
 325:10 337:17 338:3  
 344:2,19 354:8 357:4  
 357:21 365:6,7,7  
 371:10,14 373:7  
 375:5,14 378:21  
 380:5,12 381:7,8,10  
 381:10,22 383:19,21  
 384:12,16 391:19,20  
 394:17 395:6,7,7,16  
 395:20,20 396:3,6,16  
 396:17,21 399:14,22  
 401:9,13 402:19,21  
 403:1,3 409:15,16  
 413:21 414:8 423:1,8  
 429:17 430:8,10,11  
 430:14,16,19 431:10  
 434:17,20 435:4,13  
 436:4,8,17,21 437:6  
 437:12 439:7,11  
 442:3,7 443:7 445:8  
 445:13 448:21 450:2  
 450:15

**pedantic** 322:14**Pennsylvania** 8:16

**people** 15:10,16 16:13  
 16:14 17:9 19:3 20:15  
 30:22 31:17 58:8 69:1  
 82:2 83:6 85:16,19  
 86:11 88:12 91:3  
 93:22 94:1 127:19  
 150:15 156:12,18

159:6 163:19 165:19  
 165:22 167:4 168:21  
 169:18 171:3,4  
 172:13,15 173:13  
 174:15,20 187:16  
 195:22 216:5 217:9  
 234:9 235:3 236:17  
 238:11 243:8 245:9  
 245:10 276:3,6  
 280:11 282:12,17  
 291:20 423:7 433:3

**people's** 271:21**Pepperdine** 170:15

**percent** 27:22 46:1 57:4  
 57:6 58:22 79:8 94:1  
 124:22,22 125:10  
 127:2,4 129:17 241:7  
 241:7 263:5,7,8  
 275:11,21 289:9  
 315:5,6 358:19  
 372:16 381:9 411:10  
**percentage** 58:20 126:6  
 263:2 265:4 269:7  
 372:13 414:3

**perception** 238:4 242:6**perfectly** 323:11,13**perform** 308:12**performance** 275:22**performing** 442:7**performs** 270:20**period** 56:14 59:4 84:1  
 88:6 195:7 390:4**perishable** 19:5,6**permissive** 450:7**permit** 334:14**person** 58:13 104:1

116:21 160:18 162:8  
 162:8 172:8,9 194:10  
 244:18 268:6 283:9  
 283:12,20 291:11,12  
 292:20 293:11 306:19  
 310:3 340:11 383:20  
 436:12 437:2 451:2  
**personal** 88:3 113:1  
 225:18 338:12 339:6  
 339:7 439:9  
**personally** 64:7 76:16  
 133:8 137:21 138:20  
 162:2 172:14 179:7  
 195:14 231:16 283:15  
 313:4

**persons** 4:22 441:5

**perspective** 51:2 163:2  
 173:19 227:10 231:17  
 283:22 284:1 293:20

**perspectives** 233:5**pertaining** 118:17**pertinent** 119:9**pest** 66:21,21 81:21

**pests** 66:11 370:8  
**petroleum** 293:6  
**PhD** 297:13  
**phenomenal** 170:18  
**phenomenally** 172:14  
 172:15  
**pheromone** 80:18  
**pheromones** 81:2  
**Philippines** 250:11  
**Phillip** 380:16  
**phone** 191:17  
**phones** 4:12,13  
**phonetic** 125:2 344:7  
**phrase** 417:2 438:19  
 440:5  
**physical** 193:13  
**pick** 37:12 430:14  
**picking** 238:7 363:18  
**pictures** 7:21 8:3,4  
**piece** 388:21 451:13  
**pieces** 41:2 124:3  
 388:19  
**pile** 129:5  
**pinpoint** 371:9  
**pioneer** 7:11  
**pistachio** 127:17  
 140:14 145:21 147:16  
 147:18,20 148:10  
 150:20 151:17 152:22  
 153:18 154:5 155:16  
 155:20 156:5,6 158:1  
 161:14 162:17 163:2  
 163:5 165:18,22  
 166:11 167:12 168:3  
 169:5 170:11 171:22  
 174:9 231:14  
**pistachios** 138:2,8,14  
 140:6,18 141:1 145:7  
 145:10,14,16 146:2,4  
 147:1 156:8 157:15  
 158:22 159:16 163:17  
 165:13 167:18 168:4  
 168:21 172:7 228:13  
 241:1 290:7 293:2  
 372:21  
**place** 22:9 40:6 49:22  
 73:9 82:2 190:2 191:6  
 235:17 245:5 309:11  
 318:18 415:18 449:20  
**placed** 436:5,8  
**placeholder** 440:5,11  
**places** 80:5 84:22 85:15  
 341:19  
**placing** 445:7,18  
 446:22  
**plain** 315:17,21  
**plan** 11:7 12:21 41:4  
 73:16 75:2 111:18  
 142:16 193:11 200:14

234:5 264:11 299:17  
**plane** 91:20  
**planning** 402:21  
**plans** 193:10  
**plant** 52:16 62:19 84:16  
 84:18 181:20 199:5  
 214:18 215:1,6 267:6  
 268:10 270:19 297:13  
 361:12 395:5  
**planted** 7:5 83:20 84:1  
 97:12 108:6 115:3,10  
 139:4 177:10 199:6  
 226:2 243:8 298:4,5,8  
 419:17  
**planting** 83:16 85:2  
 232:21 298:6,14  
**plantings** 83:19 84:20  
 85:1,13 97:15  
**plants** 48:5 62:20 158:8  
 168:1  
**plateau** 356:4  
**play** 67:21 152:15  
 285:13  
**playing** 89:5,14 90:6  
 91:9  
**please** 6:13 9:20 41:12  
 42:21 60:9 71:17,19  
 72:20 79:12 107:2  
 117:10 120:14 136:6  
 136:13 144:12 161:9  
 170:1 171:19 176:20  
 195:3 197:11,15  
 215:16 221:12,16  
 224:15 244:2 247:10  
 257:17 278:10 296:12  
 296:22 297:8 301:7  
 320:12 347:3 348:7  
 364:20 374:11 389:20  
 393:5 407:10 416:12  
 428:11 452:10  
**pleasure** 360:4  
**plenty** 210:1 316:8  
**plural** 376:4 378:16,21  
 378:22  
**plus** 27:10 33:15 54:11  
 210:7 219:8  
**point** 40:4,5 42:9 56:13  
 56:18 59:3 68:6  
 115:16 126:11 131:11  
 144:9 149:20 152:4  
 155:2 157:5 176:12  
 184:4 192:21 194:20  
 195:16 203:9 239:21  
 299:8 319:2 321:2  
 325:3 326:4 327:14  
 336:15,18,21 372:7,7  
 372:22 373:6 392:14  
 433:20 435:13,14  
 436:1 442:10 450:16

450:16 451:1,14  
**pointed** 7:22  
**points** 190:6 439:19  
**policing** 182:5  
**policy** 35:5 131:13,14  
**pollen** 269:5,5  
**pollination** 268:21  
**pond** 400:5,6  
**pool** 338:19  
**pooled** 370:2,16  
**poor** 170:5 362:19  
**popular** 354:20,20  
**population** 84:17,18  
**portion** 95:15 103:10  
 150:6 183:22 217:5  
 277:20 304:19 393:16  
**portions** 296:20  
**position** 92:7 94:7  
 132:19 216:10 279:11  
 283:10 313:1 347:14  
 434:1  
**positioned** 389:7  
**positions** 167:8,10  
**positive** 164:2 262:11  
 375:19 377:8  
**possession** 43:9,15  
 308:19 381:1  
**possibilities** 210:7  
 342:16  
**possibility** 309:9  
 367:19 383:13 423:4  
**possible** 191:13 262:2  
 279:22 413:7 420:1  
**possibly** 85:5 425:6  
 447:13  
**post** 352:10  
**potential** 17:11 138:21  
 228:9 240:1 261:22  
 285:9 373:2  
**potentially** 30:17 68:4  
 150:7 167:21 371:8  
**pound** 10:15,16 15:7  
 16:7,11 23:3 38:11  
 56:14,22 57:13 58:20  
 63:7 75:12,13 93:9  
 109:3,4 110:6 140:1,2  
 140:4 149:21 150:5  
 150:19,21,22 152:6  
 157:19 178:7,8 200:3  
 200:4 227:22 228:1  
 243:14 250:22 251:1  
 262:10,12 420:2,5,12  
 420:21 447:20  
**poundage** 396:8 419:11  
 419:20 421:3  
**pounds** 12:10 22:20  
 23:6 41:14,16,17 42:3  
 54:6 58:4,5 62:9 63:2  
 63:6 74:13 75:8 85:7

91:16 108:9 111:6,21  
 112:6 125:9 142:7,14  
 142:21 177:8 199:4  
 201:14 226:7,7  
 229:11 243:13 263:22  
 299:7,12,14 339:9  
 343:18 349:7,10  
 355:9,16,21 357:21  
 358:1,4,18,20 364:19  
 364:19 365:1,2  
 371:16,17 394:6  
 420:10,15 425:5  
 447:17,21 448:11  
**power** 249:22  
**powers** 117:20 186:13  
 233:18  
**pquiros@kslaw.com**  
 2:18  
**practically** 276:3  
**practice** 28:8 195:11,12  
 234:18 238:17 279:16  
 283:13  
**practices** 120:16  
 160:17 243:19 244:7  
 280:19 292:6 417:1  
**pre** 404:13  
**preadmissions** 336:3  
**precedent** 204:15  
**precise** 410:4  
**predict** 57:22 216:6  
**predictions** 58:3,4  
**predominantly** 346:9  
**prefer** 286:20  
**preference** 191:15,16  
**preferential** 236:20  
**preparation** 193:17  
 248:4 322:18 436:20  
**prepare** 224:1 445:13  
**prepared** 6:12 10:13  
 60:18 63:4 72:14,19  
 75:10 108:22 137:11  
 137:16 139:21 176:17  
 178:5 198:13,17  
 199:22 225:10 227:19  
 248:17,18 250:19  
 259:13 262:7 283:18  
 332:1 437:12 449:5  
**preparing** 292:6 303:14  
**prescriptive** 344:15  
**present** 2:19 4:8 79:18  
 82:5 106:18 129:8  
 153:21 190:18 227:6  
 274:22  
**presented** 31:14 181:20  
 422:15  
**preservation** 35:21  
**preserves** 29:15  
**president** 66:9 75:21  
 76:3 78:7 92:2,8,9

202:2 204:3 221:13  
 223:5 274:21 275:17  
 301:15,16,18,19,21  
 302:1  
**presiding** 1:14  
**press** 291:16  
**pretend** 425:2  
**pretty** 8:11 15:22 28:4  
 30:7 33:9 35:21 52:7  
 79:19 81:18 88:15  
 150:19 152:22 168:20  
 214:9,10 404:18  
 439:18  
**prevailing** 44:12  
**prevalent** 417:15,17  
**prevent** 82:22 286:19  
 368:8  
**prevented** 29:12  
**preventive** 286:12  
**previous** 40:2 216:2  
 218:3 219:9 249:15  
 254:20 370:17 399:8  
 400:12 414:9  
**previously** 165:19  
 193:4  
**price** 11:4,7,21 16:11  
 27:13 33:20 34:3  
 39:22 41:7,10 56:12  
 57:7,9,19 58:9 59:2  
 61:16 63:5,8 69:18  
 74:1 75:11 102:18,19  
 103:12,13 109:1  
 110:18 123:15,19  
 124:6 139:22 141:19  
 149:11 178:6 200:1  
 200:19 201:2,4  
 208:22 216:11 219:5  
 219:13 221:4 222:13  
 222:16 227:20 228:12  
 228:14,16 229:2,18  
 240:22 241:19 243:12  
 245:15 250:20 260:14  
 279:10 281:1 308:20  
 365:5 370:12 389:7  
 417:11  
**prices** 11:2,9,16 39:14  
 39:21 40:3 73:14,17  
 74:3 75:14 109:21  
 110:16 116:13 138:11  
 140:15,21 141:17  
 150:22 200:12,15  
 211:5 228:7,8 229:1  
 241:8,22 242:2,10  
 262:21 263:1  
**pricing** 10:14 11:6,15  
 73:15 200:13  
**primarily** 18:22 123:2  
 207:13  
**primary** 61:9

**principal** 249:2  
**principally** 314:8  
**principle** 310:1  
**prior** 46:5 409:3,14  
 425:22  
**private** 218:22  
**probability** 422:11  
**probably** 12:19 39:3  
 51:19 52:13 53:18  
 62:17 74:22 79:8  
 86:10 111:15 142:16  
 147:20 172:13 240:6  
 240:11 243:5 244:9  
 245:6 264:8 268:5  
 286:11 336:9 344:13  
 355:20 357:11 358:5  
 372:10,11 388:18  
**problem** 16:2 58:11  
 79:13 168:1 324:10  
 324:11,17  
**problems** 94:21 151:4  
 156:21 196:17 273:8  
 318:19  
**procedural** 5:4 316:19  
**procedure** 117:21  
 118:9 188:9 233:18  
**procedures** 128:21  
 188:14 192:17 193:11  
 235:13 312:3 370:6  
 426:18 427:20  
**proceed** 5:15 60:13,21  
 71:21 77:16 176:20  
 224:18 334:3  
**proceeding** 5:20  
 326:22  
**process** 10:6,8 23:10  
 27:9 108:18,20 121:1  
 125:4 126:12 139:17  
 139:19 146:8 154:7  
 164:22 168:2 177:21  
 178:1 181:16 199:18  
 199:20 220:14 227:15  
 227:17 235:5,14  
 237:1 251:8,10  
 264:21 265:1 271:20  
 284:21 286:12 298:17  
 314:21 322:2,17  
 326:20 328:2 329:14  
 330:1 345:9 353:2  
 359:9 367:15 368:4,5  
 368:7,13 369:19,21  
 370:5 371:15 377:5  
 378:12,14,17,18  
 379:3 381:6 386:19  
 397:7 406:16 410:21  
 415:13 437:12 450:13  
**processed** 370:1,3,3  
 395:5  
**processes** 154:12

235:17 442:3  
**processing** 122:22  
 154:11 370:6,21  
 375:16,17 393:4  
 415:12  
**processors** 30:9 40:21  
 167:12 222:18 347:9  
**processors/handlers**  
 167:9  
**produce** 29:21 89:18  
 124:21 125:8  
**produced** 108:8 177:7  
 199:3 354:13,14,15  
**producer** 116:8 226:5  
 357:13 416:18 417:11  
**producers** 69:15  
 222:17 228:9  
**produces** 63:1 75:7  
 142:21  
**producing** 85:6 133:13  
 151:4 346:7  
**product** 16:9 19:6  
 20:14 22:6 29:8 30:11  
 30:15 71:2,6 88:3  
 110:8 116:14 119:16  
 122:20,21,22 127:18  
 151:5,9 152:1,2 164:5  
 211:18 212:9 218:5  
 218:21 219:13 234:10  
 238:12 261:22 280:22  
 285:22 290:5 294:11  
 309:2,5,20 310:1  
 334:21 335:6 378:16  
 386:18 397:5 417:4  
 430:4 432:21 435:14  
 439:14 441:1,18,19  
 443:15 445:18 446:2  
 446:10 447:1,10,17  
 449:4,7 450:17,17  
**production** 6:22 7:2  
 11:11 12:10,18 22:20  
 23:16 35:10 39:15  
 51:21 52:1 62:9,16  
 69:20 73:19 74:14,21  
 79:9 84:4,7,8,14,19  
 85:9,10 96:1,5,7,12  
 108:7,10 111:6,14  
 112:20 115:4 128:3  
 134:2 138:22 139:3,9  
 140:16 142:8 147:21  
 160:19,21 177:7,11  
 199:3,7 200:17  
 201:15 213:5,16,21  
 214:5 215:21 218:3  
 229:12 245:2,3  
 249:22 263:2,13  
 264:1,8 271:1 272:17  
 273:3 275:18,21  
 279:6,8 290:19

