

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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WEDNESDAY,
JULY 22, 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

APPEARANCES:

On Behalf of the Department of Agriculture:

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Also Present:

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

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

2 8:00 a.m.

3 JUDGE GUTHRIDGE: Back on the record
4 in the hearing regarding the proposed marketing
5 agreement for pecans. It's July 22nd in Las
6 Cruces at 8:00 a.m. Are you ready to proceed?

7 MR. QUIROS: Thank you, Your Honor.
8 Dr. Hudson, now, I'll ask you to turn your
9 attention to Section 986.20 Handler Inventory.
10 Is this term used in the industry?

11 DR. HUDSON: Yes, it is.

12 MR. QUIROS: Is this definition
13 consistent with usage in your experience?

14 DR. HUDSON: Yes, it is.

15 MR. QUIROS: Why did you define it?

16 DR. HUDSON: We defined this to
17 recognize the industry practices. Some handlers
18 will purchase and process goods and then hold
19 them in inventory, and we want to make sure that
20 this inventory is both counted and assessed, and
21 I'll refer to the Section 986.61(h) and Section
22 986.75.

1 MR. QUIROS: Thank you. No more
2 questions of this witness on this definition, at
3 this time.

4 JUDGE GUTHRIDGE: USDA questions?

5 MS. SCHMAEDICK: This is Melissa
6 Schmaedick, USDA. Good morning, Dr. Hudson.

7 DR. HUDSON: Good morning.

8 MS. SCHMAEDICK: Just to clarify, if
9 I understood your statement correctly regarding
10 the inventory.

11 That term is used in conjunction with
12 the section under assessments, that involves the
13 --

14 DR. HUDSON: Yes, it does.

15 MS. SCHMAEDICK: Thank you.

16 JUDGE GUTHRIDGE: Any more questions
17 from USDA? Proceed.

18 MR. QUIROS: Dr. Hudson, now turning
19 your attention to Section 986.21, Handler Clean
20 Production. Is this term used in the industry?

21 DR. HUDSON: Yes, it is.

22 MR. QUIROS: Is this definition

1 consistent with the industry usage, in your
2 experience?

3 DR. HUDSON: Yes, it is.

4 MR. QUIROS: Why did you define it?

5 DR. HUDSON: We define this because
6 it's used in the marketing order or marketing
7 policy section, as part of the information we
8 need to have to report to the Council, and is
9 referred to in 986.65(a)(6)(1).

10 MR. QUIROS: Thank you. No more
11 questions of this witness, on this definition.

12 JUDGE GUTHRIDGE: USDA questions?

13 MS. VARELA: Jen Varela, USDA. Dr.
14 Hudson, in describing why this was necessary, you
15 talked about the marketing policy section.

16 Can you expound a little, and maybe
17 follow up on your earlier definition of grower
18 clean production on why having these numbers is
19 particularly important to the grower, when
20 they're making their marketing policy?

21 DR. HUDSON: Yes, grower clean
22 production is production by the grower, through

1 the cleaner.

2 He still has proprietary rights to
3 that production, and therefore, is not subject at
4 that level for assessment.

5 On the other hand, the handler clean
6 production is production which has been purchased
7 the same, by handler, and then taken into a
8 cleaning plant and then cleaned and sorted into
9 the respective categories of standard and sub-
10 standard and trash.

11 So, that is the reason for the
12 definition.

13 MS. VARELA: So, when you combine
14 those two together, are there any other -- does
15 that give you a full idea of what your current
16 supply is, when you combine those two together?

17 DR. HUDSON: Yes, that is a fair -- a
18 close assessment, yes.

19 MS. VARELA: And I imagine in your
20 opinion, that's really important for the board to
21 know at the beginning of the year, when you're --

22 DR. HUDSON: Yes, assessment is

1 extremely important.

2 MS. VARELA: -- establishing -- okay.

3 JUDGE GUTHRIDGE: Anymore USDA
4 questions? Mr. Quiros?

5 MR. QUIROS: Yes, Dr. Hudson, we're
6 now putting up Section 986.65. I wanted you to
7 take a look at the -- yes, this one.

8 Just real briefly, if you take a look
9 at 986 through the first, and look at that at
10 (a)(1), the estimate of grower clean
11 production/handler clean production.

12 DR. HUDSON: Yes.

13 MR. QUIROS: Thank you. Dr. Hudson,
14 the handling clean production and the handler
15 inventory, those are the issues that you were
16 getting at in Section 986.65(a)(1), is that
17 correct?

18 DR. HUDSON: Yes.

19 MR. QUIROS: Thank you. Now, I'd like
20 to turn your attention to Section 986.22. Is
21 this term used in the industry?

22 DR. HUDSON: Hican, yes.

1 MR. QUIROS: Is that definition
2 consistent with the usage in your experience?

3 DR. HUDSON: Yes, it is.

4 MR. QUIROS: Why did you define that?

5 DR. HUDSON: Because hican is a
6 different species and we wanted to make sure that
7 we distinguished it from pecan, because pecans
8 are not covered in the marketing order.

9 MR. QUIROS: No more questions of this
10 witness on this definition.

11 JUDGE GUTHRIDGE: Any USDA questions?

12 MS. SCHMAEDICK: Melissa Schmaedick,
13 USDA. Dr. Hudson, are hicans produced in a
14 commercial capacity?

15 DR. HUDSON: No.

16 MS. SCHMAEDICK: So, do they ever
17 enter the stream of commerce?

18 DR. HUDSON: Yes.

19 MS. SCHMAEDICK: Can you explain that,
20 please?

21 DR. HUDSON: Hicans, like some very
22 small hickory, at times in our area of the

1 country, the east, are blended in the seedlings
2 or maybe in the west, but it's an extremely small
3 percentage, extremely small percentage.

4 We could -- if we identify them as
5 being hicans, we try to keep them separate, but
6 there will be a point in time when they will be
7 assessed as a seedling. If we know that they're
8 not seedlings and they're identified, then
9 they're not, obviously.

10 MS. SCHMAEDICK: Do you see any future
11 need to add hicans to the scope of the marketing
12 order?

13 DR. HUDSON: Certainly, that would be
14 something that the board would consider.

15 MS. SCHMAEDICK: So, if I'm
16 understanding you correctly, are hicans similar
17 to the native trees that are naturally
18 promulgated and not currently being planted on
19 intentional orders?

20 DR. HUDSON: Yes.

21 MS. SCHMAEDICK: Thank you.

22 JUDGE GUTHRIDGE: Are there anymore

1 USDA questions?

2 MS. CHILUKURI: Yes, Dr. Hudson, how
3 -- is it easy in the industry to distinguish
4 between the hicans and the pecan?

5 DR. HUDSON: No.

6 MS. CHILUKURI: Can you elaborate on
7 that?

8 DR. HUDSON: Yes, hicans are very
9 small, very round, a very hard nut. It is more
10 similar to the Chinese shan he tao, which is a
11 native indigenous species, particularly in China.

12 But it closely resembles some small,
13 round softer shell seeds, but it's not a pecan.

14 MS. CHILUKURI: Does Council have any
15 measures or provisions in place to ensure that
16 pecans are not put into the same commerce under
17 marketing order, that you know of?

18 DR. HUDSON: No, but quite honestly,
19 it was unnecessary.

20 You're looking at, gosh, less than
21 probably one-tenth of one percent, if that much.

22 The purpose of this was not -- quite

1 honestly, is -- because it is genetically
2 different from the pecans, to not open the door
3 by allowing them in, because it would do --
4 there's a possibility that there might be another
5 tree fruit species that could also be included in
6 the marketing order, and our purpose here is just
7 to address pecan.

8 MR. HILL: Just one more question. Is
9 there a -- I guess this is an opinion question,
10 but is there a measurable taste difference
11 between this hican the pecan?

12 DR. HUDSON: Yes, in fact, quite
13 honestly in my opinion, I'd rather have hican
14 than pecan. I love hican.

15 Hickory has more of a deeper flavor,
16 but the problem with them is, their shell is
17 about 20 percent. The hull is extremely hard.
18 If you get a bag of hicans, you've got a good
19 friend.

20 MR. HILL: Thank you.

21 JUDGE GUTHRIDGE: Anymore USDA
22 questions? Mr. Quiros?

1 MR. QUIROS: Dr. Hudson, I understand
2 you have one hican tree on your farm. Is that
3 correct?

4 DR. HUDSON: Yes.

5 MR. QUIROS: And how many pecan tress
6 do you have on your farm?

7 DR. HUDSON: I have --

8 MR. QUIROS: Give me your best number.

9 DR. HUDSON: -- 100,000, something
10 like that.

11 MR. QUIROS: One-hundred-thousand
12 trees. So, you've got one hican --

13 DR. HUDSON: I've got --

14 MR. QUIROS: -- and 100,000 --

15 DR. HUDSON: Yes, I probably got more
16 than that.

17 MR. QUIROS: Educated guess?

18 DR. HUDSON: How many cows in Texas?

19 MR. QUIROS: You've got 2,000 acres of
20 trees.

21 DR. HUDSON: Yes.

22 MR. QUIROS: And how many -- what

1 would you say your number of trees is per acre?