299:18 307:9,13  
 322:8 354:15,16  
 364:18 365:6 382:6  
 382:14 386:19 390:8  
 390:9 391:14,15,17  
 391:18 394:15,15,21  
 395:4,4,9 400:15  
 401:3,14 403:5,6  
 404:15,16 406:15  
 407:19 428:12,22  
 436:13 446:3  
**productive** 70:2  
**productivity** 249:21  
**products** 69:21 164:3,6  
 181:16 343:1  
**profession** 250:9  
**professional** 426:16  
 427:4  
**profit** 47:7 112:19  
 157:13 207:19 222:17  
**profitability** 418:8  
**profitable** 357:5  
**profound** 99:18  
**prognostications** 220:7  
**program** 20:22 93:16  
 93:18,20 94:10,18  
 116:1 119:10,12  
 121:7 122:3 141:4  
 148:11 155:15 171:14  
 181:4,9 186:6,15,19  
 187:5,6,8,12 188:12  
 189:9 192:15 193:7  
 193:18,20 196:2  
 202:6 207:4 209:5  
 210:3,22 211:11,16  
 234:2 253:10 271:5  
 273:17 275:16,19  
 288:15 289:5 294:1  
 328:15  
**programs** 153:18  
 155:16,21 170:8  
 207:14 210:5 286:18  
 421:8  
**progress** 208:7 276:10  
**progresses** 404:15  
**prohibited** 4:19  
**project** 425:3  
**projected** 10:14 33:15  
 63:5 109:1 139:22  
 178:6 200:1 215:21  
 219:15 221:9 227:20  
 250:20  
**projections** 211:6  
 389:9  
**prolific** 79:19  
**promote** 97:6 101:9  
 119:16 128:8 211:21  
**promoted** 211:17,17  
**promoting** 127:17

276:13  
**promotion** 10:15 36:4  
 61:12 75:14 92:6,12  
 95:16 109:2 140:1,21  
 141:2,8 145:22  
 146:18 149:22 150:9  
 150:13 157:22 178:7  
 200:2 207:18 227:21  
 250:21 261:15 262:9  
 291:5  
**promotional** 63:8  
**promotions** 149:9  
 158:2 207:13  
**promulgated** 99:6  
 222:11  
**promulgations** 100:14  
**prong** 58:1  
**pronouncements**  
 100:17  
**proper** 161:1,2  
**properly** 48:5 283:7  
 413:15  
**property** 12:20 62:18  
 75:1 111:17 264:10  
**Proponent** 3:10 5:13  
 13:20 60:7,11 65:14  
 71:20 72:2 77:14  
 106:21 107:3 113:15  
 114:8 136:11,15  
 144:2 175:18 176:1  
 180:7 197:16,21  
 205:3 224:13,17  
 231:2 247:8,12  
 251:18 252:10 258:9  
 258:13 266:6 296:13  
 328:5 329:12 385:7  
 389:13 403:8  
**proponents** 2:13  
 179:15 196:9 224:9  
 230:10 319:1  
**proposal** 5:7 24:14 26:4  
 26:5 67:9,13 117:15  
 124:12 126:11 180:19  
 181:4 215:3 233:11  
 318:18 321:4 326:7  
 328:17 329:6,17,18  
**propose** 229:21 251:7  
 264:17  
**proposed** 1:5 4:5 12:8  
 12:12,17 13:3,4 16:21  
 20:22 30:21 61:6,9  
 62:7,11,15 63:9 64:4  
 64:10,12 67:6 72:8  
 74:11,15,20 76:6,8,12  
 76:19,21 109:19  
 110:3 111:4,8,13  
 113:5,11,13 116:1  
 119:9 122:3 124:18  
 137:1 140:8 142:6,9

143:7,9 147:5 155:15  
 171:14 176:10 178:14  
 179:11,13 184:11  
 185:11 192:14 194:14  
 194:21 198:5 201:13  
 201:16,20 202:17  
 203:1,3 209:5,11  
 210:11,19 215:12,14  
 217:12 225:3 229:10  
 229:13 230:4,6  
 233:11 234:2 236:2  
 247:22 251:12,14  
 253:10 254:19 258:21  
 260:8 263:21 264:2,6  
 265:10,12 273:11  
 281:9 292:1 300:2  
 303:12 304:1,8,20  
 317:18 318:12 319:21  
 320:2 328:7 353:11  
 359:10 409:14 412:18  
 414:16 415:6 418:13  
 436:13  
**proposition** 55:1  
**proprietary** 254:11  
 255:8 312:5 380:10  
 380:12 381:16 383:2  
 383:21 384:18 417:2  
 417:7,12 426:20  
 427:11 432:16 437:14  
 441:18  
**propriety** 274:13  
**protect** 235:17 333:7  
**protected** 75:11 338:17  
**protocol** 238:13  
**protocols** 12:4 74:8  
 87:13 111:1 142:2  
 162:21 201:9 216:15  
 229:6 237:19,21  
**proud** 8:12  
**prove** 325:9  
**proves** 280:17  
**provide** 66:12,16,19  
 68:16 124:11 127:2  
 153:19 182:19 222:15  
 226:15 234:11 260:20  
 278:19 414:17  
**provided** 122:9 129:10  
 167:14 365:16 404:18  
 417:21 450:17  
**provider** 244:20  
**providers** 228:10  
**provides** 120:19  
**providing** 155:9 441:6  
**provision** 192:6 417:20  
**provisions** 195:9  
 414:21  
**proviso** 191:8 444:21  
**public** 1:3 35:8 167:11  
 173:4,7 174:2 263:7

271:4 283:10 286:9  
 326:14  
**published** 61:7 136:22  
 307:22 315:14 318:13  
 331:1 336:13  
**pull** 303:21 315:8  
**pulled** 315:2,3  
**pump** 48:10 49:9  
**pumping** 47:18,19  
**pumps** 50:20  
**pupae** 80:12  
**purchase** 127:4 309:2,4  
**purchased** 138:19,20  
 226:3 307:3 350:3  
**purchases** 31:22  
**purchasing** 433:9  
**pure** 152:2 349:20  
**purpose** 26:5 188:17  
 308:2 326:13 328:12  
 384:1 409:6 423:6  
 442:20 448:2  
**purposes** 313:3  
**pursuant** 4:6 395:22  
**pushed** 99:21  
**pushing** 286:1  
**put** 11:4 12:21 19:1,8  
 19:18 29:17,21 30:6  
 31:5 39:10 40:14 51:1  
 53:18 75:2 91:15  
 96:12 105:9 111:18  
 128:21 129:3 131:2  
 151:19 213:9 215:9  
 221:22 236:4 264:11  
 268:19 278:17 279:8  
 280:13 308:6,18  
 315:8 344:16,19  
 345:18 347:5 352:17  
 354:4 364:12 372:1  
 387:2 411:17 431:11  
 434:18 435:19 439:2  
 439:15  
**puts** 308:8,9  
**putting** 11:18 31:6  
 39:20 54:16 94:16  
 103:18 254:16 342:5  
 439:5 445:21 447:10  
**puzzle** 451:12

---

**Q**


---

**qualified** 36:22 53:12  
 53:12 288:12 453:22  
**qualities** 48:3  
**quality** 12:3 19:19,21  
 29:1,3,4,5,6,10,15,19  
 30:3,13,19 31:2 34:19  
 38:17 48:1,7 56:22  
 69:1 70:13,17 87:12  
 88:2,20 89:2,4,15,20  
 90:2 110:22 125:2

131:4 142:2 151:5,22  
 152:2 161:1 162:21  
 201:9 216:15,17  
 222:15 229:6 238:3,4  
 238:9,10,11,14,16  
 262:3 271:2 280:1,10  
 280:12 286:4 308:9  
 315:4 323:8 333:17  
 334:21 335:6 413:16  
 414:5  
**quantifying** 403:5  
**quantity** 74:8 92:20  
 354:14  
**quarantine** 79:2,4  
**quarantiners** 82:3  
**question** 17:18 24:2  
 26:3,17 28:21 33:1  
 41:13 43:12 55:13,19  
 69:6 70:10 88:21  
 92:21 97:10 104:21  
 106:9 115:2 126:9  
 145:20 148:8,20  
 150:3 152:9 156:17  
 159:22 160:5 162:7  
 171:7,10 172:6 173:3  
 174:21 194:19 218:15  
 237:18 238:22 256:3  
 256:8 257:1,13 268:6  
 285:5 290:4 307:11  
 310:11 315:11 316:16  
 317:14 318:2,14  
 320:3,21 321:16,17  
 321:20 323:9,11,13  
 329:11 332:7 333:13  
 337:9 339:20 341:2  
 362:3 363:22 364:9  
 368:10 372:20 373:3  
 374:8 391:7 392:15  
 394:11 396:13,19  
 397:17 399:3,7  
 405:21 408:1 411:20  
 424:16,18 425:2,8  
 433:7 445:11 449:14  
 449:18 451:18  
**questioning** 185:1  
 317:4  
**questions** 13:6,22 14:2  
 14:3,9 32:7,9,11,14  
 32:22 43:2 55:7 56:11  
 58:17,19 59:6,8 64:7  
 64:13 65:16,19 68:10  
 70:4,5 71:11 76:15,22  
 77:17,20 83:11 87:8  
 90:8 95:1,2,9 102:6  
 104:17 107:12 113:14  
 114:10,12 118:17  
 128:11,12 132:13  
 134:17,19 136:20  
 143:10 144:6,8,22

148:16 153:13 160:7  
 164:15 166:7 171:1  
 175:1,6,8 176:11  
 179:14 180:10,12  
 196:4,5,10,13 203:4  
 205:6,9 212:18  
 215:11 217:15 218:7  
 223:7,12 230:8 231:5  
 231:6 238:19 240:14  
 245:22 246:5,8  
 251:15 252:13,15  
 256:11 257:3,8  
 265:13 266:9,11  
 278:4,9,11 281:4,7,8  
 287:3,9 288:11  
 294:14,17,20 300:13  
 305:5 306:9 310:6,8  
 311:5,7,9,10 313:12  
 313:12,15 314:13,15  
 316:8 317:5,12 319:5  
 320:11,17,19 321:12  
 323:4 324:16 325:1,2  
 325:19 326:1,3,16  
 327:8,9 330:9 331:16  
 331:21 332:2,5 334:1  
 335:19 337:21 338:20  
 340:19 341:22 342:1  
 344:22 350:12,22  
 360:21 363:1 366:6  
 367:4,6 373:10,15  
 377:17 380:18,22  
 385:6 386:1,3 389:13  
 389:15 397:15,18  
 398:17,18,20 399:4  
 401:20 403:21 404:1  
 405:19 406:3 409:8  
 411:1 415:15 416:7  
 424:5 426:9 428:6  
 429:3,4,13 444:14,15  
 449:11 451:8 454:3  
**quick** 55:11 115:1  
 132:18 144:9 268:3  
 290:4 341:2 371:5  
 380:21 451:20  
**quicker** 38:1  
**quickly** 38:3 42:18  
 115:15 156:2 340:1  
 372:4  
**Quiros** 2:14 5:10,16,18  
 5:22 6:3,8,11 7:13,16  
 7:21 9:19 13:7,22  
 14:1 25:5,12,20 26:1  
 32:13,15,17 33:14,18  
 34:1,5,11,18 35:2,15  
 36:2,12,14,19 38:4,7  
 38:12,16,20 39:4,9,18  
 40:9,13 41:6,9,12,19  
 42:2,12,16 43:19  
 44:19 45:3 47:18 49:7

49:11 50:6,14 51:1,6  
 51:11 53:7,11 54:1,4  
 54:11 55:2,6 59:6,13  
 71:17 72:4,6 77:1,17  
 95:5,6,8,14 96:14,18  
 96:22 97:9 98:4,11,14  
 98:22 99:8,10 100:1,7  
 100:13,19 101:4,16  
 101:20 102:2,5,14  
 103:2 104:10,15  
 107:5 130:9 136:5,7  
 136:16,18 137:5,7,15  
 143:11 144:4,5 148:2  
 148:5 175:5,6 197:10  
 197:17,18 198:2,8,16  
 203:5 205:5,6 213:8  
 213:11 218:10,12  
 219:2,11,14,18,22  
 220:4,11,15,18,22  
 221:3,6,11,20 223:6  
 223:20,22 257:21  
 258:15,17 259:2,9,12  
 259:16 261:3,13  
 262:19 263:10,15,18  
 265:14 266:8,9  
 267:16 287:7,14,18  
 288:2,5,9,20 289:3,14  
 289:20 290:3,16  
 291:1,7,21 292:12,17  
 292:22 293:13 294:7  
 294:13 295:6,9,11  
 296:6,15,16,18 297:4  
 297:8,15,18 299:1,11  
 299:15,20 300:1,10  
 300:17,20 301:6,18  
 302:3,7 303:6,9,22  
 304:6,13,17 305:8,12  
 305:16,21 306:2,13  
 310:7,16 311:2,5,7,11  
 311:17,21 312:6  
 313:10,18 314:1,5,12  
 315:10 316:11,15,17  
 317:10 318:7 319:6  
 319:13,19 321:8,19  
 325:8 331:13 332:19  
 333:3,12,15,20 334:4  
 334:9,17 335:3,7,12  
 335:15 338:1,7,20  
 339:19 340:5,18  
 341:8,12,16,21 345:1  
 345:3,12,15 346:3,10  
 346:17 347:3,22  
 348:7,13,17 349:1,5  
 349:15,17 350:7,11  
 351:5 362:22 363:3,7  
 363:13,16 364:6,15  
 364:22 365:3,12,15  
 365:19 366:5,11,15  
 366:19 367:4 373:11

373:12,14 374:10,16  
 375:1,11,21 376:3,6,9  
 376:13,17,21 377:2,6  
 377:9,13,16 379:6,10  
 379:14,19 380:1,7,17  
 385:7,11,19 386:7,11  
 386:15 387:1,6,10,15  
 387:18,20 388:1,6,11  
 388:14 389:12 390:21  
 392:18 395:1 397:20  
 398:4,10,13,16,22  
 401:22 402:5,9,13,20  
 403:8,12,16,20  
 409:12 410:9,22  
 416:10,16,20 417:6  
 417:14,18 418:17  
 419:5,10,19 420:6,9  
 420:15,19 421:2,12  
 421:16 422:2,20  
 423:12,16,19 424:1,4  
 424:19 427:15,17  
 428:5,9,11,15,19  
 429:2,5,15,20 431:3,8  
 431:14,22 432:5,10  
 432:22 433:7,16  
 434:2,6,12 435:8,16  
 435:21 436:3,7,11,15  
 436:19 437:1,7,16,20  
 438:3,12,15,18 439:1  
 439:22 440:3,10,12  
 440:21 441:5,9,15,20  
 442:12,22 443:8,22  
 444:8,13 451:11  
 452:2,10,15 453:2,8  
 453:12,17 454:2,15  
**quiz** 28:2 88:9 138:11  
 163:9 208:7 233:4  
 252:22 304:10 337:16  
 343:15 346:5 347:5  
 351:20 352:2,9 358:8  
 359:14 360:2,6,8  
 368:7 375:13 377:5  
 378:3 380:15 409:19  
 411:6 418:13 422:6  
 422:12 423:3 425:13  
 444:19  
**quiz** 451:5  
**quorum** 129:5,6,9  
 131:2 188:14,18  
 189:2,5,11 192:10  
 193:1  
**quorums** 191:2  
**quoted** 390:16  
**quoting** 103:5

---

**R**


---

**R-A-N-D-Y** 297:3  
**rainfall** 86:20

**rains** 404:20  
**raise** 60:9 71:18 107:2  
 136:13 156:16 168:21  
 197:14 224:16 247:10  
 296:12  
**raised** 182:15 323:9  
 373:14 375:2  
**ran** 322:20  
**ranch** 1:13 53:17,21  
 137:21,22 138:1,19  
 139:9 140:20 142:22  
 143:1 162:1 177:4,5  
 177:15  
**rancid** 29:12 39:5  
**rancidity** 217:6  
**Randy** 3:8 295:9 296:13  
 297:2 307:6  
**range** 40:1 357:12,14  
**ranges** 49:3  
**rare** 271:12  
**rarely** 443:20  
**rate** 43:8,14 183:15  
 371:16  
**rates** 44:12 235:13  
 236:18  
**rating** 270:15  
**rationale** 235:10  
**Ray** 106:4  
**re-definition** 315:20  
**re-enter** 138:18  
**re-extractions** 243:13  
**reach** 302:14  
**reached** 113:7 217:6  
 454:11  
**react** 31:15 290:8 293:3  
**reaction** 40:6  
**read** 6:1,9 22:17 25:9  
 25:21 32:19 43:21  
 44:17 63:7 72:7,12  
 115:15 129:5,17  
 147:19 148:13 161:13  
 161:16,18 171:18  
 185:2 191:9 195:6  
 198:4,18 221:16  
 225:11 259:14 281:15  
 305:3 311:14 319:7  
 319:16 320:7,8  
 323:18 325:21 326:11  
 359:6 369:7 384:7  
 391:15 394:21 395:19  
 416:12 451:19,22  
 452:10  
**reading** 124:18 148:21  
 271:20 328:8 329:1  
 359:22  
**reads** 362:15 424:9  
**ready** 5:11 37:20 60:3  
 247:5 258:12 379:8  
 451:21

**real** 20:13 42:18 46:14  
53:12 138:21 140:14  
167:14 211:5 239:17  
303:3 356:16 423:5  
438:19  
**realistic** 11:16  
**realize** 394:13  
**realized** 89:17 122:19  
138:10 140:16  
**realizes** 97:17  
**really** 12:14 41:3 52:1  
68:8 88:13 89:22  
94:11 97:18 98:7  
99:20 102:17 104:12  
113:7 130:7 151:3,3  
151:12 154:9 155:3  
157:2 158:13,13  
159:4 163:19 168:21  
172:16,22 186:21  
190:6 216:3 232:22  
233:2 235:6 238:1,14  
243:10 268:21 279:4  
286:14 291:7,18  
305:18 311:20 315:3  
340:1 349:20,22  
376:18 383:11 388:3  
404:22 413:12 418:2  
**reason** 19:12,12 37:22  
80:14 105:20 168:16  
254:17 332:17 425:17  
**reasonable** 12:13 23:12  
62:12 74:2,16 110:11  
110:17 111:9 141:18  
142:11 172:9 186:10  
201:3,18 214:4,7  
229:15 244:21 260:15  
264:4 281:1  
**reasonably** 185:7  
**reasoning** 39:19  
**reasons** 18:22 39:12  
61:10 243:4 353:6  
**Rec'd** 3:11  
**recall** 189:6,10 262:1  
290:18 322:2 446:14  
**receipts** 335:10  
**receive** 103:11 120:2  
125:5 198:10 200:19  
213:18 258:19 293:18  
310:4 374:5  
**received** 5:19 6:3 11:2  
13:21 65:15 73:14  
77:15 88:12 114:9  
136:21 137:8 144:3  
180:8 200:12 205:4  
231:3 252:11 259:3,6  
266:7 304:13 330:22  
404:4  
**receiver** 449:22  
**receives** 309:17

**receiving** 11:7 146:8  
438:9 450:6 452:9  
**receptacles** 342:17  
**recess** 223:18 224:3  
296:4 454:12  
**recognize** 125:7 134:7  
163:10 174:7,14,19  
**recognized** 149:8  
164:11  
**recommend** 410:6  
413:5 424:10  
**recommendation**  
358:14 388:8 412:20  
412:22 415:5 426:1  
**recommendations**  
120:1,7 414:17  
**recommended** 186:9  
412:15  
**record** 13:8 42:19 59:19  
64:15,17 77:2 114:4  
117:13,20 131:9  
132:11 136:1,3  
140:16 143:20 147:8  
154:8 171:16 172:2  
176:15 180:3 195:5  
204:21 206:7 209:21  
221:16 223:1 224:5,7  
225:2 236:16 252:6  
258:4 266:2,20  
284:13,14 296:7,9,11  
297:1 305:2 316:14  
317:2 318:11 319:8  
322:5,19 323:5,18  
324:22 325:12 326:6  
326:16 328:14,14  
329:5,10 331:8,18  
332:16,21 348:5  
353:16 357:19 359:6  
362:9 364:17 369:7  
392:10,12,14,16  
395:19 401:5 423:5  
446:12 450:14,21  
454:6,8,9,10,16,18  
**records** 110:8 271:1  
438:17  
**Recross** 3:2 55:12 56:8  
132:16 340:22 377:19  
**red** 31:18  
**redefine** 315:17 316:9  
317:14,22 318:10  
320:5 321:11 325:20  
329:22 409:22 425:16  
**redefining** 322:6  
**redefinition** 332:6,12  
**Redirect** 3:2 32:16  
70:11 95:7 128:19  
218:11 287:6 339:18  
363:2 373:13 401:21  
427:16 451:10

**reduced** 123:14  
**reducing** 123:3  
**refer** 85:22 88:22  
184:10 304:18 305:4  
309:22 347:17 358:6  
362:11 364:16 365:4  
367:12 374:17 378:11  
387:11 408:2,6  
414:10 438:6  
**reference** 42:9 115:16  
116:3 239:15 345:4  
378:16 388:2,3  
**referenced** 364:17  
**references** 182:8 204:7  
**referencing** 93:6  
**referendum** 195:7,17  
284:16  
**referendums** 194:20  
195:20  
**referrals** 253:7  
**referred** 13:18 21:4  
26:8 60:6 64:16 65:12  
72:1 77:12 106:20  
114:6 136:10 143:22  
175:17 180:5 197:20  
205:1 219:10 224:12  
230:22 247:7 252:8  
258:8 266:4 312:4  
334:15 368:18 393:17  
408:10  
**referring** 24:9,18 56:20  
86:1 102:17 127:12  
129:1 149:6 209:7  
233:16 293:13 364:9  
382:10 427:22 428:1  
**refers** 375:4  
**reflect** 42:5 413:15  
453:14  
**reflected** 101:1  
**reflects** 416:22 441:12  
**refresh** 35:4 429:9  
**refrigerated** 31:5 88:3  
88:17 217:8  
**refrigerator** 31:3  
**regard** 33:1 34:13 35:5  
35:8,12 36:7 95:18  
97:5 99:2 100:15  
124:12 131:12 220:7  
220:19 287:19 292:2  
294:11 295:14 296:20  
311:3 314:13 317:12  
319:21 321:20 327:11  
348:9,9 364:10  
376:10 385:20 403:13  
429:10 432:8,11,12  
452:3,4  
**regarding** 14:11 17:1  
122:14 148:21 149:20  
261:8 316:8 408:1

449:11,18  
**regardless** 200:19  
228:16 441:3  
**regards** 302:21 339:6  
343:4 344:1 347:20  
358:22 372:5,8  
392:21 393:1 396:8  
400:10 403:5 411:10  
414:5 421:7,21 438:6  
442:11 448:6  
**REGINA** 2:15  
**region** 41:16 86:2 87:4  
87:6 90:16,19 91:2,4  
132:20 133:13,22  
134:1,10,11 307:18  
348:3 349:5,15,16,18  
350:6 355:1 363:19  
404:5 419:20,21  
**regional** 206:10 213:2  
348:15  
**regions** 36:6 83:8 134:9  
151:10 214:2,3  
307:16 346:7 355:2  
404:13 405:8 419:6  
421:5  
**Register** 61:8 136:22  
184:14 331:2  
**regular** 409:20  
**regularly** 64:5 76:14  
97:22  
**regulate** 145:13  
**regulated** 181:12  
194:10  
**regulation** 396:4  
447:16  
**regulations** 285:11,14  
329:21 372:6 395:21  
396:18,20 397:2  
**reimbursement** 185:20  
**reinforce** 196:2  
**reintroduce** 4:9  
**reiterate** 330:19  
**rejected** 30:13  
**relate** 181:4 192:12  
278:11 402:20 407:10  
**related** 47:19 99:5  
122:4 149:12 187:14  
261:1,9 262:3 274:10  
312:5 353:16 394:11  
**relates** 44:2 287:9  
326:2 342:13 371:7  
375:22 384:6 393:2  
449:18  
**relating** 444:21  
**relation** 239:5  
**relations** 286:9  
**relationship** 42:18  
209:18 253:9 254:12  
254:20 390:5 396:13

417:10 437:5 441:3  
**relationships** 308:16  
 355:5  
**relative** 365:8 400:9  
**relatively** 7:7 19:5 59:4  
 129:4 156:5 161:4  
 163:8 167:22 357:9  
 357:11  
**release** 221:7 271:4  
**released** 181:14  
**relevance** 169:13  
 186:18 371:11  
**relevant** 294:6 336:2  
 396:3,21 400:14  
**reliability** 239:14  
 260:10 278:19,21  
 279:2  
**reliable** 55:21 220:2  
 239:17  
**relinquished** 204:6  
**rely** 61:16  
**remained** 84:9  
**remember** 8:10 53:5  
 158:6,7 167:5 233:21  
 304:11 422:3 433:6  
 445:14  
**remind** 4:11  
**reminder** 440:6  
**reminding** 366:4  
**remiss** 161:16  
**remittance** 110:9  
**remove** 37:21 84:12  
 236:22  
**removed** 38:3 101:14  
 369:18  
**renewing** 415:1  
**rent** 279:14  
**repeat** 31:22 135:13  
 150:3 166:18  
**rephrase** 367:16  
**report** 17:6 35:11  
 153:19 156:20 182:4  
 259:5 386:21 388:7  
**reporting** 17:1 21:4  
 22:5 56:3 154:20  
 155:6 182:9 234:19  
 408:22  
**reports** 15:14 16:18  
 35:7 153:19 186:2  
**represent** 115:16  
 206:17 360:16 364:10  
 365:22  
**representation** 67:20  
 68:3 122:4,15 123:6  
 126:10 133:7 166:15  
 166:21 168:18 169:7  
 190:3 262:1  
**representative** 22:13  
 183:13 189:8 281:19

282:12 352:4 358:7  
**representatives** 4:17  
 10:2 64:4 76:13 86:16  
 139:15  
**represented** 122:18  
 123:8 188:20 347:9  
 349:13 352:5,11  
**representing** 167:1  
 322:15  
**require** 44:14 129:12,15  
 410:2 425:21 426:5  
 439:20 450:14,21  
**required** 35:6 43:8,14  
 44:9 112:19 188:13  
 193:9 212:13 328:1  
 337:17 347:5 411:14  
 412:21 413:3 427:21  
 434:7 438:7,13  
**requirement** 82:4  
 130:14 415:4  
**requirements** 12:5  
 30:17 47:10 74:9 99:5  
 99:11 101:2 111:2  
 142:3 162:22 201:10  
 216:16 229:7 245:17  
 286:2 412:19 438:8  
**requires** 130:9 211:16  
 212:14 414:4  
**research** 36:4,7 61:11  
 68:16,17 69:4 80:3  
 81:6,6,11 82:8,9,11  
 95:16,19 96:2,5,7,13  
 96:15,15 97:2,5,5  
 98:15 121:14 127:22  
 128:3 212:9 260:20  
 260:21,22 261:1,5,8  
 271:21 273:10 275:1  
 282:17 286:18  
**researching** 109:22  
 127:8  
**reserve** 14:1 65:17  
 114:10 144:5 180:10  
 205:6 231:5 235:13  
 252:13 266:9 313:11  
**reside** 225:17  
**resistant** 272:22 273:1  
 273:12  
**resolved** 410:14  
**resort** 11:17  
**resource** 355:21  
**resources** 212:10  
 249:12 261:12 275:3  
 286:3 292:20  
**respect** 129:12  
**respected** 360:13  
**Respectfully** 223:4  
**respective** 220:7  
 360:13  
**respond** 292:8 319:3

**responded** 55:17  
**response** 13:15 59:7,10  
 62:5 65:8 71:12 77:8  
 95:4 104:20 105:1  
 114:2 128:14 134:15  
 134:20 143:18 175:4  
 175:9 180:1 196:7,14  
 204:19 223:10,13  
 230:18 246:2,9 252:4  
 257:5,16 265:22  
 278:18 294:2,18,21  
 296:2 313:16 325:5,7  
 339:17 366:9 390:7  
 409:10 428:8 451:9  
 451:18 454:5  
**responsibilities** 190:16  
 249:9 440:20 452:14  
**responsibility** 30:9  
 35:11  
**responsible** 438:14,17  
 450:19  
**rest** 58:14 152:20 158:2  
**restate** 103:1 374:10,21  
 396:13  
**restaurant** 7:17 9:4  
**restraints** 162:11  
**restrictions** 237:10  
**result** 123:14 126:13  
 159:2 211:3 260:8  
 329:11  
**resulted** 351:10  
**resulting** 211:5  
**results** 215:3 395:11  
**resume** 391:1,2 454:13  
**résumé** 6:18 108:2  
 138:5 177:13 199:8  
 250:7 260:3 265:15  
**resumed** 224:5  
**retail** 216:20,21  
**retain** 19:20 20:11 29:6  
 30:18 440:22  
**retained** 437:5,7  
**retains** 384:11,16 385:2  
 441:4 443:6  
**retention** 250:1  
**return** 223:19 232:22  
 233:1 434:21  
**returned** 222:17  
**returns** 152:5  
**revenue** 139:10 177:16  
 199:11 275:9  
**review** 6:1 35:6 117:8  
 137:9 150:12 181:21  
 194:21 198:10 225:7  
 248:4,14 258:19  
 259:10 262:8 340:1  
 350:8 429:12  
**reviewed** 10:12 61:6  
 63:3 75:9 108:21

139:20 144:14 176:13  
 178:4 199:21 227:18  
 250:18 262:6 304:14  
**revisit** 444:5,6  
**revolving** 353:21  
**reward** 94:11  
**Richard** 113:2,3  
**rider** 289:1,12  
**right** 5:10,15 18:5 22:2  
 22:9 26:11 30:6 34:11  
 34:20 35:2 40:9,11,13  
 42:2 46:17 52:20 53:9  
 60:10 70:19 71:19  
 88:16 106:1 107:2  
 117:5 128:7 135:22  
 136:14 144:21 161:11  
 169:17 184:19 190:5  
 197:7,15 219:11,14  
 219:18 224:16 225:9  
 232:9 234:21 246:10  
 246:15,16 247:11  
 255:13,16 257:9  
 263:14 280:21 281:13  
 288:3 290:3,8 292:10  
 292:17 294:7 295:10  
 295:15 296:12 300:10  
 301:20 313:18 330:15  
 342:18 355:12 361:17  
 368:15 369:2 373:4  
 374:5 375:21 376:3,5  
 376:8,21 377:6 379:4  
 381:13 383:10 385:9  
 388:1 392:17 397:14  
 404:9 407:3,9 408:16  
 421:5 427:10 434:4  
 438:15,22 440:2  
 441:13 443:4 447:19  
 448:12  
**rights** 190:15 432:16  
**Rio** 1:12 86:6  
**rising** 228:16  
**risk** 261:20 285:9 286:9  
 293:14 370:7,22  
 371:1 418:16  
**risks** 293:15 294:9  
 373:2  
**river** 27:6 28:10,11 46:9  
 47:22 49:8,12,16,17  
 51:8 232:9 401:8  
**rivers** 86:6  
**road** 1:13 276:7 447:18  
**roadside** 443:16 445:14  
 447:3,3 448:10  
**roaster** 207:19  
**roasting** 436:16  
**rocks** 430:22  
**role** 66:6 92:1 274:18  
 285:18 286:3 291:15  
 303:5 359:22 385:16



**roles** 63:21  
**rolling** 58:9  
**room** 1:12 2:5,10 34:22  
 55:18 94:16,19  
 168:15 207:16 396:10  
**root** 268:12,15  
**Rosita** 245:6  
**rosters** 195:20  
**Roswell** 107:18  
**rotation** 169:20  
**roughly** 253:6  
**round** 353:7  
**row** 52:6 246:20 298:7  
**rows** 401:4  
**rule** 21:5 407:5,13,15  
 420:5  
**rules** 415:13  
**ruling** 320:21  
**run** 158:12 247:2 364:7  
 411:19  
**RUPA** 2:8  
**rupa.chilukuri@ogc....**  
 2:12

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**S**


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**S-A-L-O-P-E-K** 6:16  
**S-T-E-I-D-L-M-A-Y-E-R**  
 249:1  
**S-T-R-A-L-E-Y** 107:17  
**Saba** 108:13 121:19  
 122:8  
**Sacramento** 158:8  
 227:3  
**safety** 70:22 146:15  
 285:11 286:5,18  
 290:5,18 291:13  
 294:11 334:21 372:20  
**salaries** 265:5  
**sale** 215:9 395:8 432:12  
 436:12 442:3  
**sales** 31:11 73:11 202:3  
 300:15 301:1 334:22  
 382:6 448:18,19  
**Salopek** 3:3,13 5:13,18  
 5:21 6:2,7,10,14,15  
 6:18,20 7:13,15,20  
 8:1,4 9:19,21 14:7,9  
 14:13,21 15:4 16:19  
 17:3,6 18:2,6,11,12  
 18:17,21 20:3,7 21:1  
 21:6,10,17,20 22:8,16  
 23:2,17,21 24:2,7,11  
 24:16,20 25:2,8 26:7  
 26:20 27:2 28:9 29:1  
 29:4,13 30:1,5,20  
 32:1,4,8,12,17 33:4  
 33:17,21 34:4,10,15  
 34:21 35:14,22 36:10  
 36:13,16 37:8 38:6,9