2 DR. HUDSON: Well, it varies. I mean,
3 as low as 10 trees per acre, to now, we've got
4 some with 40 trees per acre. So, gosh, I don't
5 know that gets me close to --

6 MR. QUIROS: So, tens of thousands of
7 trees?

8 DR. HUDSON: I got one great pecan
9 tree.

10 MR. QUIROS: Okay, thank you.

11 DR. HUDSON: I wouldn't cut it down
12 for nothing.

13 MR. QUIROS: Thank you. Section
14 986.23, Dr. Hudson, in-shell pecan, is this term
15 used in the industry?

16 DR. HUDSON: Yes, it is.

17 MR. QUIROS: Is this definition
18 consistent with usage, in your experience?

19 DR. HUDSON: Yes, it is.

20 MR. QUIROS: Why define?

21 DR. HUDSON: To distinguish it from
22 shell pecans.

1 MR. QUIROS: Are there different
2 markets for in-shell and shell pecans?

3 DR. HUDSON: Yes, there are.

4 MR. QUIROS: In which form are pecans
5 delivered from the grower to the handler,
6 typically?

7 DR. HUDSON: On an in-shell basis.

8 MR. QUIROS: How about from the
9 handler to the consumer?

10 DR. HUDSON: Principally, on a shell
11 basis.

12 MR. QUIROS: Thanks, that's in the
13 domestic market, is that correct?

14 DR. HUDSON: Yes.

15 MR. QUIROS: Thank you. Do in-shell
16 and shell pecans have different markets?

17 DR. HUDSON: Yes, they do.

18 MR. QUIROS: And do they have
19 different values?

20 DR. HUDSON: Yes, they do.

21 MR. QUIROS: No further questions of
22 this witness on this definition at this time.

1 JUDGE GUTHRIDGE: USDA questions? No?
2 Mr. Quiros?

3 MR. QUIROS: Thank you. Section
4 986.24 inspection service, we've had some
5 discussion about that before, Dr. Hudson. Can
6 you take a moment to look at it? Is this term
7 used in the industry?

8 DR. HUDSON: Yes, it is.

9 MR. QUIROS: How often is this used in
10 the industry? I was under the impression there
11 were not many inspections right now.

12 DR. HUDSON: There are not.
13 Principally, the State, Federal State inspection
14 service has become a very important part of the
15 export industry.

16 But in regards to domestic, it is not.

17 MR. QUIROS: And do you feel like
18 inspection service definition is needed at this
19 time?

20 DR. HUDSON: Certainly for domestic.

21 MR. QUIROS: And why is it needed?

22 DR. HUDSON: We needed this for

1 several reasons. Number one, to guarantee
2 safety, which is certainly an issue. We would
3 like to see greater uniformity, and quite
4 honestly, trace-ability can become a huge issue
5 in the industry, and in the absence of
6 inspection, trace-ability is nearly impossible.

7 MR. QUIROS: And how will this help
8 the industry, Dr. Hudson?

9 DR. HUDSON: Well, quite honestly, it
10 will give all of the industry increased consumer
11 confidence and safety and quality pecans, and
12 other product handling authorities, as mentioned
13 in paragraph 986.69 should, and I think will
14 increase demand and price of all of this.

15 It will also allow the industry to
16 localize and trace a problem with quality and
17 safety, if it does occur, and just to elaborate.

18 There currently is not a crisis
19 response team in the pecan industry, if we were
20 to have a E. coli or salmonella outbreak, and
21 that's disgraceful.

22 That, quite honestly, puts all of our

1 industry at risk.

2 MR. QUIROS: Thank you, Dr. Hudson.

3 How will it help consumers?

4 DR. HUDSON: Well, just as I just
5 mentioned, it will give us greater information in
6 regards to trace-ability, but it allows us to
7 make better decisions in regards to food safety.

8 MR. QUIROS: Thank you. No more
9 questions of this witness, at this time, on this
10 definition.

11 JUDGE GUTHRIDGE: Are there any USDA
12 questions?

13 MS. SCHMAEDICK: Melissa Schmaedick,
14 USDA.

15 Dr. Hudson, you did briefly mention
16 that there are inspections that occur for export
17 product, is that correct?

18 DR. HUDSON: Yes.

19 MS. SCHMAEDICK: Can you talk about
20 what type of scenario or what product would be
21 inspected for export and who conducts those
22 inspections?

1 DR. HUDSON: I can only address this
2 from our personal experience, and that is that
3 any load that we export, we have certified, and
4 the reason for this is -- goes back to liability,
5 in regards to payment or non-payment.

6 We need a guarantee in regards to 12
7 percent, to qualify the grade, the count, the
8 moisture. So, when we send these pecans for
9 export, these pecans, if there happens to be an
10 issue, that we have verified that product from a
11 third-party, in regards to quality, and the
12 standard is matched.

13 In regards to shipping domestically,
14 there is no regulation, currently mandated
15 certification between growers and accumulators,
16 and more times than not, not. There is no
17 grading of service. It's mainly just a grower
18 count, grade basis and none of this is third-
19 party conducted.

20 MS. SCHMAEDICK: So, when you are
21 certifying for export, what standards are you
22 certifying to?

1 DR. HUDSON: We certify grade, which
2 is percentage. We certify count, which is the
3 number of pecans per count, and then we certify
4 moisture, and the moisture is not mandated to a
5 certain extent, and there is no other
6 certification on color --- there's not.

7 MS. SCHMAEDICK: I'm sorry, maybe you
8 misunderstood my question.

9 Are they -- are you certifying to U.S.
10 grade standards or a set of foreign standards or
11 customer-specific standards, for example --

12 DR. HUDSON: Well, that's an excellent
13 question. The USDA has current standards.
14 They're not standards for export. They're
15 domestic USDA standards. Which, by the way,
16 entered into the testimony, was deemed in some
17 way -- needed for --

18 But the standards that we currently
19 have, as antiquated as they are, they what we use
20 on our requirements.

21 Recently, recently, it has become more
22 worse to actually signed these documents -- and

1 spend a consider amount of time developing these
2 policies.

3 The U.S. Pecan Growers Council signed
4 a collateral agreement with the South China
5 Roasters Association to develop a unified
6 standard of trading for marketing purposes, which
7 was extremely important, and these standards are
8 really a blend of USDA standards and China
9 standards, that they would accept.

10 They're similar on some levels, but
11 honestly, this is another point or issue that
12 would need to be worked out.

13 For the most part, the rest of world
14 accepts USDA standards.

15 MS. SCHMAEDICK: Thank you. That's
16 very helpful. So, in turning your attention to
17 this definition, at the end of the definition,
18 and I'll read it for the record, it says, "Or any
19 other section of service authorized by the
20 Secretary."

21 So, does that open the door for the
22 industry to potentially use another inspection

1 service that is accredited by --

2 DR. HUDSON: Yes.

3 MS. SCHMAEDICK: -- the industry?

4 DR. HUDSON: Yes, it does, and quite
5 frankly, in Georgia, the State of Georgia,
6 Georgia's part of that, has a signed agreement
7 with -- and honestly, this is my interpretation,
8 I believe it is an independent group that hired
9 by the State of Georgia to do the certification,
10 and that -- that is a loosely held group, to say
11 the least, that we can have them come to either
12 the facility to pull samples, or you give them
13 the option to pull the samples themselves and
14 take it to their facility.

15 Obviously, being able to pull your own
16 samples could allow you the ability to fudge, if
17 you so desire, and regrettably there have been
18 instances where that has occurred, without
19 question, in regards to samples that were pulled,
20 and once they pull your grades, the grades are
21 good, but the idea being to allow you to take
22 your own sample to them, on a lot of pecans

1 that's going to be exported, without having a
2 sample pulled by a third-party, it's a really
3 good -- there's opportunity there.

4 So, I would certainly say that there
5 needs to be a standardized process and I would
6 also that probably the Secretary would be in the
7 best position to determine who could be the best
8 third-party.

9 MS. SCHMAEDICK: Thank you. No
10 further questions from me.

11 MS. VARELA: Jennie Varela, USDA. I
12 just have one quick follow up, just to make sure
13 I have what I thought I heard you say earlier.