38:14,19 39:1,6,16,22  
 40:11,18 41:8,11,17  
 41:20 42:10,15 43:4  
 43:17 44:1,17,19 45:1  
 45:3,22 47:21 49:10  
 49:13 50:8,18 51:4,10  
 51:14 53:10,15 54:3  
 54:10,13 55:5,8,16,22  
 56:7,16,21 57:15,21  
 58:21 59:11 280:16  
 420:7  
**salt** 91:14,16,18 273:1,8  
**salts** 48:4,4  
**Sammie** 105:17  
**sample** 372:14,16  
 434:22  
**samples** 181:21,22  
 315:1  
**San** 108:13 121:19  
 122:8 227:1  
**sand** 85:10  
**sandy** 46:10  
**sanitation** 370:5  
**sat** 152:5  
**satisfied** 154:17  
**satisfies** 378:6  
**satisfy** 352:7  
**saves** 286:4  
**saw** 7:21 83:16 241:7  
**saying** 33:20 56:2 103:7  
 118:1 236:16 276:19  
 277:9 320:12 330:11  
 331:4 342:10 361:21  
 367:12 375:14 383:8  
 383:18 392:5  
**says** 22:18 43:5,11 44:3  
 44:8 98:8 129:6  
 131:10 133:12 172:4  
 177:2 191:11 195:6  
 237:8 241:9 269:19  
 269:21 280:7 282:21  
 336:14,21 338:3  
 359:6 363:18 382:4,5  
 387:10 391:16 395:20  
**SBA** 356:15 359:2  
**scab** 272:13,16,19  
 273:5,7  
**scale** 413:11  
**scaled** 243:10,17  
**scenario** 20:6 417:15  
 449:9  
**schedules** 168:12  
**Schmaedick** 2:21 18:10  
 18:10,13,18 19:22  
 20:4,20 21:2,7,15,18  
 22:4,11,17 23:14,18  
 23:22 24:5,10,13,18  
 24:21 25:5,7,10,13,17  
 25:22 26:3,17,21 28:5

28:20 29:2,10,20 30:2  
 30:16 31:13,16,21  
 32:2,6 65:21,21 66:2  
 66:6,14,20 67:3,8,12  
 67:16 68:2,9 77:21,22  
 78:2,5,12,15,20 79:10  
 81:4,12 82:7 83:1,10  
 114:13,13,16,19,22  
 115:12,21 116:5,15  
 116:19 117:3,7,10,14  
 117:18 118:2,6,8,13  
 118:15,21 119:4,7,21  
 120:8,13 121:3,8,17  
 121:21 122:2,10,13  
 123:10,17,22 124:2,9  
 124:15 125:15 126:1  
 126:8,16 130:21  
 145:3,3,11,18 146:3,6  
 146:13,20 147:3,7,9  
 147:13,15,22 148:9  
 148:15 153:15,15,21  
 154:3,17 155:5,13,19  
 156:3 157:14 158:19  
 159:11,22 160:6  
 166:9,9,20 168:17  
 169:9,12,17 170:1  
 171:6,9,12,19 172:2  
 173:2,6,11 174:2,22  
 180:14,14,17 181:2,7  
 181:11 182:17 183:1  
 183:6,20 184:9,13,22  
 185:6,9,15 186:5,8,12  
 186:17 187:1,4,9  
 188:3,7,11,17,22  
 190:5,21 191:4,11  
 192:7,11 193:4,15  
 194:12,18 195:2,5  
 196:3 205:11,12,16  
 205:20 206:1,6,16,20  
 207:5,10,22 208:6,13  
 208:16,17 209:4,9,16  
 210:9,16,21 211:8  
 212:5,17 231:9,9,12  
 231:18,22 232:4  
 233:8,14 234:1,17  
 235:19 236:1,7,10,13  
 237:6,17 238:18  
 252:17,17,21 253:8  
 253:12,20 254:5,15  
 255:1,11,14,17 256:1  
 256:5,7,10 266:13,13  
 266:22 267:12,19,22  
 268:22 269:10,13,18  
 270:3,12 271:14  
 272:8 273:4,9 274:16  
 275:8,13 276:1,18  
 277:9,13 278:3 307:4  
 307:4,7,15,21 308:11  
 309:1,4,7,10 310:5

327:21 328:3 330:5  
 330:10,15,18 331:5,9  
 331:12 335:21,21  
 336:6,12 337:7,14,20  
 341:1,1,6 343:8,8,13  
 344:5,21 350:17,17  
 351:6,9,14 352:19  
 353:8 355:4,10,13  
 356:9,22 357:7,15  
 359:3,12,18,21 360:9  
 360:20 364:9 369:5,5  
 369:20 370:10,15  
 371:4 372:18 373:9  
 384:3,3,20 385:5  
 389:18,18 390:6  
 391:5,6,10 392:3,15  
 393:9,12,21 394:2,10  
 394:13,19 395:3,14  
 396:2,15 397:1,9,12  
 397:15 399:6,7  
 400:11,17,20 401:2  
 401:11,19 404:3,3,10  
 405:4,11,14,18  
 408:21,21 409:7  
 412:11,11 413:6,19  
 414:9,14 415:3,14  
 418:18 424:7,7,15  
 425:1,20 426:4,8  
 429:4 444:18,18  
 445:10,17 446:1,7,14  
 446:19 447:8,14,22  
 448:8,15 449:2,10  
**science** 98:16 170:15  
 297:11,13  
**scientifically** 220:16  
**scientist** 35:20 36:21  
**scope** 346:1 350:3  
**scratch** 156:11  
**screen** 148:3,6 267:17  
 311:13 339:21  
**season** 22:3,10 39:14  
 46:16 47:1,4,13,14  
 80:7  
**seat** 68:5 197:12 204:6  
 255:19 348:9,9,14  
 349:6,8,17 353:12,12  
 353:15,15,16,16,18  
 354:1 357:19,21  
 363:16,19 365:21  
**seated** 180:22  
**seats** 112:1 281:20  
 282:1 348:15 349:3,4  
 353:11,12,22 357:17  
 361:5  
**second** 42:18 61:15  
 82:17 92:8 109:6  
 115:14 127:6 152:9  
 156:13 191:16 214:2  
 236:5 246:4,18

316:13 375:3 376:4  
431:4 441:9  
**Secondly** 137:7 198:8  
329:9  
**secretary** 13:4 64:11  
76:20 113:12 143:8  
179:12 193:10 195:6  
202:16 203:2 222:6,8  
230:5 251:13 265:11  
304:3 315:14 318:22  
337:4 340:12 359:8  
360:1,4 386:21 388:8  
410:6 412:16 424:11  
425:19  
**Secretary/Treasurer**  
63:15  
**section** 21:3 25:6 32:18  
35:3,5 43:3,6,20 44:2  
44:8,14 88:17,17  
95:15 97:1 99:3 102:9  
119:9,22,22 128:21  
129:1,3 131:11  
133:15,16,19 147:10  
161:9 171:13,14  
172:3 185:16 186:9  
186:13 187:2 194:20  
194:21 218:14 236:3  
236:5 281:10,14  
284:3,4,15 296:21  
304:21 305:8 306:3  
310:17 311:12 312:3  
312:4 313:19 314:10  
314:10 328:17 333:21  
334:5,15 336:22  
338:4,8,8,16 339:21  
341:4,9 345:3,7  
347:17 348:1,10,18  
349:1 350:8,20  
353:11 354:2 359:4  
360:21 363:4,17  
366:12 367:2,2 374:4  
374:17 379:15 380:6  
382:2 385:11 386:7  
386:22 387:3 388:2  
398:4 399:1 402:6,10  
409:13 410:7 416:11  
417:5 427:18 428:12  
429:1,7,8,16,17 438:6  
438:8 440:4,7 446:20  
447:9 451:17,20  
453:5,19 454:3  
**sections** 42:22 45:4  
117:19,21 118:2,16  
118:17 184:15 185:11  
185:12 188:4 192:12  
213:4 233:16,19  
296:20 329:2 350:22  
395:17 430:21  
**sector** 187:16

**sectors** 187:15  
**securing** 10:6 108:18  
139:17 177:21 199:18  
227:15  
**see** 4:8 5:11 15:21  
16:10 19:11 33:13  
36:10 38:4 68:18  
72:19 81:18 84:2,19  
85:8 89:15 92:14  
102:2 105:4 121:1  
125:8,13 131:18  
135:1 138:21 154:21  
156:2,22 168:1  
175:11 180:17 181:22  
186:1 192:21 196:16  
208:22 209:13 211:3  
211:4 213:9 214:2  
220:1 221:17 223:16  
240:22 243:20 245:9  
246:11 260:8 261:19  
267:3,4 269:10 270:1  
270:20 271:21 272:1  
276:7 277:1 282:5,11  
285:12 289:7 294:1  
307:21 311:18 336:22  
348:3 353:9 355:18  
371:12 375:9 382:3  
395:22 425:12 430:6  
**seedling** 268:4,8,9,20  
269:1 395:6  
**seedlings** 271:8 298:6  
365:8 413:18  
**seeing** 37:10 158:22  
159:5  
**seen** 11:1 16:10 27:15  
31:9 39:6 40:3 42:13  
73:13 84:21 85:17  
94:7 151:22 167:20  
174:5 179:7 200:11  
211:6 220:22 221:10  
228:6 236:12 241:5  
283:14 302:14  
**segments** 113:8  
**segued** 346:16  
**select** 405:6 417:21  
**selected** 269:20 359:8  
418:1  
**selection** 344:4  
**self** 300:5,6  
**sell** 11:5,20 16:9 31:1  
61:12,21 69:14 99:15  
116:9 126:21 217:1,2  
267:3,5 275:11  
308:21 343:20,21  
382:20 443:15 445:13  
448:10 449:7  
**seller** 12:19 62:17 74:22  
111:15 264:9  
**selling** 14:20 23:4 24:8

40:15,16 53:21 54:15  
61:17 436:4,7,11  
443:4,12 444:3 445:1  
445:5,20 446:10  
447:17  
**sells** 308:9  
**send** 182:11  
**sending** 274:2  
**sends** 442:18  
**sense** 141:5 162:12  
164:13,19 167:13  
183:21 184:2 193:19  
272:5 343:16 377:22  
392:4 430:6 450:5  
**sensitive** 167:18 168:3  
168:10  
**sent** 9:13 315:13  
368:22  
**sentence** 144:13,14  
171:21 172:3 254:9  
359:4 363:18 367:11  
373:18 374:12 375:3  
375:22 384:8 419:12  
424:9 441:9,21  
442:13,17,20 452:6  
452:11 453:12  
**sentiment** 183:7 377:11  
**separate** 57:1 178:22  
266:22 370:19 372:1  
372:3 377:22  
**separated** 323:12 368:5  
**September** 22:1 34:7  
40:20 59:2 405:6,9,11  
409:1  
**series** 165:22  
**serve** 26:5 71:5 121:12  
145:16 169:14 172:5  
179:4 190:14,19  
308:3 360:3 439:5  
**served** 167:3 202:1  
232:5  
**serves** 328:15  
**service** 161:19 181:17  
181:18 336:9,22  
337:1,2,3,13 338:3  
369:16 380:13 384:11  
384:15,17,19 385:1  
398:5 399:11 401:15  
402:1 419:8 437:13  
440:13 442:8 443:6  
445:12 449:6  
**services** 338:4 400:9  
400:13 401:1 441:6  
443:14 444:12  
**servicing** 162:9  
**serving** 71:4 119:20  
166:11  
**session** 304:12  
**sessions** 409:4

**set** 34:3 41:3 78:22 79:1  
120:6,10 131:6  
167:11 323:1 345:10  
355:7 390:13  
**sets** 263:11  
**setting** 406:8,11  
**settle** 40:8 219:13  
**settled** 258:2  
**seven** 7:2 47:5 48:16  
54:12 199:7 241:13  
451:13  
**shake** 430:10  
**shaker** 430:11  
**shaking** 97:20 378:18  
**share** 15:4 172:9 178:3  
234:13 335:2 375:16  
414:12  
**shared** 14:10 109:6  
131:5 182:3 280:6  
**sharing** 24:1 154:4  
155:2,6 234:8  
**sheer** 355:19 401:6  
**shelf** 12:6 20:5,11  
31:10 37:5 38:5 88:9  
111:3 142:4 280:20  
299:15,16  
**shell** 10:15,16 37:21  
38:3,13 57:1,4,5 63:7  
75:12,13 109:2,3  
111:22 112:6 126:21  
127:3 140:2 151:1  
178:7,8 218:17  
227:21,22 242:4  
250:21,22 262:12  
299:9,11,13 323:7  
333:16 349:7 357:21  
358:18,19 364:18  
367:21 368:9 369:9  
369:10,14,14,18  
370:4,7 371:2 373:20  
373:22 374:5,14  
375:18 376:22 378:17  
378:19 391:20 396:7  
413:21 414:3 415:22  
416:1 420:10  
**shelled** 38:12,15 43:5  
63:6 218:17 413:21  
**sheller** 29:7 93:13  
108:13,14 110:12  
112:1,4,11,16 122:4  
126:10 254:2,8,14  
291:3 299:3,9 300:5  
308:17 349:2,4,6,6,8  
349:9,12,21 357:17  
357:20,22 358:7,9,10  
358:12 359:7 360:17  
381:11 383:19 412:6  
435:1 443:13 451:2  
**shellers** 36:15,17 82:16

- 93:14 111:20 112:8  
122:14 123:2,9,12  
130:16,18 131:3  
153:9 222:22 265:7  
282:2,16 303:2  
312:21 335:16 345:21  
346:4,7 347:6,8,11,12  
347:15,19,21 349:14  
352:6,16,16 358:21  
410:15 412:1,4 413:4  
428:2 431:19 434:19  
434:21 435:7
- shelling** 110:5 112:7  
116:3 121:21 125:3,4  
126:20 303:4 343:20  
368:13 369:1 374:3  
378:14,15 379:5  
436:16 437:4
- shells** 374:13
- shelves** 31:7 217:7
- shift** 26:18
- shifting** 121:18 324:10
- ship** 19:16 208:21
- shipped** 344:8
- shipping** 182:12 344:17
- shipping** 12:4 39:11  
74:8 87:13 89:2 111:1  
142:2 162:21 182:10  
201:9 216:15 229:6  
237:19,21
- shook** 435:19
- shop** 155:1
- short** 47:5 56:14 192:22  
195:14 276:7 298:9
- show** 32:18,21 42:17,22  
43:20 95:15 102:8  
119:15
- showed** 9:14 292:22
- shower** 94:15
- showing** 97:1 339:20
- shows** 127:14 283:17
- shrinkage** 393:3,13,18  
397:6,22
- sick** 8:22
- side** 26:19 164:1 210:8  
243:1 245:15 268:16  
274:7 285:20 315:9  
349:12 415:22 416:1  
447:18
- sign** 9:15
- signed** 135:11 196:20  
295:19
- significance** 22:22  
347:19
- significant** 130:1  
243:21 281:2 347:15
- significantly** 425:13
- signify** 417:3
- silence** 4:12
- silt** 28:12,16,17
- similar** 91:1 152:20  
186:15 191:19 211:3  
357:18 384:10 443:5
- similarly** 155:15 300:20
- simple** 54:4 152:3  
279:4 289:7 308:5  
358:16 362:19 389:22  
390:11 393:6
- simplistic** 389:22
- simply** 128:22 328:17  
329:10,16 333:1  
383:22 388:17 397:3  
407:14 434:13 437:12  
438:5
- Singh** 105:18,19 106:2  
106:7,11,16 135:6,8  
135:13,17
- single** 42:8 75:5 142:19  
173:22 293:11 308:17  
308:17 328:16
- sir** 32:15 72:10 95:6,13  
100:12,18 102:1,4,13  
103:2 203:12,21  
204:10 214:20 215:7  
221:20 259:1,8,11,15  
295:1,4 377:16  
379:10
- sit** 31:7 49:1 73:9  
169:19 172:8 410:15
- site** 381:1,2,19,19
- sitting** 8:10 88:8 94:19  
170:3
- situation** 33:11,11,12  
57:19 194:6 222:14  
367:18 431:4 433:16  
434:7 438:13 439:3  
446:6 453:2
- situations** 192:22  
433:10 435:2 440:21  
446:21 452:19
- six** 26:13 49:5 83:8  
108:10 130:12 190:12  
225:22 226:7
- Sixty-two** 118:4
- size** 11:13 12:3 33:16  
61:20 69:7,13 73:21  
74:8 87:12 89:2,4  
90:2,4 99:11,21  
110:14,22 131:15,17  
131:20 141:15 142:1  
162:20 164:3,7  
181:13 200:22 201:8  
216:14,17 217:3  
219:8 228:21 229:6  
239:5,18 260:12  
262:3 272:14 278:17  
280:2 348:8,19  
357:13,13 409:14,22
- 411:9 412:14,15  
413:10,11,16 421:13
- sizeable** 355:21
- sized** 354:20 357:12
- sizes** 42:13 409:16  
410:10
- sizing** 47:8 99:2,5 100:2  
100:10,15,21 101:2  
314:21
- skills** 291:19
- skin** 367:22
- sky** 91:12
- slightly** 123:14 124:5
- slow** 37:20
- slowed** 52:13
- slower** 27:9
- slowly** 170:9
- slows** 29:13
- small** 9:22 12:18,20  
23:8 61:5 62:16 73:5  
74:21 83:5 86:10  
108:15 111:14 112:18  
112:20 139:11,12  
141:12 142:15 177:17  
177:19 183:10 199:12  
201:22 227:11 242:2  
243:7 250:15 260:4  
264:8 282:1,2 300:11  
300:21 301:3 312:21  
345:22 348:13 352:1  
352:2 354:11 355:13  
355:17 356:7,13,14  
356:19 357:9,11,13  
358:8,12 359:2 361:9  
361:15 364:11 365:16  
365:17,18,22,22  
372:13 400:5 414:3  
439:10,14,18 447:4,9  
448:21
- smaller** 12:16 23:5  
49:19 56:5 62:14,22  
74:19 75:7 89:18,21  
111:12 142:13,20  
168:18 169:3 201:20  
240:7 243:1 264:6  
349:13 382:14 418:2  
420:20 421:3 440:17
- smallest** 138:22 242:18
- smart** 171:3
- society** 68:22
- softer** 33:13
- software** 249:16,18
- soil** 46:9,10,14 47:20  
250:1 297:11
- solar** 249:22
- sold** 9:8 11:3 40:19  
41:1,2 138:13 150:17  
150:20 159:14 344:3  
403:4 431:10,13,14
- 431:16,17,18 433:4  
435:4
- sole** 442:20
- solo** 246:19
- solution** 444:12
- somebody** 23:7 26:11  
26:14 106:10 174:13  
189:21 236:21 237:1  
238:5 244:6 324:4  
332:12
- somewhat** 99:11
- son** 170:5,13,14
- soon** 332:8
- sooner** 191:13
- sorry** 32:13 112:10,15  
117:9 148:4,7 162:2  
208:15 231:22 244:3  
254:3 281:11 302:2  
337:7 353:10 367:17  
387:5,7 395:18 399:2  
405:11,20,22 436:6  
440:8
- sort** 4:22 31:3 37:3  
45:11 130:17 158:21  
163:13 164:2,12  
220:11 236:22 243:3  
290:3 308:8 318:16  
318:21 327:22 357:17  
419:6 433:9 445:12
- sorted** 368:4 371:17,22  
431:1
- sorting** 163:11,12,17  
164:9
- sorts** 400:9
- sound** 59:14 126:13  
234:4 389:2
- source** 409:20
- South** 1:7 2:5 273:22
- Southeastern** 301:10  
302:18
- southern** 401:8 404:13
- southwest** 53:2 85:3,22  
86:17
- southwestern** 86:2
- space** 12:6 111:3 142:4  
279:14
- spaced** 49:17
- spaces** 400:2
- Spalding** 2:16
- speak** 14:17 67:5  
163:14 172:12 174:8  
253:10 290:21 414:11
- speaking** 183:16  
185:22 238:1
- specialized** 244:20  
245:17,19 430:12
- specialty** 234:12
- specific** 151:18 153:1  
153:20 190:2 192:20

282:1 285:19 291:3  
 305:1 308:15 324:16  
 324:21 326:7 327:7  
 327:21 328:1 343:19  
 349:17 350:5 408:3  
**specifically** 10:13 63:4  
 75:10 92:5 109:1  
 113:4 127:12 139:22  
 178:5 187:18 200:1  
 227:20 237:13 239:4  
 249:11 250:20 253:4  
 262:8 267:14 276:12  
 277:17 284:8 286:7  
 304:19 447:2  
**specificity** 315:22  
**specifics** 208:4  
**spell** 193:11 297:1  
**spelled** 6:16 73:1  
 107:17 137:19 176:22  
 198:20 225:16 248:22  
 259:18  
**spellings** 175:12  
**spend** 48:13 185:10  
 275:18 285:18  
**spending** 48:19 61:14  
**spent** 107:21 233:4  
**spiral** 371:19  
**spoke** 9:12 10:3 193:5  
**spokesperson** 291:8  
 291:11 294:5  
**spot** 254:16  
**spray** 91:11  
**spraying** 244:12  
**spread** 46:22 399:18  
**spreading** 82:22  
**spring** 403:3 404:22  
**spring/early** 406:12  
**Springs** 1:13  
**sprinkler** 28:13,15 46:3  
**stability** 11:21 110:18  
 141:20 160:2 201:5  
 229:2,18  
**stabilize** 109:21  
**stable** 167:22 222:20  
**stages** 37:6,20  
**stagnated** 141:8  
**stain** 164:4  
**stakeholders** 62:2  
 326:17  
**stand** 317:1 318:19  
 443:16  
**standard** 99:14 120:11  
 120:16 162:4 164:10  
 217:2 241:11 332:3  
 371:14 408:7,10  
 411:13 413:2,14,17  
 414:6 421:21 423:17  
 423:21  
**standardized** 217:1

220:14  
**standards** 70:13,22  
 71:3 87:15,20 89:15  
 99:10 146:15 163:4,9  
 164:8 181:13 182:1  
 216:17 334:14 335:9  
 357:8,9 373:6 409:19  
 409:20 410:1,17  
 411:4,5,7,9,10,12,15  
 411:16,18,19 412:2,5  
 412:6,7 413:2,8,14,21  
 414:11,22 415:2,7,18  
 415:20 421:17  
**standpoint** 290:17  
**stands** 116:17 445:14  
 447:3,4 448:10  
**start** 21:21 22:3 30:14  
 36:8 46:2 103:5  
 156:11 164:5 185:15  
 189:20 193:22 253:21  
 306:12,13 404:11  
 406:5,11,21 408:11  
**started** 45:11 138:7,8,9  
 159:20 195:17 298:13  
 404:21  
**starting** 27:4 40:7  
 235:14 409:4,4  
**starts** 22:15 46:16  
 49:14 119:1 269:15  
 348:2 384:8 404:6,8  
**starved** 52:7  
**state** 9:3 24:2 79:9,20  
 81:13 93:2 95:21  
 141:3 164:18 165:3  
 169:2 202:4 206:18  
 226:8 275:14,21  
 276:17 277:18 291:4  
 291:9 296:22 337:11  
 452:12  
**stated** 123:18 160:10  
 285:7 315:22 343:9  
 351:6 393:5  
**statement** 22:18 60:18  
 64:20 92:15 93:2  
 107:11 113:17 148:20  
 159:7,10,12 176:17  
 180:18 225:10 237:7  
 248:17 269:19 329:7  
 336:1 359:13,22  
 385:1 393:13  
**statements** 92:15  
 115:14 240:19 350:20  
**states** 1:1 8:14 21:22  
 62:8 79:15 82:21  
 86:17 96:6 139:1  
 151:7 156:7 160:20  
 203:9,11 204:8  
 206:13 211:10,12,14  
 216:1 272:12,22

273:5,6,7 307:14  
 412:14 413:20 419:7  
**static** 242:1  
**station** 9:15  
**statistical** 388:19  
**statistics** 208:10  
**stats** 293:7  
**stay** 36:8 37:5 271:22  
 280:13  
**stayed** 8:18 9:1  
**stays** 194:6 273:16  
 274:13  
**steadier** 19:17  
**steadily** 11:11 73:19  
 200:17  
**steep** 195:18  
**Steidlmayer** 3:7,21  
 227:5 246:22 247:1  
 247:13,17,18,21  
 248:2,5,8,12,15,16,19  
 248:21,22 251:17,20  
 252:18,20 253:2,11  
 253:15,16,19 254:1,7  
 254:22 255:4,13,16  
 255:21 256:2,6,9,15  
 256:19 257:2,9,13,14  
 257:14,15,19  
**step** 40:7 236:2 448:16  
**stick** 100:3 125:2 269:2  
**sticks** 294:1  
**stop** 28:16  
**stopped** 170:7  
**stops** 48:5  
**storage** 11:18 29:21  
 31:3 33:6 35:16 36:8  
 39:10,20 40:14,21  
 58:2 216:3 218:22  
 239:14 279:5,8,15  
 280:7,9 339:10 372:2  
 403:4 431:12 440:16  
**store** 31:1,6 38:5 40:7  
 280:8  
**stored** 15:14 16:17 17:1  
 431:2  
**stores** 31:4 36:18,20  
 37:9  
**storing** 35:16  
**story** 103:19  
**Straley** 3:4,16 105:15  
 106:18 107:1,3,7,8,13  
 107:16,17 109:8,10  
 112:13,15 113:17  
 114:17,18,21 115:7  
 115:20 116:4,7,18,22  
 117:5,17,22 118:4,7  
 118:10,14,18 119:6  
 119:13 120:5,10,17  
 121:5,11,20 122:1,6  
 122:12,16 123:16,21

124:1,8,14,17 125:19  
 126:4,15 127:1,11  
 128:6 130:3,8,20  
 131:8 132:1,6,10,21  
 133:4,8,18 134:5,7,19  
 134:21 144:17,20  
**stream** 29:22 218:5  
 309:12 436:5,9 445:8  
 445:18,21 447:1,10  
 452:19  
**Street** 2:16 277:2  
**strictly** 372:9  
**strong** 150:12 221:18  
 303:4  
**stronger** 149:22  
**strongly** 141:9  
**structure** 245:16  
 345:13 346:19 347:2  
**structured** 443:21  
**studies** 96:1  
**study** 150:1,9 211:7  
 280:13 297:17  
**stuff** 89:19  
**sub** 370:15  
**subcommittee** 146:21  
**subject** 366:6 368:1  
 378:6 424:10 425:19  
 447:15  
**submission** 321:5  
**submit** 185:20 186:2  
 193:10  
**submitted** 223:4 304:3  
 318:18 329:17 359:8  
**submitting** 329:14  
**subparagraph** 129:15  
**subsection** 43:3,21  
 218:16 348:18 349:2  
 387:4,6,7,15  
**subsequently** 125:14  
**subsidiary** 312:11  
**subsoils** 47:19  
**substance** 4:19 5:7  
**standard** 113:4  
 124:13 125:1,17,22  
 126:2 314:9 367:1  
 370:12,14,16 371:11  
 378:21 379:1 395:7  
**substantial** 125:6,10  
 213:14  
**succeeded** 302:3,5  
**success** 142:15 210:21  
**successful** 157:1 158:4  
 235:8 271:12 425:11  
**sudden** 58:5 447:11  
**sufficient** 317:2 356:2,3  
**sugar** 250:11  
**suggestion** 125:16  
**suit** 221:18  
**sum** 158:20 390:7

391:17,18  
**summarize** 133:11  
 156:2 277:1  
**summary** 6:6 10:13  
 63:4 64:16 72:13  
 75:10 108:22 137:9  
 139:21 148:22 159:3  
 176:14 178:5 198:11  
 199:22 225:5 227:19  
 248:10 250:19 259:5  
 262:7 297:9  
**summer** 406:13  
**sums** 392:6  
**sunlight** 51:15  
**super** 129:16 130:9,14  
 131:1 347:13 412:21  
 413:3 415:4 426:5  
 427:20 428:1  
**superficial** 430:15  
**superior** 89:22 269:20  
**supply** 26:10 31:6  
 33:11 34:17 97:14  
 161:1 222:13,15  
 239:19 240:1,5 298:8  
 389:3 390:1,2,3,7,18  
 391:18,22 392:6  
**support** 13:2 61:8 64:9  
 67:13,15 69:6 73:8  
 76:18 113:10 141:9  
 143:1,4,6 156:21  
 161:21 162:6 179:10  
 182:15 183:16,17  
 184:7 202:14,20,22  
 210:14 222:9 223:3  
 230:3 251:11 265:9  
 328:9 354:5 423:7  
**supporting** 202:17  
 330:22  
**supportive** 210:11  
**supports** 222:16  
**supposed** 31:18  
**sure** 6:14 7:15 8:4 15:4  
 28:2 41:9 56:19,21  
 59:17 68:8 82:5,15  
 88:2 93:1 96:9 103:7  
 104:7 166:20 181:6  
 182:9 184:1 192:3  
 235:8,10,16 237:3,15  
 246:5 252:20,22  
 253:15 254:3,5,7  
 257:19 273:16 277:21  
 278:10 279:3 280:5  
 286:5 293:17 294:9  
 306:13 307:20 319:4  
 336:16,19 349:12  
 352:7 367:10,14  
 368:12 374:10 375:1  
 396:15 410:12,20  
 411:21,22 419:13

425:17 427:11 442:16  
 451:5  
**surely** 170:9  
**surrounded** 293:12  
**survive** 52:18 390:5  
**susceptible** 272:19  
 432:21  
**sustainability** 228:19  
**sustainable** 227:8  
**SW** 2:5,10  
**swear** 175:21 197:12  
 258:12  
**sweeper** 430:12  
**sweeping** 378:18  
**swept** 430:12  
**swings** 16:7  
**switching** 316:22  
**sworn** 5:14 60:12 71:20  
 107:3 136:15 176:1  
 197:16 224:17 247:13  
 258:14 296:14  
**synonymously** 375:15  
**system** 28:12,13,14  
 48:20 49:14 89:7,13  
 90:1,5 268:12,15  
 273:18 282:9 450:10  
**systems** 49:18

---

**T**


---

**T** 2:3 187:8  
**table** 3:1 348:14 365:5  
 410:16  
**take** 29:16 30:9 32:19  
 33:8 35:4 43:1,4,21  
 49:18 50:4 54:20  
 56:22 57:6 85:3 97:18  
 103:21,21 105:10  
 107:12 155:7 170:15  
 172:18 186:13 189:1  
 195:21 196:22 197:5  
 203:4 236:1 246:18  
 254:5 269:1 272:4  
 276:7 295:14 296:3  
 303:20 315:19 320:19  
 323:17 328:17 329:21  
 339:9,22 347:22  
 348:3,17,19 358:18  
 370:21 371:5 373:17  
 374:11 380:22 382:19  
 387:8 391:1 392:7  
 395:14 406:6 416:12  
 418:7 425:15 429:9  
 429:12 430:2,5  
 433:10,17 439:14  
 441:19 450:4,8  
 451:19 452:16  
**taken** 8:3 16:20 53:5  
 89:17 191:14 352:21  
 368:3 369:22 378:4

381:11 430:18  
**takes** 28:14 49:4 55:3  
 122:21 195:15 380:11  
 418:4 449:20  
**talk** 5:2,3,7,8,9 15:10  
 17:10 19:3 36:19 37:4  
 42:2 45:18 51:12  
 127:7 206:1 223:15  
 258:1 293:21 325:2  
 343:16,17 353:20  
 355:14 373:16 383:4  
**talked** 20:15 37:2 54:5  
 98:15 161:19 165:5  
 178:1 288:22 327:1  
 371:6 422:4 433:3  
 440:12  
**talking** 4:19 15:16 25:6  
 28:3 81:9 87:3 100:9  
 154:22 159:20 162:9  
 185:10 192:18 215:22  
 216:2 235:11 332:10  
 343:17 372:15 434:12  
**talks** 97:2  
**tapping** 210:6  
**target** 207:8  
**tariffs** 101:14  
**taste** 20:11,17 31:20  
 37:17 88:13  
**tasted** 31:17  
**tastes** 217:10  
**teaching** 274:3  
**team** 112:22 133:9  
**Tech** 297:7  
**technical** 146:12 192:4  
 260:21  
**technology** 170:17  
 171:5 191:22 192:2  
 226:15 249:16,17,19  
 250:2 261:8 274:10  
 285:19,21 286:4,14  
 286:17  
**teeth** 411:17  
**tell** 14:22 17:4 29:19  
 34:18 38:22 39:18  
 45:7 47:11,18 49:7,11  
 76:6 79:11 91:22 93:6  
 101:5,7 106:4,13  
 116:17 151:10 160:19  
 161:16,20 165:14  
 214:21 268:2 274:18  
 280:11 306:17 308:1  
 314:18 344:6 348:7  
 348:20 351:14 357:1  
 357:3 358:2 359:17  
 415:11,21 439:1  
 443:1 451:21  
**telling** 322:7  
**ten** 47:5 97:21 108:8  
 129:21 135:21 241:14