14 In speaking of the certification that
15 you're given when you're exporting or any type of
16 inspection, I believe I heard you say that there
17 are currently no minimum grades or sizes in
18 force, and you note that on a national level.

19 Could you tell me, are there -- have
20 -- are there now, or have there ever been any
21 state minimums, at least in Georgia, in your
22 experience?

1 DR. HUDSON: No, let me clarify a
2 point. Now, there are some very low standards,
3 and you can market any pecan, it doesn't matter
4 how bad it is. You're not -- there is no
5 regulations governing the sale of the pecans. If
6 you find somebody that will buy them, you can
7 sell them.

8 So, there is no standard in regards to
9 market. There are standards in regards to
10 quality, in that it goes all the way to amber,
11 which is a very dark color meat, which is bitter,
12 but it has a market, even on -- they can go into
13 gluten-free flour or meal.

14 So, there are markets for that and it
15 does happen, and it does have value, but there
16 are standards regulating the sale once it reaches
17 a certain point, and certainly, that's something
18 that the American Pecan Council should address.

19 Pecans which do not have --- are only
20 available -- there are only 50 or so available
21 before oiling the mill should be done so. Those
22 pecans should not be put out for human

1 consumption.

2 MS. VARELA: All right, but to your
3 knowledge, there are no minimum requirements --

4 DR. HUDSON: No, to my knowledge, no
5 minimum requirements.

6 MS. VARELA: Thank you.

7 JUDGE GUTHRIDGE: Anymore USDA
8 questions? If I could ask one question,
9 remembering that I'm here for the Federal
10 Maritime Commission, not Department of
11 Agriculture, USDA probably knows this.

12 But is the Federal and State
13 inspection service an already existing agency or
14 entity that inspects products across the
15 agricultural production?

16 DR. HUDSON: I'll be honest with you,
17 I can't answer, I do not know their
18 authorization. I just know that we have them in
19 Georgia and they are part of Department of Ag.

20 JUDGE GUTHRIDGE: Thank you.

21 MS. SCHMAEDICK: Melissa Schmaedick,
22 USDA, and Judge, yes, there are Federal and State

1 inspection services is a real -- the real deal.
2 They're really there.

3 JUDGE GUTHRIDGE: Thank you.

4 MS. SCHMAEDICK: Sure, sure. Dr.
5 Hudson, so, you just mentioned the real -- I
6 believe you called it an amber pecan, that is
7 real bitter and is used for oil or gluten-free
8 flour, is that what you said?

9 DR. HUDSON: Yes.

10 MS. SCHMAEDICK: Under this program,
11 is it the intention to assess those pecans, as
12 well?

13 DR. HUDSON: Yes.

14 MS. SCHMAEDICK: Would they fall into
15 the sub-standard of that order?

16 DR. HUDSON: Yes.

17 MS. SCHMAEDICK: Thank you. That's it
18 for now. Thank you.

19 JUDGE GUTHRIDGE: Mr. Quiros?

20 MR. QUIROS: Thank you. Dr. Hudson,
21 now, let's turn to Section 986.25, handler
22 transfer.

1 Can you take a minute to review that
2 definition, and it's also up on the screen, and
3 then we'll ask a few questions. Let me know when
4 you've had a chance to read it.

5 DR. HUDSON: I read it.

6 MR. QUIROS: Thank you, Dr. Hudson.

7 Is this term used in the industry?

8 DR. HUDSON: No, it's not, not likely.

9 MR. QUIROS: Explain.

10 DR. HUDSON: Well, we know in the
11 industry that one handler may transfer nuts to
12 another handler for the purpose of some other
13 part of the process and procedure.

14 For example, a shell might transfer to
15 a roaster, who will transfer to a packer or a
16 small accumulator, who will transfer to a larger
17 accumulator.

18 In our discussion with handlers, we
19 may express concerns that might clearly stated in
20 such circumstances and one assessment will be
21 made, and it will be the receiving handler in
22 this transfer, who will be responsible for the

1 assessment, as specified in Section 986.62.

2 MR. QUIROS: Why should the
3 transportation of pecans within the proposed
4 production area from a grower to a handling
5 facility not be considered handling?

6 DR. HUDSON: Because the nut has been
7 transferred and it has not been put into
8 Commerce. There has not been a translation -- a
9 translation.

10 MR. QUIROS: Is a common or contract
11 carrier considered a handler?

12 DR. HUDSON: No, he's not.

13 MR. QUIROS: Is that Section 986.19
14 that we discussed yesterday?

15 DR. HUDSON: Yes, it is.

16 MR. QUIROS: If not, is this because
17 he or she won't own the pecans, but merely
18 provides the service?

19 DR. HUDSON: Yes, it is.

20 MR. QUIROS: Should commission-based
21 sales be treated under the proposed order?

22 DR. HUDSON: Yes, they should be

1 treated.

2 MR. QUIROS: Are they considered
3 handling or not?

4 DR. HUDSON: Yes.

5 MR. QUIROS: Who is the responsible
6 handler party?

7 DR. HUDSON: I would just refer this
8 to the project ownership Section 986.31.

9 MR. QUIROS: So, in the case of that
10 transaction, the buyer would be the handler?

11 DR. HUDSON: Yes.

12 MR. QUIROS: And Commission sales
13 person would just be paid a fee by the buyer --

14 DR. HUDSON: Yes.

15 MR. QUIROS: -- or the seller?

16 DR. HUDSON: The Commission fee. He
17 never obtains the primary rights to the pecans.

18 MR. QUIROS: So, he should not be a
19 handler because he is not being paid -- he never
20 owns a proprietary interest in the pecans, is
21 that right?

22 DR. HUDSON: That is correct.

1 MR. QUIROS: Thank you. Do
2 Commission-based sales frequently occur in the
3 industry?

4 DR. HUDSON: Yes, they do, quite
5 frequently, very often.

6 MR. QUIROS: What is a grower provides
7 these services? Are they a handler?

8 DR. HUDSON: No.

9 MR. QUIROS: What if a grower sold
10 pecans to a person with a handling facility
11 outside the proposed production area? Would they
12 be a handler?

13 DR. HUDSON: Yes, they would.

14 MR. QUIROS: Would the grower become
15 the handler?

16 DR. HUDSON: Yes, he would.

17 MR. QUIROS: Who would ultimately be
18 responsible for the certification of the product?

19 DR. HUDSON: The grower.

20 MR. QUIROS: And they would be
21 responsible for the assessments, as well?

22 DR. HUDSON: Yes, outside of the

1 inspection area.

2 MR. QUIROS: Okay, and reporting, as
3 well?

4 DR. HUDSON: Yes.

5 MR. QUIROS: So, in a common example
6 where we were shipping outside the production
7 area, whether it's to Chicago or China, the
8 grower would then become a handler?

9 DR. HUDSON: Yes.

10 MR. QUIROS: Thank you. Does the
11 grower who handles pecans then, in such cases,
12 will the -- always become a handler?

13 DR. HUDSON: Yes, he would.

14 MR. QUIROS: Okay, thank you. No more
15 questions at this time, on this definition.

16 JUDGE GUTHRIDGE: USDA questions?

17 MS. SCHMAEDICK: Melissa Schmaedick,
18 USDA. Thank you, Dr. Hudson.

19 I want to shift gears a little bit and
20 talk about your experience with the American
21 Pecan Order, and the discussions related to this
22 term, and the relevance, in terms of this

1 program.

2 Can you explain to us -- you mentioned
3 that this term is not currently used, but the
4 American Pecan Order decided to important to
5 include. Is this part of a larger element of the
6 program that you are wanting to put into place?

7 DR. HUDSON: First off, this is a very
8 complicated concept, as evidenced by how confused
9 I am. It's just -- even being a part of this
10 process and understanding it.

11 There is something -- some very -- I
12 hate to say grey areas, but for example, to be
13 brief.

14 If I sell one of the pecans that have
15 been delivered to Chicago, as a grower, the only
16 way we'll ever be able to track those and have
17 those assessed, because they're leaving the
18 production area, we need to assess the grower
19 who, in fact, is a handler, cash exchange,
20 proprietary products are exchanged, and it's at
21 the hands of the grower.

22 So, he's -- it's no longer a grower,

1 but rather a marketer or a handler. He's a
2 grower, but he's a handler.

3 Now, if someone comes to my plant,
4 inside my production area, or on my farm, and he
5 wants to buy that same as the handler, and he's
6 going to take it to Chicago, at that point in
7 time, I would tell him, "You're in Georgia. You
8 are responsible for paying this assessment," and
9 we will obviously give him the paperwork, but
10 we're going to submit papers, indicating that
11 he's obligated for this assessment.