263:7,8 285:1  
**tend** 239:17  
**tender** 13:7 65:1 77:1  
 113:16 143:11 179:16  
 230:10 265:14  
**tendering** 203:5  
**tenders** 251:19  
**term** 100:10,14 103:16  
 169:10,16 171:14  
 217:17 244:1 253:10  
 253:22 305:19 309:21  
 311:18,22 313:20  
 314:2,6,7 330:20  
 334:5 335:12,22  
 336:1 341:10,13  
 343:10 344:2 346:14  
 350:19 366:13,16,19  
 366:20 370:11,17  
 371:6,8 374:1,19  
 375:3 377:11 379:16  
 382:4,5,9 384:8,22  
 386:8 396:2,20 399:9  
 400:12 402:11 414:15  
 427:3 428:13 433:8,9  
 433:12 434:2,3  
 442:22  
**termination** 194:22  
 284:5 416:3 422:18  
**terminology** 56:19  
 414:7  
**terms** 27:1 50:15 68:3  
 83:15 84:20 90:22  
 96:7 100:16,20  
 131:12 167:1 172:1,5  
 182:6 183:21 214:4,8  
 214:9 234:2,18 268:2  
 308:1 315:21 327:1,2  
 327:7 328:11 329:21  
 330:20 344:16 345:8  
 356:10 379:20 401:11  
 406:8 407:11 412:19  
 419:2 441:10 445:4  
 449:19  
**terrible** 163:20  
**testified** 88:4 95:19  
 203:9 239:9 319:20  
 350:19 376:13 377:7  
 433:3  
**testifies** 327:11  
**testify** 5:5 105:22  
 135:11 196:20 202:13  
 295:19,22 321:18  
 345:5 420:9  
**testifying** 143:1,3  
 202:19 341:4 361:3  
 374:8  
**testimony** 3:13,14,15  
 3:16,17,18,19,20,21  
 3:22 5:17 6:12 9:20

13:8 18:14,15 22:12  
 22:14 56:10 60:14  
 65:2 72:5,19,21 78:3  
 81:5 90:11 95:9 100:8  
 101:6 103:3 107:6  
 113:16 115:1,2,14  
 123:18 127:6 137:16  
 137:17 138:6 145:4  
 159:11 160:10 162:19  
 164:18 176:3,13  
 177:1 179:16 198:1  
 198:17 204:15 205:13  
 209:11,17 210:15  
 216:13 221:21 222:2  
 224:19 225:6 230:11  
 231:10 239:2 247:15  
 248:10 251:19 252:19  
 252:22 258:16,18  
 259:13 263:11,17  
 265:15 266:14,16  
 278:12 285:7 287:19  
 288:21 295:14 307:5  
 316:20 321:2 322:2  
 325:22 327:16,22  
 328:9,10 329:16  
 350:18 380:16 397:4  
 399:9 400:12 404:4  
 407:5 414:10 420:7  
 423:13 426:17 429:22  
 444:20 445:1 449:18  
 451:13 453:18 454:14  
**Texas** 1:7 8:21 15:7  
 61:2 63:15,17,18,21  
 66:3 73:2,4 75:22  
 78:7,10,12,16,19,21  
 79:1,4,6,9 80:1,2,3  
 80:3 81:14 83:2,7  
 86:1,3,8,14 95:11  
 108:8 165:6 203:16  
 226:20 259:19,22  
 260:1 264:14 274:17  
 275:8,14,15 276:13  
 276:13,16,17,19  
 277:16,19,21 287:19  
 287:21 288:3,10  
 289:8,10 301:12  
 421:10,13  
**thank** 5:16,22 6:14 9:19  
 14:8 16:16 18:8,13  
 22:11 23:18 28:5,20  
 32:6,8 35:15 36:19  
 39:9 41:12 42:16  
 43:19 44:19 45:3  
 51:11 54:11 55:6  
 56:10 57:11 58:16  
 60:17 64:14 67:3 68:2  
 68:9 69:5 70:3 71:9  
 72:4,11,18 78:3,4,5  
 79:10 81:4 83:1,10,11

85:21 86:21 87:7 90:7  
 90:10 94:22 95:8,14  
 96:18,22 97:9 101:4  
 102:2,5,14 104:15  
 106:15,16 107:9,14  
 109:9 114:22 115:12  
 116:15,19 117:3  
 118:15 119:21 120:13  
 121:17 123:10 124:9  
 126:8,16 127:5  
 128:10 132:13 134:6  
 134:12 135:2,17,20  
 136:18 137:7,15  
 145:4,5,19 147:3,7  
 148:15 149:10,16  
 152:8 153:12 161:6  
 162:13 164:14,17  
 165:8 166:6 169:9  
 171:6,12 173:2  
 174:22 175:1 176:5  
 178:12 180:18 181:7  
 182:17 183:1,6 184:9  
 184:22 186:12 188:3  
 188:7 191:4 194:12  
 194:18 196:3,10,11  
 198:2,16 203:19  
 205:12 206:6 212:17  
 214:12,16 216:12  
 217:14 218:6,12  
 221:6,11 223:6  
 224:21 225:15 230:6  
 230:9 231:10,11,12  
 233:8 234:17 235:19  
 237:6,17 238:18  
 240:13,17 242:13  
 243:22 245:20 246:6  
 246:17 247:19 248:19  
 248:20 251:16 252:18  
 254:15 256:7,10  
 257:1,7 258:15 259:9  
 259:12,16 261:13  
 263:15,18 266:14,15  
 267:18 270:12 271:14  
 273:9 274:16 278:3,4  
 279:21 281:3 284:2  
 286:22 287:2,7,18  
 288:5,9,20 292:12  
 294:13 295:1,4 296:6  
 296:18 297:18 301:6  
 302:7 306:2,16 307:5  
 310:5,14 313:10  
 328:3 333:10,20  
 334:4 337:14,20  
 338:7 340:18 341:6  
 341:21 343:6 344:21  
 346:10,17 348:17  
 350:11 353:8 355:4  
 356:9 357:15 359:3  
 359:21 360:20 361:17

362:21 363:7,13  
 364:6,22 365:3 366:3  
 366:5,11 369:3,20  
 370:10 371:4 372:18  
 373:9 376:13 377:16  
 379:6 380:17 385:5  
 388:14 389:12 390:6  
 391:10 393:9 394:2  
 397:1,9,12,20 398:4  
 398:16,22 400:11  
 401:19 402:9 403:20  
 405:4,18 407:22  
 408:16 409:7,12  
 413:19 415:14 416:5  
 416:10 417:14,18  
 418:17 419:10 421:16  
 423:19 424:4 425:7  
 425:20 426:8 428:5,9  
 429:2 436:3 439:22  
 440:10 444:13,19  
 445:10 446:7 449:10  
 449:12 451:6,11  
 452:1 453:16,17  
 454:2,15  
**Thanks** 246:5 257:10  
**theory** 173:9,12 283:12  
**thereon** 44:11 412:15  
**Thermal** 177:2  
**thin** 371:3  
**thing** 4:14 30:20 84:16  
 89:4 94:14 154:9,10  
 165:11 173:1 193:14  
 195:19 203:8 217:4  
 217:17 239:16 240:12  
 241:17 292:14 325:12  
 361:1 429:16  
**things** 5:1,5 9:12 40:5  
 66:16 67:2 82:1 84:21  
 88:1 99:15,17 153:17  
 157:10 168:15 170:4  
 172:12 212:14 240:5  
 266:16 272:15 276:9  
 277:1,2,15 322:19  
**think** 12:1 13:8 17:13  
 18:7 20:7 21:17 23:2  
 23:11 30:21 31:18  
 32:1 34:19 36:5,13,14  
 36:16,17 38:22 39:6,7  
 41:17 42:6,10,20,21  
 45:15 53:13 54:15  
 57:11,18,21 63:19  
 67:14,19,22 69:9  
 70:18 73:7 74:6 79:8  
 81:13 82:13 84:1 85:7  
 85:11,17 87:16,17,21  
 88:18 89:4,21 90:1,4  
 91:7,20 93:11 94:8,17  
 94:18 95:21 96:5,12  
 96:16,18 97:3,7,13,16

97:18 98:17,20 99:13  
 105:6,11 106:3  
 110:21 119:13 120:18  
 121:11 122:16,19  
 123:4 125:20 127:11  
 128:8 132:7 135:4  
 141:22 150:19 155:21  
 157:14 158:14 160:6  
 162:4,4 163:3,18  
 172:13,22 173:3,22  
 174:5,17 184:7 189:3  
 192:16 193:5 195:13  
 201:7 202:7 203:8  
 206:20 212:16 216:7  
 216:9 220:15 229:4  
 234:6,10,21 235:9  
 236:18,19 237:2,12  
 237:14 238:2,3,4  
 239:13 241:5 242:6  
 243:2,3,17 254:1  
 255:8 261:5 263:9,12  
 268:7 270:6 273:14  
 273:15 275:11,20  
 276:22 282:7,11  
 284:19 285:2,15,20  
 286:1 289:6,15,21  
 290:11,14 292:3,15  
 294:3 302:19 306:11  
 307:10 312:20 318:2  
 318:10 319:8,11  
 320:20 321:14,16  
 322:6 326:18 329:2  
 329:19 332:14,16  
 337:5 339:8,13  
 342:21 343:3 351:18  
 355:17 359:15,15,17  
 361:2 363:8 373:14  
 374:7 378:4,5,8  
 380:15 383:1 390:16  
 390:18 392:14 408:9  
 410:13,14 412:1,4,7  
 415:9 418:21,22  
 425:4,8,12 426:12,12  
 429:21 433:2 437:17  
 440:1 441:11 444:9  
 450:12  
**thinking** 39:19,20 274:5  
 282:13 324:11 331:17  
 435:9,10  
**thinner** 367:22 368:8  
**third** 61:19 82:17 127:7  
 283:6  
**thirds** 191:3  
**Thirty** 421:14  
**thought** 4:17 68:8  
 95:20 100:20 105:12  
 144:15 236:2 316:20  
 347:1,11 348:20  
 375:1 420:10 421:22

433:4  
**thoughtful** 322:20  
**thoughts** 169:13 178:3  
 234:19  
**thousand** 354:8 420:17  
**thousands** 371:16,17  
**thread** 254:8,13 255:12  
 255:15,18 256:4  
**three** 7:12 8:17 9:14  
 16:12 20:9 22:13 31:7  
 48:14 50:9 52:14  
 80:12 93:2 105:13  
 107:19 110:5 152:9  
 164:18 190:12 203:8  
 214:3,8 216:13 220:6  
 220:19 240:4 241:7  
 241:15 242:2 261:14  
 263:5 270:16 271:10  
 272:15 277:22 284:22  
 295:13 302:20 307:15  
 311:15 353:19 354:1  
 355:2 363:17,19  
 365:21 372:15  
**threshold** 12:13,14,17  
 62:12,13 74:16,17,20  
 80:20 111:9,10,13  
 112:3 142:10,12  
 191:3 201:17,19,21  
 229:14,16 264:3,5,7  
 353:14 356:18 419:11  
 425:5  
**thresholds** 422:3  
**through-put** 153:2  
**throws** 293:19  
**tie** 8:1 22:5 446:19  
**tied** 27:17  
**Tifton** 453:19  
**till** 54:19  
**time** 8:10 9:6 14:14  
 19:13 21:13 24:3 39:2  
 44:12 48:1 51:21 55:3  
 56:15 59:20 62:3  
 77:18 84:1 85:12 89:8  
 91:15 93:10,16 94:8  
 101:7 102:15 103:4  
 105:8,13 135:5,14,19  
 146:17 148:16 155:7  
 159:4 162:3 164:1,2  
 167:18 168:3,10  
 170:22 172:9,18,22  
 173:21 185:2,10  
 189:10 190:2 192:21  
 195:21 197:8 231:5  
 232:18 233:4 240:17  
 246:7 254:6 270:21  
 275:18 279:10,13  
 280:21 283:3,16  
 285:1 292:14 298:10  
 310:6 315:19 320:20

327:12 331:17 338:21  
 341:22 350:12 367:5  
 367:21 372:10 374:7  
 376:7 377:17 380:18  
 389:14 390:4 392:7  
 398:17 403:21 404:14  
 424:5 426:12 429:3,7  
 429:12 430:15 431:4  
 431:13 444:14 450:16  
 451:1  
**times** 54:6 178:3  
 239:18 241:15 264:20  
 272:4,19 280:18  
 358:21 364:20 372:1  
 375:7 381:21 431:12  
 434:3  
**tires** 27:14,14  
**title** 380:11 437:8  
 440:22  
**today** 6:12 27:21 37:14  
 59:16 72:20 78:6  
 106:5 124:7 136:19  
 137:16 198:3 231:13  
 235:18 238:10 242:4  
 260:21 266:15 270:10  
 273:17 280:5 298:7  
 304:18 361:2 389:5  
**told** 105:7 322:18 324:3  
**Tom** 222:6  
**tomatoes** 19:7  
**tomorrow** 454:12  
**ton** 23:3  
**tonnage** 214:9  
**tons** 24:17 343:18  
**top** 31:2 50:12 96:17  
 169:6 184:19 216:12  
 268:16 293:8  
**topic** 83:14 307:7  
**total** 127:3 354:13,14  
 372:14,16  
**totally** 375:18  
**totes** 309:8  
**touch** 271:22  
**touched** 28:21 193:6  
 422:22  
**tough** 52:17 293:8  
**town** 227:2  
**track** 249:20 270:22  
 450:14  
**tracking** 450:2  
**tractor** 8:11 27:13  
**tractors** 8:8  
**trade** 151:14 301:7  
 337:18 435:20 448:21  
**tradeoffs** 91:8,19  
**trades** 269:20  
**tradeshows** 207:11,12  
**traditional** 270:17  
**traffic** 19:16

**train** 8:8 9:15  
**transaction** 308:13  
 453:4  
**transfer** 23:20 24:6,22  
 24:22 26:5,9 44:7,13  
 395:7 430:3 432:12  
 437:22 440:7 449:20  
 450:10,11,15,21  
 452:4  
**transfers** 437:21,22  
 438:20 449:19  
**transition** 21:20 47:12  
**transitioning** 52:6,9  
**transparency** 120:19  
 234:14,22 235:5,13  
**transparent** 250:3  
**transportation** 440:16  
**transported** 344:3  
**transporting** 442:6  
**trap** 80:18  
**travel** 49:21 272:2  
**traveled** 352:22  
**traveling** 145:5  
**treat** 80:20 82:21  
**treated** 183:22 362:1,2  
**treatment** 44:7,20  
 154:18 236:20  
**tree** 12:6 15:21 54:15  
 54:18 61:13 74:10  
 111:2 138:3,16 139:1  
 140:22 142:4 167:17  
 168:6 201:11 226:21  
 227:8 229:8 240:6  
 261:9 268:9,13,14,14  
 268:16,19 269:2,3,4  
 271:1 272:17 280:8  
 298:4 399:16 422:7  
 433:5  
**trees** 7:1,5 12:19 37:17  
 46:18 47:2 51:7,13  
 52:13 54:14,15,16  
 62:17 74:22 83:20  
 84:2,11,12,15,18,21  
 111:16 177:11 199:5  
 199:6 232:21 238:8  
 241:9 243:7 244:15  
 245:9 261:9 264:9  
 270:4,18 287:12  
 399:21 422:10 430:10  
 434:9 449:5  
**trek** 12:20  
**tremendously** 158:13  
**trends** 153:6  
**tributary** 49:20  
**Tributes** 86:6  
**tried** 52:11 170:20  
 271:20 324:12  
**triple** 27:15  
**trouble** 118:1

**truck** 19:16 30:7 382:17  
**trucks** 19:14 430:17  
**true** 7:10 44:14,16,22  
 287:21 288:17 290:17  
 299:5 340:3 376:15  
 423:5 432:3 447:7  
 452:17  
**truly** 323:2 418:10,14  
**trust** 121:6 234:22  
**try** 14:17 52:15 83:14  
 91:17,18 101:13  
 123:11 181:4 211:19  
 253:17 268:6 270:17  
 271:19,22 272:7  
 276:22 279:4 289:6  
 371:9  
**trying** 25:4 41:6 46:15  
 47:9 55:20 87:17  
 94:20 101:8,11,12  
 102:21 103:14 173:17  
 173:17 184:16 211:21  
 217:5 253:22 254:1  
 272:9 275:1 286:17  
 302:11 303:20 316:7  
 327:3 330:8 344:1  
 352:3 356:6 392:3  
 396:16 401:12 406:21  
 426:13 442:13 447:5  
**TUESDAY** 1:9  
**Tularosa** 198:21  
**Turkey** 207:9  
**turn** 4:11 25:10 112:19  
 147:4,9 166:4 171:13  
 184:13 188:8 191:6  
 194:21 218:13 221:12  
 267:12 310:16 311:11  
 313:19 357:16 379:15  
 409:13 416:11 417:19  
 427:18 428:11 429:6  
 439:14 443:14 451:17  
**two** 7:21 8:4 9:6 15:8  
 20:9 25:16 35:21  
 46:21 80:12 87:11  
 88:10 91:9,19 92:15  
 93:1 102:3 109:18  
 113:8 119:15 124:3  
 124:22 125:20 127:5  
 130:13 148:21 149:5  
 152:21 157:12 162:10  
 167:5,5,6,9 169:1,10  
 169:11 172:1,5,19,20  
 173:5 174:10 177:12  
 190:6 191:2 195:10  
 215:11,11,13,19  
 219:12 220:6 225:7  
 241:15 242:19 259:22  
 264:15 266:15 270:18  
 271:10 278:13 279:22  
 280:14 289:10,11