12 This was the only way the board felt
13 like that we could properly maintain these kinds
14 of transactions without ever becoming a
15 significant point of leakage, and by leakage I
16 mean assessors.

17 So, that was the reason this was put
18 in place.

19 Now, another quick example. I also
20 have a buyer that buys pecan sorbet, and here
21 again --

22 MS. SCHMAEDICK: Excuse me. Is that

1 the accumulator definition?

2 DR. HUDSON: Well, this would come
3 under the accumulator definition for -- where we
4 have a buying order or accumulator, small
5 accumulator who buys these nuts, immediate
6 transactions, pours them into bags and then
7 brings those nuts to us, and then we pay him. We
8 actually finance that operation, not a
9 subsidiary, but it's not always on our own.
10 There are many of these around the state.

11 At that point, that transfer, with
12 significant documentation, would be handled to my
13 buying point, as the accumulator, and I would be
14 receiving the product for the assessment, and
15 that would lead to the inter-handler transfer
16 because it has moved from the grower. Those are
17 just two examples.

18 MS. SCHMAEDICK: So, again, going back
19 to your discussions with the American Pecan Order
20 and focusing specifically on very, very small
21 accumulators, in your opinion, does the -- the
22 authority to allow those very small accumulators

1 to essentially, pass on the assessment burden to
2 a larger handler, does that facilitate the --
3 does that lessen the overall reporting
4 requirement and burden on the smaller entities?
5 Is it --

6 DR. HUDSON: Yes, I see where you're
7 trying to get to. I will say this.

8 In the absence of the ability to have
9 this inter-transfer provision, it may very well
10 put some of these very small businesses in the
11 very small rural communities that need this
12 business, out of business, because of the
13 responsibility of having to maintain records to
14 make this assessment.

15 I think the value is worth the issue
16 or the problem.

17 MS. SCHMAEDICK: So, those small
18 accumulators, they would still need to keep track
19 of their receipts.

20 DR. HUDSON: Certainly. There will be
21 both electronic and paper recording of these
22 transactions.

1 MS. SCHMAEDICK: And in terms of
2 compliance, does the use of those inter-handler
3 transfers specifically prevent contact with the
4 small accumulator -- does it assist in the
5 compliance?

6 DR. HUDSON: Yes, it does. It
7 actually would improve our ability with
8 compliance.

9 MS. SCHMAEDICK: Thank you. No
10 further questions.

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

13 MR. QUIROS: So, Randy, one of the big
14 ideas in this section is that -- or one of the
15 principles is that only one handler pays the
16 assessment, is that correct?

17 DR. HUDSON: Yes, it is.

18 MR. QUIROS: And Dr. Hudson, the need
19 to track the inter-handler transfer transactions,
20 that's also -- the tracking of this is also one
21 of the large ideas, is that correct?

22 DR. HUDSON: That's correct.

1 MR. QUIROS: Now, when you say it's a
2 grey area, it's not a grey area in the language,
3 is it, just that not --

4 DR. HUDSON: Well, it's not a grey
5 area, and I didn't mean to insinuate that it was.

6 MR. QUIROS: It is --

7 DR. HUDSON: By grey, I mean that the
8 obligation of paying the assessment is worked --
9 we're going to put that on the small accumulator,
10 to possibly cover, put some of those ideas.

11 MR. QUIROS: So, it's just not a
12 current practice that the industry is familiar
13 with, either growers or handlers?

14 DR. HUDSON: That is correct.

15 MR. QUIROS: Okay, are most handlers
16 that you know, I'm talking about large
17 accumulators and handlers, not people that work
18 out of the back of a --

19 DR. HUDSON: Right.

20 MR. QUIROS: -- grocery store, are
21 they sophisticated, in terms of tracking what
22 they will see then and --

1 DR. HUDSON: Yes, highly sophisticated
2 electronic and also, because of the necessary
3 tracking.

4 MR. QUIROS: They have to pay taxes to
5 their states, etcetera?

6 DR. HUDSON: Certainly, only in Texas
7 is this provision in place.

8 MR. QUIROS: So, for those handlers,
9 being able to make this adjustment to one more
10 form --

11 DR. HUDSON: It will be seamless.

12 MR. QUIROS: Thank you, Dr. Hudson.
13 No further questions.

14 JUDGE GUTHRIDGE: USDA?

15 MR. QUIROS: Dr. Hudson, I'd like you
16 now to turn to Section 986.26 merchantable
17 pecans. Is this term used in the industry?

18 DR. HUDSON: Not as used here.

19 MR. QUIROS: Explain why this was
20 necessary.

21 DR. HUDSON: Under the Federal
22 Marketing Order, the Secretary set minimum

1 standards for un-shelled and shelled pecans.

2 For formatting of this was not clear,
3 and we need industry-wide standards to find what
4 is and what is not merchantable.

5 The term is also used later in the
6 marketing order, in Section 986.76.

7 MR. QUIROS: How will these standards
8 help the industry?

9 DR. HUDSON: Here again, in regards to
10 health and safety, to keep the informed consumers
11 --- and consumers educated, it also gives an
12 opportunity for quality information to get out.

13 MR. QUIROS: How will this help
14 consumers?

15 DR. HUDSON: Well, most importantly,
16 basically, in regards to food safety.

17 MR. QUIROS: Any other reason?

18 DR. HUDSON: Yes, by having a
19 standard, we're able to better keep information
20 in regards to our product.

21 MR. QUIROS: Thank you. No further
22 questions on this definition, at this time.

1 JUDGE GUTHRIDGE: Any USDA questions?

2 MS. VARELA: Jen Varela, USDA. Dr.
3 Hudson, could you give us just a brief idea of
4 why knowing this number would be important to the
5 Council? What would you use that information
6 for?

7 DR. HUDSON: Well, you know, you have
8 -- it would have -- it would give us the ability
9 to determine, you know, how our products is being
10 handled. It certainly would allow us to have
11 better communication and trace-ability.

12 It would allow us for the first time,
13 to be able to determine if it is merchantable,
14 and if it's not, then it shouldn't be sold as
15 such, and I think here again, one of these --
16 this is one of the very important sections that
17 allows or gives the board the opportunity to make
18 some very significant changes or some very
19 significant contributions.

20 JUDGE GUTHRIDGE: When you say board,
21 you mean the Council?

22 DR. HUDSON: Yes, the Council, I'm

1 sorry.

2 MS. SCHMAEDICK: Melissa Schmaedick,
3 USDA.

4 Dr. Hudson, sir, if you could take a
5 moment and look at the definition that is
6 projected here on the screen.

7 Let's start with 986.26 paragraph A,
8 and I'll read it, for the record. "Merchantable
9 in-shell pecans means all in-shell pecans meeting
10 minimum grade regulations that may be affected
11 pursuant to 986.69."

12 So, I want to start out by saying
13 that, or by asking about the term 'may' and its
14 relationship with handling regulations, which
15 could be established under 69.

16 So, based on your earlier testimony,
17 you said that there currently aren't any handling
18 regulations in effect, correct?

19 DR. HUDSON: Yes.

20 MS. SCHMAEDICK: But there might be,
21 at some later date, correct?

22 DR. HUDSON: Hopefully, yes.

1 MS. SCHMAEDICK: So, if those handling
2 regulations are in effect, you would be in a
3 situation, based on my understanding of your
4 testimony, where you would have your product that
5 comes from the grower, to the handler, it's
6 cleaned, and right now, that cleaned product is
7 what is considered your market's buyer, is that
8 correct?

9 DR. HUDSON: Yes, yes.

10 MS. SCHMAEDICK: But if there are
11 handling regulations in effect, it takes that lot
12 of pecans and further subjects them to another
13 sorting classification, correct?

14 If handling regulations are in effect,
15 that lot of product is then further processed to
16 meet those standards, is that correct?

17 DR. HUDSON: If regulations were in
18 place, then at the handling phase or at the
19 cleaning phase, that first phase, those non-
20 merchantable nuts are already in most cases,
21 being removed.

22 Why I say this, it's because there's

1 many, honestly, damaged loads, high moisture,
2 being considered merchantable.

3 MS. SCHMAEDICK: Okay, what I am
4 trying to ask is, if there are handling
5 regulations in effect, the quality of
6 merchantable pecans could be different from the
7 volume of product coming from the field that was
8 just simply cleaned?

9 DR. HUDSON: Yes, yes, that is true.

10 MS. SCHMAEDICK: Okay, so, in terms of
11 your understanding of your market, if you are
12 looking at the volume of pecans, and trying to
13 include that information in your analysis and
14 projection of your budget, based on the earlier
15 testimony, that is what you stated, merchantable
16 pecans is a different number than grower or
17 handler cleaned production?