293:4 302:2 343:21  
349:8 353:12,13,15  
353:16,22 357:21  
378:2 392:6 395:17  
395:18 396:14 400:6  
413:9 420:17 423:13  
429:6,10 450:18  
452:20

**two-thirds** 129:13,16  
131:21 189:13,18

**twofold** 58:1

**Tying** 415:3

**type** 16:2 28:12,13

33:10 36:22 46:3,7  
48:8 79:3 84:4 86:19  
120:4 163:16 193:16  
212:6,11 234:8 245:1  
269:11 270:4 272:16  
293:15 307:8 369:11  
448:1

**types** 46:13 66:15 92:20

125:2 207:5 261:4  
272:8 342:6,17 373:1  
434:14 440:13 448:6

**typical** 20:5 41:14,15

46:16,20 120:3 244:7  
381:9

**typically** 38:14 40:10

126:5 154:12 219:20  
368:3 370:2,18  
375:15 381:16,18  
408:6 435:6 445:19

**typo** 78:17

## U

**U.S.** 2:4,9 61:12 62:5

73:11 76:3 92:2,4  
101:5,10,16 139:1  
202:2,12 204:1,11  
206:2,10,21 207:22  
209:14 210:10,18  
212:2 221:14 238:17  
261:17 270:16 272:3  
273:17 274:13 275:6  
301:17 390:18 414:11

**UAE** 207:9

**UC** 280:6

**UK** 207:9

**ultimately** 443:17

**unanimous** 304:5

319:20 328:20 405:17

**unanimously** 323:20

352:15,17

**uncle** 8:21 9:2 89:5

**unclear** 319:7

**uncles** 8:7 89:12

**underdeveloped**

333:16

**understand** 6:11 11:19

12:8 15:3 22:15 34:16  
37:7 45:16 60:18 62:7  
74:11 104:6 111:4,20  
137:15 140:19 142:5  
156:20 157:7 163:7  
176:16 190:5 198:16  
201:12 208:16 220:4  
225:10 229:9 233:22  
248:17 259:12 263:20  
288:15 299:2 307:12  
322:19 323:14 326:12  
328:22 329:5 360:4  
375:8,13 393:13  
396:16 418:20 444:10  
452:8

**understandable** 250:4

**understanding** 21:8,10

22:6 34:1,3 67:9  
107:10 123:5 125:16  
155:10,14 167:16  
213:1 237:14 249:16  
253:21 255:12 306:8  
328:16 333:2 360:10  
377:21 378:11 406:17  
414:21 430:7 433:21  
449:20 451:4,15

**understood** 56:19

149:4 316:19 325:8  
325:17 331:4 336:1

**undertaken** 68:18

**undeveloped** 323:7

**unduly** 10:19 63:11

75:17 92:18 93:5  
110:12 116:1,6  
140:10 178:16 200:7  
228:3 262:15

**unfortunately** 37:12

128:20 170:5 275:19

**unhealthy** 228:9,15

**unification** 303:1

**unified** 73:8,11 261:20

262:1 411:15

**uniform** 12:3 30:12

70:22 87:20 163:4  
216:17 334:12,14  
410:10

**uniformity** 238:2,16

**uniformly** 409:16 410:5

**unifying** 76:9

**unintended** 237:16

**unintentional** 368:17

**unique** 243:3 316:3

**unit** 27:20,20 245:16  
411:11

**United** 1:1 8:14 21:22

79:15 82:20 86:17  
139:1 151:7 156:6  
160:20 203:9,11

204:8 216:1 307:14  
413:20

**universally** 164:11

**universe** 422:11

**universities** 96:6

260:20

**University** 80:4 232:12

297:11,12 298:13

**unknown** 165:10 166:3

**untimely** 7:8

**upcoming** 99:19 285:14

**updated** 12:3 414:18

**upgraded** 164:8

**uphold** 29:1

**upholding** 29:3

**upwards** 85:4

**urge** 76:20

**USA** 274:8

**usage** 305:13 314:2

366:16 386:12 402:14  
428:16

**USDA** 2:20,21,21,22

18:11 35:7 55:9 56:9  
59:5 65:22 68:13 77:4

81:16 83:13 87:8,10  
89:10 114:14 120:2

126:19 132:17 134:14  
145:4 148:18 149:19

153:16 160:9 162:16  
166:10 180:15 181:16

181:18 182:5 189:7  
205:12 207:3 211:20

212:20 214:14 231:10  
238:22 240:16 252:18

256:14 266:14 270:15  
271:4 273:17 274:2,2

278:6 281:6 295:13  
305:1 307:5 310:9,22

311:9 313:13,14  
317:6,7 318:3 319:15

320:18,21 321:6  
324:3,9,10,15 326:8

329:4 332:5 334:1  
335:18,22 338:22

341:2 342:4 343:9  
350:18 361:14 362:14

363:1 365:5 367:9  
369:6 373:7,14 375:1

384:4 385:12 386:2  
389:19 399:8 403:22

404:4 406:2 408:22  
409:19 411:9 412:12

416:3 424:8 426:11  
444:19 451:19

**USDA's** 219:21 321:20  
385:16

**use** 28:12 54:6 100:16  
142:17 163:11,16,17

212:3 237:10 286:3

306:3,5 310:17 327:1

339:6 344:8,8 348:8

364:12 370:17 378:15

382:9 388:19 402:17

402:17 414:7 419:11

420:4 445:12

**useful** 239:9,11 388:15

**uses** 265:5 320:13

373:7 449:3

**usually** 190:17 277:22

404:17

**usury** 153:5 235:7

238:13

**utmost** 392:22

## V

**vacancy** 190:18

**vacuum** 315:2

**vacuumed** 322:3

**validating** 284:21

**valley** 7:7 9:9,18 26:22

45:8 46:8,8 86:5

169:3 227:2,3 245:6

**valleys** 45:8 46:9

**valuable** 95:22 366:21

**value** 34:12 57:10 58:13

104:3,5 125:5 239:1

262:10 282:11 286:14

309:19 315:9 323:8

323:10 328:18,21

333:18 365:7 376:14

376:14 377:3,5

435:19

**Varela** 2:22 14:6,8,17

14:22 16:16,20 17:4

17:19 18:4,7 83:13,13

85:21 86:21 132:17

132:17,22 133:5,10

133:16,20 134:6,12

148:18,18 149:2,10

149:13,16 160:9,9,13

161:6 212:20,20

213:7,13,20 214:1,12

240:16,16 241:3

242:13,21 243:22

244:4,22 245:20

281:6,6,13,17,22

282:4 283:8 284:2,8

284:11,14 285:4

286:22 342:4,4,15,21

343:6 367:9,9 368:11

368:16,21 369:3

375:2 405:20 406:2,2

406:20 407:4,7,10,21

408:5,16 426:11,11

427:2,6,10

**variability** 56:12 57:19

**variable** 239:22



**variance** 241:12  
**variant** 48:9  
**variation** 11:2,5 16:10  
 42:13 47:6 57:7 73:14  
 73:15 200:12,13  
 228:7 405:2  
**variations** 412:14  
**varied** 157:9  
**varies** 40:18  
**varieties** 125:20 139:3  
 177:9,13 199:8  
 243:14 260:2 269:12  
 269:19,22 270:7,8,10  
 270:13,14 271:11,16  
 272:10,14 273:13  
 274:10 368:1,9 413:9  
**variety** 7:3 38:21 39:2  
 108:12 124:20 240:9  
 268:8,11,13 269:6  
 271:9 272:18 273:1  
 413:10  
**various** 15:14 45:10  
 79:16 107:22 312:18  
 341:19  
**vary** 16:11 56:13 57:12  
**varying** 48:3 50:11  
**vast** 91:6  
**vat** 430:20  
**vats** 430:18  
**vectors** 82:19  
**Vega** 7:18  
**vegetable** 47:14  
**verb** 379:5  
**verbal** 13:15 59:7,10  
 65:8 71:12 77:8 95:4  
 104:20 105:1 114:2  
 128:14 134:15,20  
 143:18 175:4,9 180:1  
 196:7,14 204:19  
 223:10,13 230:18  
 246:2,9 252:4 257:5  
 257:16 265:22 294:18  
 294:21 296:2 313:16  
 339:17 366:9 409:10  
 428:8 451:9 454:5  
**verbatim** 328:8 329:2  
**verifiable** 239:19  
**verified** 17:13  
**verify** 17:17  
**version** 126:20  
**versus** 10:15 63:6  
 75:12 109:3 140:2  
 178:7 200:3 227:22  
 234:9 241:14 243:14  
 243:14 250:22 344:8  
 354:1 378:1 413:8,11  
**vertically** 108:3 115:18  
 116:8 298:16  
**vetting** 415:7

**viable** 112:17 235:6  
 355:7  
**vibration** 307:11  
**vice** 76:2 92:1,8,9 186:1  
 274:21  
**video** 191:16 192:3  
**view** 34:12 57:16 83:22  
 149:22 152:14 173:15  
 173:18 324:18  
**viewpoints** 235:4  
**views** 215:16  
**Vilsack** 222:6,8  
**violent** 331:14  
**vis** 360:1,1  
**Visalia** 227:1 249:4  
**vision** 227:8  
**visited** 125:12  
**vitae** 64:20 113:18  
 179:17 251:20  
**Voc** 297:7  
**voice** 131:5 132:9 169:6  
 261:20 285:8 290:14  
 291:18  
**volatility** 228:8,11,12  
 228:14 240:20,22  
 241:13,16,17,18,19  
 241:19 281:1  
**volume** 19:16 27:6  
 31:10 125:7,10 134:1  
 182:5,12 187:17  
 279:7 397:10  
**volumes** 11:14 395:6  
**voluntarily** 182:4 186:3  
**voluntary** 17:7 93:17,21  
 99:8,12 275:18  
 288:15 289:4 413:22  
 415:18  
**volunteer** 282:22  
 337:19  
**vote** 12:12 22:21 62:10  
 74:15 111:8 129:13  
 129:16 142:9 174:20  
 189:19 191:14 201:16  
 215:3 229:13 264:2  
 304:1,5 312:11,13,22  
 313:9 319:20 352:14  
 354:15,20,21 405:17  
 413:3 423:2,6 426:6  
**voted** 203:15 204:5  
 317:17 318:13 323:20  
 331:19 332:13 333:7  
 352:14,16 354:17  
**votes** 130:15 195:10  
 313:8 347:19  
**voting** 129:7 131:4  
 133:2,11,17 189:18  
 312:3 313:3 358:15  
 398:8

---

**W**


---

**wagon** 430:16  
**wagons** 430:17  
**wait** 41:4  
**waiting** 215:2  
**Wall** 277:2  
**walnut** 127:16 157:9,11  
 232:10  
**walnuts** 85:11 228:13  
 232:1 240:22 241:14  
 241:22 244:10,11  
**want** 4:11 26:13 56:11  
 59:20 69:21 83:14  
 87:18 95:14 128:22  
 129:2 133:21 135:11  
 137:8 147:4 148:13  
 148:19 171:20 173:12  
 181:3 190:4 191:2  
 197:2,5 212:21 213:3  
 240:18 241:9 244:14  
 246:4 254:3 269:14  
 278:13 285:6 287:20  
 288:11 295:22 306:14  
 315:10,20,21 316:5  
 317:6,13,21 319:15  
 320:10 322:14 327:8  
 329:1 331:14,17  
 332:20 339:11 340:6  
 345:16 354:6 355:4  
 357:16 367:10 368:12  
 371:4 374:2,9 376:18  
 382:1 384:4 387:7  
 390:5 403:17 406:3  
 422:2 424:12 425:12  
 443:18 446:10,19,20  
 447:1 448:16 450:4  
 452:15  
**wanted** 14:9 32:21 45:4  
 100:19 102:9 103:6  
 104:16 105:22 106:13  
 115:13 132:22 136:19  
 147:9 166:10,12  
 191:6 232:15 247:2  
 258:18 266:16 267:12  
 267:13 281:7 284:3  
 288:9 300:5 345:20  
 345:20,22 346:1  
 347:7,8 348:13  
 349:11 352:1 353:8  
 356:7 419:13 422:7  
 425:17 426:19 442:2  
 442:5,16  
**wanting** 68:5 285:8  
 295:19 318:9  
**wants** 318:3 361:9  
**warehouse** 17:2 18:15  
 20:1 21:12 44:5 382:7  
**warehoused** 22:7

**warehouses** 431:12  
 434:21  
**warehousing** 17:1,5,21  
 17:22 20:21 43:5  
 382:7 440:16  
**warning** 5:6  
**warrants** 191:12  
**Washington** 2:6,11  
 101:13  
**wasn't** 11:3 56:19 99:21  
 103:15 104:8 232:13  
 335:17  
**waste** 135:14  
**wasted** 62:4  
**watch** 176:4  
**water** 27:6,7 28:10,11  
 28:17 42:6 45:17,19  
 45:20,20 47:9,22 48:5  
 48:11,12,14,15,17,20  
 49:5,8,12,18,21 50:2  
 50:4,7,15,21,22 51:3  
 53:18 54:2,3 75:3  
 86:7 91:12 111:19  
 142:18 161:1,2 250:1  
 264:12  
**way** 30:4 43:17 44:17  
 55:22 57:9 63:20  
 80:15 81:2 82:19,21  
 87:18 140:21 155:20  
 165:6 212:16 234:2  
 234:13,15 281:2,19  
 282:9 285:12,21  
 294:3,4 324:1,1,8  
 333:5 335:7 341:13  
 369:15 389:8 400:22  
 422:9 432:7 448:6  
**ways** 45:10 91:17 159:9  
 174:10 294:8 359:20  
 381:5 408:11  
**we'll** 117:7 119:21  
 135:5 170:9 183:14  
 189:20 313:11 316:8  
 321:8,16 325:16  
 327:16 391:1 402:5  
 429:12 430:5,10  
 437:20 451:14  
**we're** 24:8 25:4 33:10  
 34:17 37:11 48:18,21  
 50:9 52:12 56:4 84:4  
 85:6,7 91:20 93:9  
 94:19,20,20 99:15  
 101:10,11 136:7  
 150:21 154:11 161:3  
 174:9 210:2,6 224:3  
 235:14 245:13 253:2  
 253:3,4 255:5,8,9  
 258:12 294:9 320:15  
 322:9 323:20 325:19  
 326:19 328:20,21

331:13 332:22 333:1  
 343:17 361:16 379:11  
 392:13,14 410:19  
 416:13 440:6 454:12  
**we've** 16:5 25:12 27:3  
 27:15 48:15 54:5 58:3  
 83:18 94:7 151:21  
 160:15 191:20 192:12  
 292:7 302:14 315:22  
 318:10 324:5 332:1  
 390:21 404:4 414:10  
 415:11 454:10  
**wealth** 103:20,20  
**weather** 37:16 273:2  
 404:19  
**website** 113:1 280:6  
**week** 19:7 40:3 56:14  
 59:4 203:16 453:20  
**weeks** 16:12 46:21  
 57:13 168:5 221:8  
 302:2  
**weevil** 79:2,2,11,13  
 80:6,22 81:7 82:22  
**weigh** 57:2  
**weigh-in** 354:21  
**weight** 57:3 69:7  
 128:17 394:4,7  
 397:10,11,12  
**weighted** 354:16 371:3  
**weighty** 429:11  
**welcome** 360:6,8  
 362:17  
**wells** 27:8,10 48:22  
 91:14,15 422:15  
**went** 57:9 59:3 101:13  
 136:3 170:6,7 208:11  
 224:5 232:16 296:9  
 298:13 392:12 454:8  
 454:18  
**weren't** 103:8  
**west** 41:16 45:6 51:13  
 63:15,17,18,21 66:3  
 75:22 78:10,16,19,21  
 79:4,6 83:2 86:1,3,8  
 86:14 89:18 91:7  
 95:11 212:1 260:1  
 399:20 419:19,21  
 420:11,19  
**western** 75:21 78:7,12  
 78:18 86:12,13,14,16  
 87:4,6 91:3 95:10  
 134:8,10,11 206:12  
 272:11,21 273:5,6,7  
 301:13 404:5  
**westward** 79:3,5 80:2  
**white** 354:7  
**wide** 11:1,5 16:10 38:21  
 39:1,22 73:13,15 97:4  
 100:2 200:11,13

228:6 235:3 345:20  
 347:7 442:2  
**wider** 46:22 400:2  
**widespread** 401:7  
**wife** 8:17 9:14 73:2  
**wiggle** 34:22  
**wild** 85:3 298:6  
**willing** 123:5 289:16  
 326:2 360:16  
**Wilson** 453:18  
**win** 261:17 354:21  
**window** 19:5,9  
**windrunners** 430:12  
**wing** 174:16  
**winter** 298:9 403:3  
**wise** 228:4  
**wish** 53:5 170:4 317:11  
 390:10  
**withholding** 155:4  
**witness** 3:2 5:11,13  
 59:12,21 60:11 71:16  
 71:20 105:5,8,10,11  
 106:5,6 107:3 135:3,7  
 135:19 136:6,15  
 175:13,14 176:1  
 196:18 197:3,9,16  
 223:17 224:8,10,17  
 246:13,20,21 247:12  
 254:20 257:20,22  
 258:13 295:5,7  
 296:13 316:18 317:9  
 323:15,18 325:20  
 326:3 367:5 374:9  
**witnesses** 5:4 7:22  
 100:8 223:22 325:15  
 341:3 414:10  
**wonder** 163:1  
**wonderful** 151:8 153:10  
**wondering** 148:9  
 213:10 254:19 356:12  
 399:10 445:3  
**word** 97:19 173:22  
 305:9 330:12,12  
 344:18 345:19 348:12  
 374:19 376:4 417:20  
**words** 23:14 24:3  
 154:12 173:16 320:14  
 339:7 344:6 347:18  
 433:19  
**work** 8:15 29:8 61:22  
 63:19,21 79:20 92:11  
 93:20 94:17,21 97:22  
 146:15 155:21 156:19  
 156:19 165:16 168:12  
 170:6 172:19 186:5  
 194:9 202:8,10 210:2  
 219:20 220:1 230:1  
 231:21 235:18 241:11  
 253:5 270:17 271:18

274:22 296:19 302:15  
 383:1 405:5 406:8  
 407:12 439:6 440:19  
**workable** 405:7 444:9  
**worked** 8:16,20 17:17  
 40:21 146:19 173:10  
 173:21 212:22 232:9  
 232:10,17 275:19  
 355:14 356:4  
**working** 59:16,18 62:5  
 99:15 155:22 158:16  
 207:2,20 249:18  
 292:5 303:2  
**works** 153:10 173:16  
 283:17 361:3  
**world** 127:15 150:15  
 163:11 167:14 261:18  
 356:16 389:1  
**world's** 168:7  
**worms** 80:17  
**worried** 39:5 98:7  
**worst** 168:7  
**worth** 69:19 70:16,17  
 215:20  
**wouldn't** 36:10 51:4  
 81:18 104:9 157:22  
 209:18 291:8 340:6  
**wrapped** 344:14  
**Wray** 196:19,21 295:16  
 295:17,20  
**writing** 41:21 222:9  
**written** 13:8 176:17  
 177:1 191:17,21  
 202:15 203:13  
**wrong** 21:11 221:1  
 293:7 427:3  
**wrote** 221:13

---

**X**


---

**x** 130:5,6 330:20  
**x-ray** 163:12

---

**Y**


---

**yard** 418:12 422:10  
**yards** 298:1  
**yeah** 174:7 190:10  
 256:19 375:10 411:2  
 426:2  
**year** 9:7 11:7,10,10  
 12:11 22:20 32:20  
 34:6 39:2 40:12,14  
 41:3 42:8 44:4,5  
 52:20 58:21 62:9 63:2  
 73:18,18,22 74:14  
 75:8 92:7 108:8  
 110:15 111:7,22  
 112:6 124:21 125:7,9  
 126:7 127:2 141:16

142:8 150:18,21  
 151:15 153:4 154:13  
 157:19 170:2 172:5  
 177:7 195:7 199:3  
 200:16,16 201:1,15  
 202:1 215:21 216:2  
 218:3 219:8,16 220:1  
 220:8 221:9 229:12  
 233:1 240:2 241:6,21  
 241:22 260:13 264:1  
 272:4 283:17 289:9  
 293:3 389:7 402:10  
 402:17,18 403:10  
 406:4,9,22 408:3,6  
 409:1,3  
**year's** 208:11 219:6,9  
 408:8  
**years** 7:2 8:10,19,19 9:7  
 11:1,17 12:11 16:5  
 17:10,15 20:10,16  
 22:21,22 23:1 27:4,12  
 33:19 35:19,21 40:2  
 42:3,5,6,7 48:2,12,14  
 48:15 51:22 52:5,14  
 54:12,20 62:10 73:13  
 74:14 80:13 84:3 85:2  
 97:13,20 99:17  
 107:20,21 108:10  
 111:7 113:9 117:1,1  
 138:4,5,18 142:9  
 147:20 153:2 156:15  
 159:18,21 162:10  
 169:10,11,19 172:8  
 172:17,19,20 177:12  
 185:5 191:21 195:14  
 199:7 200:11,19  
 201:16 208:4,6,8  
 210:22 225:22 226:2  
 228:6 229:13 240:4  
 241:13,14 242:3,3  
 264:2,15 274:3  
 280:14 284:16,22,22  
 285:1 290:6,7,19  
 297:22 302:11,19,20  
 388:21 408:13 425:3  
**yesterday** 4:9,15,15  
 59:18 100:7 105:7  
 106:14 135:12 259:6  
 288:21 364:17 380:15  
 433:3  
**yield** 157:3,6 261:10  
 272:20 273:3  
**yields** 419:22 420:21  
**Yorba** 137:20  
**York** 232:17  
**you're-in-the** 4:22  
**younger** 157:17 170:13  
**Yugoslavia** 8:18

**Z**

**zero** 19:2 20:8,10 35:16  
280:11  
**zone** 240:8

**0****1**

**1** 5:20 16:21 24:19  
32:18 35:3 36:2 43:1  
43:3,20 72:7 85:20  
93:11 95:15 102:8  
117:4,10,11,16  
129:15 137:2 167:4  
176:9 184:10 198:4  
218:14 225:2 233:11  
247:20 258:20 260:10  
267:13 281:10,14  
296:20 300:1 304:14  
304:19 305:5 307:22  
315:18 318:11 319:9  
336:13 339:21 348:9  
349:2 353:11 363:17  
387:2,11 396:17  
398:2 406:18 410:8  
**1,000** 84:11 447:20,21  
**1,200** 249:7 256:15  
**1,666.67** 364:19,20  
**1.3** 263:12  
**1.6** 226:6  
**1.7** 263:12  
**1:15** 223:19  
**1:30** 223:20,21 224:2  
**1:31** 224:6  
**10** 16:1 19:9 26:12  
35:18 50:4 51:22  
125:8 299:7 352:1  
399:17  
**10,000** 399:17,18  
**10:17** 135:4  
**10:18** 136:1  
**10:28** 135:6,22  
**100** 16:6 37:15 94:1  
226:1  
**106** 3:16  
**107** 3:4  
**11** 19:9 20:1 27:20  
29:17 35:18 407:16  
**11:43** 197:6  
**114** 3:4,16  
**1180** 2:16  
**12** 29:17 34:17 51:22  
129:7 130:15 202:1  
280:10 283:17 343:20  
344:12,13  
**12.5** 349:7,9 357:20  
358:1,3,18  
**12:12** 223:18 224:5

**128** 3:4  
**12th** 204:2  
**13** 3:13 408:6  
**132** 3:4  
**136** 3:5,17  
**14** 3:3 408:6,11,12  
**1400** 2:5,10  
**143** 3:17  
**144** 3:5  
**15** 40:4 48:2 52:4 56:13  
127:2 153:2 290:7  
299:7 408:12,12,13  
**15,000** 85:4 87:2  
**150** 177:6 357:8  
**16** 408:15  
**16-17** 27:4  
**160** 7:1  
**166,483** 177:8  
**17** 130:11 352:10  
**1700** 6:21  
**175** 3:18 353:20 354:1  
354:10,12 355:11,20  
356:4,11,17 362:16  
363:21 364:2  
**175.5** 361:7,22  
**176** 3:5 353:18,22 362:6  
362:15 363:5,10  
364:2,10,12,20  
**18** 80:11 124:22 125:9  
315:6  
**180** 3:5,18 316:22  
**1860s** 226:12  
**19** 288:21  
**1920s** 250:10  
**1924** 8:14  
**1937** 4:7  
**1950s** 7:6  
**1955** 179:1  
**1960s** 96:10  
**1967** 8:9  
**1968** 138:8  
**1969** 99:6 100:4,15  
205:19 415:1  
**197** 3:19  
**1970s** 7:6  
**1974** 138:9  
**1978** 52:22  
**1979** 7:9  
**198** 3:6  
**1980s** 138:10  
**1981** 298:15,16  
**1986** 99:6 100:5,15  
414:22  
**1s** 100:9,10,16  
**1st** 34:7 89:1 405:6

**2**

**2** 167:5 191:7 260:19  
269:16 348:1,2,9,18

349:2 410:8  
**2,000** 41:17 139:4 299:6  
420:11  
**2.5** 10:16 63:6 75:12  
109:3 140:2 144:19  
178:8 200:3 227:22  
250:22 262:9 263:3  
**2.8** 144:16,18  
**20** 52:5 80:12 97:19  
169:19 315:6 343:18  
**20,000** 85:4 87:2  
**20,000/30,000** 23:6  
**200** 199:4 214:18 298:1  
**2001** 241:6  
**2010** 83:20  
**2011** 83:21  
**2012** 59:1 241:6  
**2013** 408:6  
**2014** 365:7  
**2015** 1:10  
**202-690-4299** 2:7,12  
**202-720-4982** 2:11  
**202-720-9237** 2:6  
**20250** 2:6,11  
**204** 3:19  
**205** 3:6  
**20s** 8:6  
**21** 1:10  
**218** 3:6  
**21st** 250:6  
**22** 400:7  
**220** 139:2,8  
**224** 3:6,20  
**23** 6:4 64:18 72:12  
109:6 137:13 176:15  
178:10 198:10 225:3  
248:7 259:4 275:20  
364:16 365:5  
**230** 3:20  
**231** 3:6  
**2325** 2:5  
**2331-C** 2:10  
**24** 50:2 167:20 400:5  
**247** 3:7,21  
**25** 40:4 56:18,20 57:7  
243:5 420:17 450:4  
**252** 3:7,21  
**258** 3:7,22  
**266** 3:7,22  
**280** 58:4 199:2 205:14  
**287** 3:7  
**296** 3:8  
**2s** 100:9,10,16

**3**

**3** 162:19 167:6 314:10  
348:10 367:2 398:5  
**3,000** 115:9 249:8

**30** 3:13 12:9 13:9,16,20  
19:15 22:19 40:2 54:5  
54:6 58:22 63:1 74:12  
75:7 111:5 138:4  
142:6,13,20 201:13  
213:6,7 229:10 243:5  
263:22 288:16,17  
344:13 355:7,15  
357:4,5 419:17 420:4  
420:4 421:3 425:4  
**30309-3521** 2:17  
**306** 3:8  
**30s** 9:7  
**30th** 34:7 405:9,12  
409:2  
**31** 3:14 60:8 65:2,10,14  
**31st** 21:4,11,19 22:5  
34:8 43:14 44:4,15,21  
218:17 405:6 407:5  
409:1  
**32** 3:3,15 72:3 77:2,9,14  
107:21 117:1 213:7  
**33** 3:16 106:22 113:16  
114:3,8  
**330** 85:6  
**339** 3:8  
**34** 3:17 136:12 143:19  
144:2  
**340** 3:8  
**35** 3:18 175:19 179:16  
180:2,7  
**36** 3:19 197:22 203:6  
204:20 205:3  
**360** 58:5  
**37** 3:20 224:14 230:11  
230:19 231:2  
**38** 3:21 247:9 251:19  
252:5,10  
**380** 226:10  
**380030** 387:16  
**38023** 184:14,20  
**38027** 119:1  
**38028** 118:12  
**39** 3:22 258:6,10 265:15  
266:1,6

**4**

**4** 167:6,7 261:19  
**4,000** 91:16 108:6 115:4  
115:5,6,7  
**4,500** 139:5  
**40** 15:7 86:10 244:8  
280:8 313:5,8 399:21  
**400** 61:2 73:2 256:20  
**400,000** 168:4  
**404-572-4604** 2:17  
**404-572-5133** 2:18  
**4100** 1:13

42 344:16  
 44 344:17  
 44,000 343:18  
 45 390:22  
 450 447:17  
 48 46:12 50:2  
 4th 297:20

---

**5**

---

5 3:3  
 5,000 232:8 243:6,13  
 5:36 454:17  
 50 54:16 79:7 83:3,4  
   86:9 177:10 315:5  
   358:19 388:20 425:3  
 50,000 12:10 22:19 23:2  
   41:13 42:3 54:5 62:9  
   63:1 74:13 75:8 142:7  
   142:13,21 201:14  
   229:11 263:22 355:9  
   355:16 420:1,5,15  
   425:5  
 50,0900 111:6  
 500 84:11,13  
 500,000 448:11  
 52 118:2 119:2 185:12  
   185:16 186:9 315:5  
 528 297:7  
 53 119:2,22,22 185:13  
   186:13 188:4  
 54 119:3 120:14,14  
   185:13 187:2 188:4  
 55 3:3 118:8 119:3  
   137:21 185:13 188:8  
 550 355:20  
 56 57:4,6

---

**6**

---

6 242:19 365:5  
 6.25 358:20  
 6.3 10:15 63:5 75:11  
   109:2 140:1 178:7  
   200:2 227:21 250:21  
   262:11  
 6/15/15 222:5  
 6:11 454:11  
 60 3:3,14 15:18,20,22  
   19:15 129:17 344:13  
 60s 52:8 78:22  
 62 450:4  
 63 150:4  
 65 3:3,14

---

**7**

---

7,000 108:5 115:3,5,5,8  
 7:59 4:2  
 70 3:3 191:21  
 700 27:22

700,000 199:4  
 70s 52:8 96:10  
 71 3:15  
 72 3:4  
 77 3:15  
 78 3:4

---

**8**

---

8 242:19  
 8:00 1:12 454:13  
 80 27:21 79:8 289:9  
 800 256:20  
 80s 96:11  
 82 269:14  
 85 49:15 127:4  
 850 226:3 256:21  
 86 170:2  
 896.69 410:8

---

**9**

---

90 157:19 275:11  
 95 3:4 46:1  
 96.94 194:22  
 968.61 102:9  
 985.65 218:15  
 986 333:21 387:14  
 986.1 296:21 305:9  
   398:4  
 986.1-986.42 304:21  
 986.10 379:15 382:11  
 986.11 385:12  
 986.12 398:1  
 986.14 32:18 399:1  
   402:11  
 986.15 409:14 412:13  
 986.16 386:7 402:6  
   416:12 424:8  
 986.17 394:21 428:12  
 986.18 429:8,16  
 986.19 374:4,18 382:2,4  
   429:8,18  
 986.2 306:3 310:17  
 986.24 336:22 338:5  
 986.25 25:11,15  
 986.26 395:16  
 986.28 267:14 269:14  
   269:16 314:10 367:2  
 986.3 147:10,12,21,22  
   148:1 253:13 311:12  
 986.30 213:4  
 986.31 312:4 417:5  
 986.32 213:4  
 986.4 313:19  
 986.42 296:21  
 986.45 281:10,14 345:4  
   345:7 346:15 349:1  
   350:8,20 351:11  
   353:9 359:4

986.45(b)(1) 348:1,2,10  
   362:1 363:17  
 986.45(b)(2) 348:18  
   357:17  
 986.46 133:17 312:4  
 986.5 334:5  
 986.50 171:13 172:4  
 986.52 117:19 119:1  
   233:16  
 986.55 117:19 128:21  
   233:17 347:17  
 986.55(c)(1) 129:4  
 986.55(c)(1)(i) 130:5  
 986.55(c)(1)(vii) 427:19  
 986.6 338:8 340:1  
 986.61 43:3,20 314:11  
   367:3 380:6  
 986.61(5) 429:1  
 986.62 25:6 438:6,8  
   440:4 451:18  
 986.63 161:9,10 236:3,7  
 986.65 35:3 131:13,18  
   218:14 387:3,12,15  
   387:17  
 986.65(a)(2) 386:22  
   387:7 388:2  
 986.65(b) 388:3  
 986.68 36:3 95:16  
 986.69 99:3 334:16  
   395:22  
 986.7 341:9  
 986.8 345:3 346:15  
 986.81 338:16 339:21  
   340:3 341:4  
 986.86 446:11 447:9  
   448:17  
 986.9 366:12 369:7  
 986.94 284:4,11  
 99 381:9

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This is to certify that the foregoing transcript

In the matter of: Proposed Marketing Order and  
Agreement for Pecans

Before: USDA

Date: 07-21-2015

Place: Las Cruces, New Mexico

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Court Reporter

**NEAL R. GROSS**

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