18 DR. HUDSON: It could be, yes.

19 MS. SCHMAEDICK: Yes, and so,
20 therefore, it is important because it further
21 defines your available supply?

22 DR. HUDSON: Yes.

1 MS. SCHMAEDICK: Thank you.

2 JUDGE GUTHRIDGE: Are there any more
3 USDA questions? Mr. Hinman?

4 MR. HINMAN: Don Hinman, USDA. Good
5 morning, and thank you for those explanations. I
6 did want to follow up.

7 You used several phrases, I believe
8 in relation to non-merchantable, which was like
9 damaged, high moisture. Could you explain a bit
10 more about what those -- and did you say that
11 those are also in current practice, typically
12 removed from -- you know, from the lots before
13 they go into Commerce?

14 DR. HUDSON: Yes.

15 MR. HINMAN: If you could --

16 DR. HUDSON: Just as an example, the
17 common legal name is nutmeat. With pecans, you
18 can't damage that.

19 MR. HINMAN: Okay. Also I wanted to
20 further explore, I'm not sure I -- you did
21 explain some of the -- you talked about grade,
22 sizes and qualities that would be in effect, if

1 there were handling requirements, and you did
2 discuss grade as being percent meets, is that
3 correct?

4 DR. HUDSON: Yes.

5 MR. HINMAN: And then could you
6 describe what would -- what are -- what factors
7 come under quality or qualities?

8 DR. HUDSON: Quality?

9 MR. HINMAN: Yes.

10 DR. HUDSON: Generally, a factor of
11 medium in color.

12 MR. HINMAN: In color, and color is
13 often defined in terms of amber and --

14 DR. HUDSON: Right.

15 MR. HINMAN: -- words like that. What
16 other phrases are used in conjunction with that?

17 DR. HUDSON: Well, obviously raw
18 amber. Raw amber and --- in different shades.

19 MR. HINMAN: And then another
20 important part of the market -- the lots being
21 delivered is the count, is that correct?

22 DR. HUDSON: Yes.

1 MR. HINMAN: Is count -- in essence,
2 is that part of --

3 DR. HUDSON: Yes.

4 MR. HINMAN: -- a great quality
5 standard? Where does that fit in that grade and
6 sizes --

7 DR. HUDSON: That tells you the number
8 of pieces or the number of nuts per pound.

9 MR. HINMAN: Okay, does that relate to
10 size?

11 DR. HUDSON: Yes.

12 MR. HINMAN: Could you explain a bit
13 more about that please?

14 DR. HUDSON: The larger the size of
15 the nut, the lower the count, as a general rule.

16 MR. HINMAN: Okay, thank you. No
17 further questions.

18 JUDGE GUTHRIDGE: Are there anymore
19 USDA questions? Mr. Quiros?

20 MR. QUIROS: Thank you, Dr. Hudson.
21 Now, I'd like you to turn your attention to
22 Section 986.27 pack, and take a moment to look at

1 it.

2 DR. HUDSON: Yes.

3 MR. QUIROS: Is this a term used in
4 the industry?

5 DR. HUDSON: Yes, it is.

6 MR. QUIROS: Is this definition
7 consistent with industry usage in your
8 experience?

9 DR. HUDSON: Yes, it is.

10 MR. QUIROS: Any other terms
11 considered?

12 DR. HUDSON: No.

13 MR. QUIROS: No other questions of
14 this witness, at this time, on this definition.

15 JUDGE GUTHRIDGE: Are there any USDA
16 questions?

17 MS. SCHMAEDICK: Melissa Schmaedick,
18 USDA.

19 Dr. Hudson, is a pack also considered
20 part of the definition of 'to handle'? Let me
21 refer you to Exhibit-1, Section 986.19.

22 DR. HUDSON: Yes, it is.

1 MS. SCHMAEDICK: Thank you. So, is it
2 important to define that term, as it relates to
3 the definition of 'to handle'?

4 DR. HUDSON: Yes, it is.

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

7 JUDGE GUTHRIDGE: Are there anymore
8 USDA questions? Mr. Quiros?

9 MR. QUIROS: Thank you. Dr. Hudson,
10 if you'd now take a look at Section 986.28
11 pecans, and look it over briefly, and let me know
12 when you've had a chance to finish your review.

13 DR. HUDSON: Okay.

14 MR. QUIROS: Thank you. Is this term
15 used in the industry?

16 DR. HUDSON: Yes, it is.

17 MR. QUIROS: Definition (a) (1)
18 through (3), is that consistent with industry
19 usage, in your experience?

20 DR. HUDSON: Yes, it is.

21 MR. QUIROS: Okay, let's break it
22 down. Pecan, let's talk about that definition.

1 Is that the --

2 DR. HUDSON: Well, pecan is a *Carya*
3 *illinoensis*, and that is by the way, southern
4 definition, and it includes all varieties of
5 pecan, the different species.

6 MR. QUIROS: But it excludes hicans?

7 DR. HUDSON: Yes, it does, yes, it
8 excludes hicans.

9 MR. QUIROS: Let's talk about native
10 and seedling as a classification. Is that a
11 common usage in the industry?

12 DR. HUDSON: Yes, it is.

13 MR. QUIROS: Explain.

14 DR. HUDSON: Well, everything that is
15 not grafted from that very broad list is assumed
16 to be native or seedling.

17 MR. QUIROS: Thank you, let's talk
18 about Section 982.28(a)(2) improved
19 classification. Explain that.

20 DR. HUDSON: Here again, improved is
21 everything that is grafted.

22 MR. QUIROS: Take a look at the non-

1 exclusive list of improved varieties there. Do
2 you think that is a representative list of the
3 improved varieties that are being planted in this
4 area?

5 DR. HUDSON: Yes, it is.

6 MR. QUIROS: Thank you. Slight
7 diversion. As a scientist, why do we graft to get
8 a variety instead of just planting a nut from the
9 variety?

10 DR. HUDSON: If you simply plant a nut
11 from the variety, you'll get a seedling. We
12 graft pecans to get uniformity of --- applied
13 overall.

14 MR. QUIROS: Are there any of the
15 improved varieties that are listed in Section
16 986.28(a)(2) that are patented or trademarked?

17 DR. HUDSON: Yes, there are.

18 MR. QUIROS: How are new, improved
19 varieties developed?

20 DR. HUDSON: Most recently, through
21 classic breeding programs, by the way, I
22 mentioned older programs, that is, we're talking

1 pollen from one tree and isolating it on the
2 female flowers of the parent tree.

3 MR. QUIROS: And --

4 DR. HUDSON: And then I mean classic,
5 as opposed to new transgenic technologies
6 creating GMOs. There are no GMO pecans that are
7 the same.

8 MR. QUIROS: The list of grafted
9 superior traits at the beginning of sub-Section
10 (a)(2) of that section, are those the grafted
11 traits, superior traits that most grafters and
12 most growers wish to have in the pecan?

13 DR. HUDSON: Yes, yes, they are.

14 MR. QUIROS: Should the Council be
15 able to regulate new improved varieties in the
16 future?

17 DR. HUDSON: Yes, they should be.

18 MR. QUIROS: Should the be able to add
19 to this list as they need to, if there becomes an
20 improved variety that starts to become dominant
21 in --

22 DR. HUDSON: Yes, yes, they should be.

1 MR. QUIROS: And is that the purpose
2 of sub-Section B?

3 DR. HUDSON: Yes, it is.

4 MR. QUIROS: Great. No further
5 questions of this witness, at this time, on this
6 definition.

7 JUDGE GUTHRIDGE: Are there any USDA
8 questions?

9 MS. SCHMAEDICK: Melissa Schmaedick,
10 USDA.

11 Dr. Hudson, you used the term GMO.
12 Can you define that?

13 DR. HUDSON: Yes, genetically modified
14 organisms.

15 MS. SCHMAEDICK: Thank you, and I
16 wanted to take some time to ask you to just
17 explain a little bit further, what grafting
18 means, for those who are not --

19 DR. HUDSON: Okay.

20 MS. SCHMAEDICK: -- familiar with
21 that.

22 DR. HUDSON: Very briefly. You have

1 your stock and there are root stock that we use
2 from certain varieties of pecans have a very
3 sound, very proliferous root system.

4 In Georgia root stock, we prefer to
5 use an Elliott pecan, where we have a really nice
6 root system. It lends itself to grafting.

7 Then we have the design for our
8 grafting schedule. Then it's taken from whichever
9 variety that you may want to graft from.

10 For example, one that might be simple,
11 that you might be looking out for is Pawnee. And
12 you would go out in the winter. You would cut off
13 your Pawnee grafting wood. You would put it into
14 the refrigerator to keep it cool, and then in the
15 spring, you would begin grafting though several
16 different grafting techniques. This Pawnee wood
17 onto your root stock, which in this case, might
18 be elevated, and then all of the new trees are
19 Pawnee, as opposed to having seeds, say in two
20 Pawnee barrens, you might have 1,000 different
21 pecan varieties because of -- this is in your
22 first year seeding.

1 MS. SCHMAEDICK: So, you have a Pawnee
2 tree, and that Pawnee tree yields pecans.

3 DR. HUDSON: Yes.

4 MS. SCHMAEDICK: But if you were to
5 take that pawning pecan and stick it in the
6 ground, you would not necessarily yield Pawnee
7 tree again?

8 DR. HUDSON: About a million to one
9 that you would.

10 MS. SCHMAEDICK: Okay, but if I
11 understand the grafting process, if you take a
12 branch off of that Pawnee tree, a little piece of
13 young --

14 DR. HUDSON: Yes.

15 MS. SCHMAEDICK: -- young wood, I
16 guess, it's probably young wood, stick it in the
17 refrigerator, and then come springtime, you
18 attach to your root stock, is that correct?

19 DR. HUDSON: Yes.

20 MS. SCHMAEDICK: That piece of that
21 Pawnee tree then creates another Pawnee tree?

22 DR. HUDSON: Yes.

1 MS. SCHMAEDICK: Which then yields a
2 true Pawnee nut?

3 DR. HUDSON: Yes.

4 MS. SCHMAEDICK: Okay, and in the
5 industry, is that how you maintain consistency in
6 producing these improved varieties?

7 DR. HUDSON: Yes, it is. That's
8 splicing.

9 MS. SCHMAEDICK: Thank you, and so,
10 would it be -- would improved pecans be
11 considered a bit more labor-intensive than native
12 pecans?

13 DR. HUDSON: No. No, because, you
14 know, as a grower you simply buy these -- very
15 few growers for pecan nurseries, I mean, this is
16 a function of a nursery.

17 So, growers would buy these nursery
18 trees and plant them, and it's -- they're all
19 uniform.

20 MS. SCHMAEDICK: Okay, thank you for
21 that clarification.

22 MS. VARELA: Jennie Varela, USDA. Dr.

1 Hudson, if you don't mind, I'd like to look into
2 the future a little bit, and think about some of
3 those possible handling standards that the
4 industry might consider in the future.

5 Some commodities look to set a certain
6 grade for standard by variety. Is that something
7 that would work well in your industry, or do your
8 practices tend to favor having a general standard
9 regardless of variety?

10 DR. HUDSON: Here again, in regards to
11 speaking on behalf of whole industry and how this
12 might evolve, but from a personal standpoint, I
13 don't -- I really have never seen the Council
14 marketing a specific species of pecan.

15 We're a very diverse industry across
16 a lot of different states, growing a lot of
17 different varieties and I just don't see that
18 happening. Nor will they enter an agreement to
19 limit someone's ability to grow whatever variety
20 might be appropriate.

21 MS. VARELA: And in your discussions
22 with the board where you were crafting this

1 definition, did you think about the total number
2 of varieties and cultivators that exist in the
3 industry?

4 DR. HUDSON: Yes, we did.

5 MS. VARELA: Okay, and I'm guessing
6 you had some reasons for not including every
7 single one of them in your definition. Can you
8 give us a little more information on --

9 DR. HUDSON: Yes.

10 MS. VARELA: -- how you came to --

11 DR. HUDSON: Because we were in
12 between phases, but it was probably -- to my
13 knowledge, there's about 450 classified varieties
14 or more. I don't really know how many there are.

15 Most of those were selections from
16 some of the more regular, ingredient growers.
17 There's just so many different varieties, which
18 is the reason why we didn't list all the
19 varieties, but rather gave examples of varieties.

20 MS. VARELA: And when you all reviewed
21 the possible definitions for the definition of
22 pecan, were there any particular varieties or

1 classifications that you at one time considered,
2 that you removed from this list?

3 DR. HUDSON: No. Here again, these
4 are just pecan varieties that were in there
5 because of the fact that they're grown by the
6 majority of growers in the country.

7 MS. VARELA: And in your opinion, is
8 this definition broad enough that it will serve
9 the industry, at least in the near future,
10 without having to make substantial adjustments?

11 DR. HUDSON: I think this will serve
12 the industry forever.

13 MS. VARELA: Thank you.

14 MS. CHILUKURI: Dr. Hudson, before we
15 had talked about pecans, and you mentioned it's
16 sometimes difficult to distinguish between pecans
17 and hicans.

18 Can you talk now about distinguishing
19 between native pecans and improved pecans?

20 DR. HUDSON: Yes, I can. But except
21 it's really at a different level.

22 Native pecans are, for the most part,

1 indigenou. I mean, some of these native species
2 have been around since, you know, forever.

3 The improved varieties have been --
4 you know, we pretty well have a handle on the
5 improved varieties.

6 In regards to that, they'll pick up
7 two nuts and tell the difference between them,
8 whether or not it's a native pecan, a seedling or
9 an improved variety.

10 There are some general
11 characteristics. For the most part, natives or
12 seedlings have a tendency to be smaller, harder,
13 but in regards to shape, they may be long, they
14 may be fat, small, narrow. They are -- now
15 understand this too now, that most of the
16 improved varieties that we plant today, at one
17 time were seedlings, in that we selected from
18 this tree that they had come up from a main nut,
19 and we selected this seedling, because of the
20 characteristics of growth, size.

21 So, many of the names on this list are
22 selections, those native selections that were

1 then grafted and became -- went from being a
2 seedling or native, to being what we consider to
3 be improved variety. So, did I confuse that?

4 All pecans, all pecans, if planted as
5 a seed or a seedling or a baby, and if you can
6 imagine the number of people in the United
7 States, there's nobody -- no two people alike.
8 Same if you plant a nut.

9 If you plant a pecan, what comes up is
10 a pecan tree, it's totally different from any
11 other pecan tree or any other plant, and if it
12 has sufficient enough qualities to meet the
13 standard of what we like to plant as improved
14 variety, then it's selected, and then we start
15 cutting graft fruit off of this tree, off of that
16 tree, and then we promulgate that, as an improved
17 variety.

18 But in order for it to be -- for us to
19 be able to look at that and tell if it's a
20 seedling or improved variety, you just couldn't
21 do it.

22 MS. CHILUKURI: Okay, so, if you can't

1 -- how can you -- or what things determine or
2 distinguish between the two, if you can't
3 visually tell? What can you do to determine --

4 DR. HUDSON: Well the one good -- what
5 we consider good compliance in these, is if
6 we're there and are producing large pecans and
7 they're small, round, hard, often times,
8 speckled, darker in color, then we know that's a
9 seedling.

10 The same would happen -- you know, if
11 I got a load of pecans that were with corn,
12 chances are, without ever even looking at them, I
13 know that they're going to be natives, if they
14 came off the plains with corn.

15 So, you know, you can't really hide
16 that. There are certain characteristics that you
17 can distinguish them, not only from where they
18 came from, location, geographic location, but
19 also you know, the size of the nut and the color
20 of the meat.

21 MS. CHILUKURI: And in terms of, you
22 said we can distinguish that, are you talking

1 about growers and handlers and other actors and -
2 -

3 DR. HUDSON: Yes, there's very few in
4 the industry that -- they know what they have.
5 They know what they're growing, whether it be
6 improved varieties or natives or seedlings.

7 MS. CHILUKURI: And in terms of the
8 grower that's selling to the handler, the handler
9 would be able to identify those pecans, as well?

10 DR. HUDSON: Yes.

11 MS. CHILUKURI: And in terms of
12 improved varieties, the list that was put out in
13 number two, is it easy to distinguish between the
14 different improved varieties?

15 DR. HUDSON: For the most part.

16 MS. CHILUKURI: And I think you had
17 mentioned some of those are trademarked and
18 patented. Do you know which of those are
19 trademarked or patented?

20 DR. HUDSON: Yes, I've looked up a
21 couple here, in sale, recently, patented,
22 licensed. There is an increase in Georgia, which

1 obviously this fellow Ellis led.

2 But as an example, Excel is one, but
3 it would be -- the licensing and patent of these
4 nuts couldn't interfere with any of the
5 assessments or handling, it's just a different
6 variety of pecan.

7 MS. CHILUKURI: Thank you.

8 MR. HILL: Brian Hill. If you look at
9 Sub-Section B, it says, "The Council, with the
10 approval of the Secretary, may recognize the
11 obsolete varieties or sub-varieties for each
12 category."

13 So, in either approving a new variety
14 or an obsolete variety, would it be up to the
15 Council to vote on this? Is this -- would that
16 be regardless?

17 DR. HUDSON: Certainly and I would
18 just like to say this.

19 I personally do not believe that we
20 would probably ever pull a trigger on something
21 like this. I don't ever see us -- I really don't
22 see any circumstance under current technologies

1 or that Council would ever consider limiting a
2 grower's ability on whatever variety they wanted
3 to plant. That's under current science and
4 current technology.

5 But let's suppose that in the future,
6 as an example here, this is just my theory, that
7 through some transgenic technology, there is a
8 deleterious gene introduced into the gene pool,
9 which let's say, to the contrary, it's really
10 great, we try and adhere (phonetic) and with all
11 the deleterious effect of pollen, it creates some
12 sort of disease influence that would influence
13 the growers in the area.

14 How would you say there are
15 circumstances that we don't have -- don't own,
16 don't control, that might harm or hinder the
17 pecan industry where this might become an issue,
18 and quite frankly, and I don't ever see this
19 occurring.

20 MR. HILL: With that said, if it does
21 happen, is it your understanding that result
22 would be based upon a single majority of grower?

1 DR. HUDSON: No, it would take -- you
2 know, it would take a super majority.

3 But here again too, this language
4 gives the Secretary the authority, if this
5 occasion occurs, to make those decisions alone.

6 JUDGE GUTHRIDGE: Are there anymore
7 USDA questions?

8 MS. LOOFT: Katy Looft, USDA. Dr.
9 Hudson, you only mentioned one of these types
10 that are patented, to your knowledge, is that
11 correct?

12 DR. HUDSON: Yes.

13 MS. LOOFT: In your opinion, how
14 important is it to work on patenting these
15 different varieties, in order to maintain
16 competitive advantage?

17 DR. HUDSON: Well, quite frankly, I
18 think it's extremely important in the future.

19 In the past, U.S. scientists have
20 developed technologies, and then these
21 technologies were made available to the world, as
22 this matter of openness -- I don't know, I just

1 feel like that in the future, maybe this piece of
2 technology should be protected.

3 MS. LOOFT: And to your knowledge, are
4 there other competitors who are grafting, in
5 terms of --

6 DR. HUDSON: Yes, there is. It's a
7 lucrative business.

8 MS. LOOFT: Thank you.

9 JUDGE GUTHRIDGE: Anymore USDA
10 questions?

11 MR. QUIROS: Your Honor, can we take
12 a break, and it's been about an hour, and then
13 come back and finish the questioning on the
14 topic?

15 JUDGE GUTHRIDGE: Can we take a break
16 for about an hour?

17 MR. QUIROS: No, we've been at it for
18 about an hour.

19 JUDGE GUTHRIDGE: Okay, I thought you
20 wanted to break for an hour.

21 MR. QUIROS: That sounds like a good
22 idea, but no, just a short break, and then come

1 back for continued questioning at USDA.

2 JUDGE GUTHRIDGE: Well, while there
3 are -- I do have one quick one, if I may.

4 Dr. Hudson, I assume .28(a)(3) sub-
5 standard pecans, that provision is going to apply
6 both to the native or seedling pecans and to the
7 improved pecans?

8 DR. HUDSON: Yes, it is.

9 MR. QUIROS: Can we take a break, Your
10 Honor?

11 JUDGE GUTHRIDGE: Anymore questions on

12 --

13 MS. CHILUKURI: I think we will have

14 --

15 MR. HILL: We may have another
16 question --

17 MS. CHILUKURI: But we're --

18 MR. QUIROS: We'll allow it.

19 MS. CHILUKURI: Okay.

20 JUDGE GUTHRIDGE: Okay, 10 minutes?
21 Five minutes?

22 MR. QUIROS: Yes.

1 JUDGE GUTHRIDGE: Ten minutes.

2 (Whereupon, the above-entitled matter
3 went off the record at 9:05 a.m. and resumed at
4 9:17 a.m.)

5 JUDGE GUTHRIDGE: When we left -- when
6 we took the break, you USDA might have had
7 another question, Ms. Schmaedick.

8 MS. SCHMAEDICK: Yes, Melissa
9 Schmaedick, USDA.

10 Dr. Hudson, I believe you stated that
11 in order to add, delete or modify the list of
12 varieties in the definition for pecans, that it
13 would require supplemental proposal with Council.

14 If you can look at Section 986, the
15 entire procedure.

16 DR. HUDSON: Yes, ma'am. I mis-spoke.

17 MS. SCHMAEDICK: Thank you. That is
18 all my questions.

19 JUDGE GUTHRIDGE: Anymore USDA
20 questions?

21 MS. VARELA: Jen Varela, USDA. Dr.
22 Hudson, I want to ask you a series of questions

1 so that we can get an idea of how these different
2 types of pecans move through the market and how
3 they might be identified later on.

4 We've already established that
5 regionally, you tend to get more natives in one
6 region than another, so, that's one way that we
7 might be certain that -- for instance, we
8 wouldn't see a lot of those pecans in the west,
9 correct?

10 DR. HUDSON: Yes.

11 MS. VARELA: Once you move to a
12 handler, it's my understanding that the improved
13 varieties have been grown in that way because
14 there are certain qualities that a handler,
15 seller or another buyer is looking for, correct?

16 DR. HUDSON: That is correct.

17 MS. VARELA: And I think an example
18 you've given to us is about the size.

19 DR. HUDSON: Yes.

20 MS. VARELA: When a nut is moving
21 through the market, do you anticipate that that
22 ultimate buyer is definitely -- or do the buyers

1 ever identify what type of nut they are looking
2 for?

3 DR. HUDSON: Yes, they do, on
4 occasion.

5 MS. VARELA: And would those
6 specifications be listed in say the Bill of
7 lading or would there be some sort of
8 documentation of what the product was sold at,
9 some type of labeling?

10 DR. HUDSON: Yes, generally, that it
11 would be evaluated based on variety and grade.

12 MS. VARELA: And then that would be
13 reflected in the buyer's records and the seller's
14 records?

15 DR. HUDSON: Yes.

16 MS. VARELA: So, if for compliance
17 reasons, an auditor was looking to make sure that
18 the nuts were classified correctly --

19 DR. HUDSON: Yes.

20 MS. VARELA: -- do you anticipate
21 there would be a trail that would show that those
22 had been identified?

1 DR. HUDSON: Yes, I would not see --
2 I do not see that being an issue.

3 MS. VARELA: And could you speak maybe
4 specifically -- I know that you were involved in
5 the export market.

6 DR. HUDSON: Yes.

7 MS. VARELA: Could you speak to what
8 some of those specifications tend to be?

9 DR. HUDSON: Yes.

10 MS. VARELA: I think anecdotally,
11 we've heard that there's a market pecan
12 enlargement --

13 DR. HUDSON: Yes.

14 MS. VARELA: -- or enlargement?

15 DR. HUDSON: Yes, according to the --
16 the export standards are based on -- as a general
17 rule, are based on variety, variety blends, size,
18 grade and moisture.

19 MS. VARELA: Okay, and when those
20 loads have -- in your experience so far, when
21 those loads have been certified for export, has
22 the inspection service been able to include

1 variety in --

2 DR. HUDSON: No.

3 MS. VARELA: -- that certification?

4 DR. HUDSON: No.

5 MS. VARELA: Not at this point?

6 DR. HUDSON: No.

7 MS. VARELA: So, does that --

8 DR. HUDSON: There's generally some
9 cases. Make sure it meets the standards with
10 regard -- or the contracts in regard to size and
11 grade.

12 MS. VARELA: Would some type of
13 identification for a variety be something that
14 the Council could develop, to assist inspection
15 into that? Is that something you would look for?

16 DR. HUDSON: You could, but quite
17 honestly, I don't think it's important because
18 for the most part, you know, in good varieties,
19 in seedlings and western, it's sufficient
20 classification, to be able to assess.

21 To require that -- to put a variety on
22 a -- that would be blurred, that could get very

1 blurred.

2 So, I don't think that as it stands
3 now, variety -- you would not -- other than the
4 fact that you know the varieties, in regards to
5 specifying it, the standards that have been set
6 are quite sufficient to identify that.

7 MS. VARELA: Okay, thank you.

8 MR. HILL: Brian Hill. This is just
9 a quick follow up question to my earlier question
10 about the approval of some varieties and the
11 leading absolute varieties.

12 I see that under 986.55, there are a
13 list of 10 different varieties that require a
14 super majority, and you now say that this change
15 would not apply to super majority.

16 Was it ever discussed on the board,
17 for requiring this change to be a super majority
18 in Council, as well? Do you recall that?

19 DR. HUDSON: I cannot recall the
20 specific discussion, no.

21 MR. HILL: All right.

22 JUDGE GUTHRIDGE: Any other USDA

1 questions? Mr. Quiros?

2 MR. QUIROS: Yes, sir. A couple of
3 questions as a follow up to this, and then I'd
4 like to turn your attention to the sub-standard
5 paragraph three.

6 The first is, can a person in the
7 pecan industry easily distinguish between native
8 and seedling and improved pecans?

9 DR. HUDSON: Yes.

10 MR. QUIROS: Across all regions?

11 DR. HUDSON: Yes.

12 MR. QUIROS: And there's a financial
13 incentive to distinguish, isn't there?

14 DR. HUDSON: Yes.

15 MR. QUIROS: A handler would never --
16 a handler would never pay improved variety prices
17 for seedlings and natives, would they?

18 DR. HUDSON: No.

19 MR. QUIROS: Thank you. So, no chance
20 that there would ever be an assessment, with
21 regard to native and seedling and improved that
22 would be confusing for the pecan industry people?

1 DR. HUDSON: No.

2 MR. QUIROS: Thank you. If you'll
3 turn your attention to Exhibit-1, Section
4 986.28(a)(3) Sub-standard pecans, please and take
5 a moment to read that and when you've finished,
6 let me ask you a few questions.

7 DR. HUDSON: Okay.

8 MR. QUIROS: Explain to us why that is
9 necessary.

10 DR. HUDSON: Because sub-standard is
11 included in the definition because although it's
12 not the best quality of nut, it does have value.

13 MR. QUIROS: Okay, and what is the
14 importance of the sub-standard classification?

15 DR. HUDSON: The importance of it is
16 that for -- you know, for substantive purposes,
17 that we understand, although it's not the best of
18 value pecan, it does have value and therefore, it
19 should exist.

20 MR. QUIROS: And it does include those
21 previous definitions of blow-outs, cracks and
22 stick-tights?

1 DR. HUDSON: Yes, it does.

2 MR. QUIROS: Thank you. Why are these
3 classifications -- why do we have these
4 classifications, all three of them, the native,
5 seedling, improved and sub-standard?

6 DR. HUDSON: Because that is the
7 preponderance of the pecans in the industry.

8 MR. QUIROS: No further questions of
9 this witness at this time, on this definition.

10 JUDGE GUTHRIDGE: Any USDA questions?

11 MS. SCHMAEDICK: Michelle Schmaedick,
12 USDA.

13 Dr. Hudson, I'm looking at
14 986.28(a)(3) sub-standard pecans, and I'm
15 wondering if over time, as the industry's
16 familiarity with this program develops and
17 potentially, develops handling regulations, could
18 this definition of sub-standard pecans evolve to
19 encompass more atrophies than what are listed
20 here?

21 I mean, you discuss in this --

22 DR. HUDSON: Yes, yes, to answer your

1 question, yes, it can. Yes.

2 MS. SCHMAEDICK: Can I --

3 DR. HUDSON: Yes.

4 MS. SCHMAEDICK: And I do see that the
5 definition does include the language 'other
6 inferior quality pecans', but in your opinion,
7 would it be important for the Council to have the
8 ability to establish a clear definition of what
9 sub-standard pecans includes?

10 DR. HUDSON: Yes.

11 MS. SCHMAEDICK: And to that point, if
12 you look at paragraph (b) of that same
13 definition, I'll read it for the record.

14 It says, "The Council, with the
15 approval of the Secretary, may recognize new or
16 delete, obsolete varieties or sub-varieties for
17 each category."

18 My question is, sub-standard pecan is
19 not required on a variety basis, correct?

20 DR. HUDSON: No.

21 MS. SCHMAEDICK: So, I'm wondering, is
22 it the intent of the industry to be able to

1 further clarify what sub-standard pecan means?

2 DR. HUDSON: I would say that what
3 we've done is tried to allow the option, to make
4 changes if necessary.

5 MS. SCHMAEDICK: Okay.

6 DR. HUDSON: Because we have the
7 potential to think on the negative side, but it's
8 more simply, the positive side. It may very well
9 be that sub-standard side of the production could
10 in fact end up being vital.

11 MS. SCHMAEDICK: Right.

12 DR. HUDSON: If pecans oil and pecan
13 meal or flour becomes as valuable as it could be,
14 then maybe there will be -- the sub-standard
15 becomes of greater value than you're best
16 improved variety.

17 So, the Council recommended -- or
18 recognized the fact that this could be subject to
19 change, based on something as simple as increase
20 in value of the sub-standard.

21 MS. SCHMAEDICK: Okay, so, I want to
22 just clarify that the intent of the industry was

1 to be able to further apply these sub-categories
2 of pecans, but not limit that refining to just
3 new or obsolete varieties --

4 DR. HUDSON: Yes.

5 MS. SCHMAEDICK: -- it could be a
6 refining of that sub-standard --

7 DR. HUDSON: Yes.

8 MS. SCHMAEDICK: -- definition?

9 DR. HUDSON: Yes.

10 MS. SCHMAEDICK: Okay, thank you. No
11 further questions.

12 JUDGE GUTHRIDGE: Anymore USDA
13 questions? Mr. Quiros?

14 MR. QUIROS: And Randy, when you read
15 986.28(b), and the last three words of (b) it
16 says, "For each category."

17 When you and the board were debating
18 this, did you mean that to apply to each category
19 of (a)(1), (a)(2) and (a)(3)?

20 DR. HUDSON: Yes.

21 MR. QUIROS: Thank you. No more
22 questions on this definition at this time.

1 JUDGE GUTHRIDGE: USDA? Mr. Quiros?

2 MR. QUIROS: Yes, Dr. Hudson, if you
3 would take a look at Section 986.29, person, why
4 define?

5 DR. HUDSON: It's a general term
6 that's needed to explain the voting and
7 nominations as this is in Section 986.48.

8 MR. QUIROS: As an example, any
9 discussion or controversy?

10 DR. HUDSON: No.

11 MR. QUIROS: Has this been used in
12 other Federal marketing orders?

13 DR. HUDSON: Yes, it has.

14 MR. QUIROS: No more questions on this
15 definition at this time.

16 JUDGE GUTHRIDGE: Are there any USDA
17 questions?

18 MR. QUIROS: Dr. Hudson, Section
19 986.30, production area, please take a moment to
20 look at that list.

21 DR. HUDSON: Yes.

22 MR. QUIROS: Is this term used in the

1 industry?

2 DR. HUDSON: Yes, it is.

3 MR. QUIROS: Is this definition
4 consistent with the usage of the industry, in
5 your experience?

6 DR. HUDSON: Yes, it is.

7 MR. QUIROS: Any significant amounts
8 of pecans grown in the U.S. outside these 15
9 states?

10 DR. HUDSON: No, and none that I'm
11 aware of.

12 MR. QUIROS: No further questions of
13 this definition, at this time.

14 JUDGE GUTHRIDGE: Are there any USDA
15 questions?

16 MS. SCHMAEDICK: Melissa Schmaedick,
17 USDA.

18 Dr. Hudson, again, when we're
19 projecting into the future, let's say 20 years
20 from now, we have a variety of pecans that are
21 developed that could be grown in Oregon, would
22 you foresee potential in that scenario to lead to

1 revising this section?

2 DR. HUDSON: Certainly, yes, the
3 situation would be considered.

4 MS. SCHMAEDICK: And if that were to
5 arise, would there be a requirement to hold
6 another hearing to revise the production area, to
7 determine whether or not that should be removed?

8 DR. HUDSON: Here again, I can't
9 respond. I don't know what that procedure might
10 be.

11 MS. SCHMAEDICK: Okay, thank you.

12 JUDGE GUTHRIDGE: Are there anymore
13 USDA questions?

14 I guess not. Mr. Quiros?

15 MR. QUIROS: Thank you. Dr. Hudson,
16 please turn to Section 986.31 for proprietary
17 capacity. Take a look at it, read it and then
18 let me know when you're finished.

19 DR. HUDSON: Okay.

20 MR. QUIROS: Dr. Hudson, is this
21 definition used in the industry today?

22 DR. HUDSON: No, but it's part of the

1 Act, and I've explained, when we discuss the
2 majority definition.

3 MR. QUIROS: Why define it?

4 DR. HUDSON: Well, it's extremely
5 helpful to distinguish this type of ownership or
6 control of the product, but it also lays out
7 voting procedures and earlier definitions of
8 affiliates.

9 Here again, the various issue, where
10 we don't give large, multi-tier businesses, like
11 my own, more votes and the smaller growers or
12 handlers, and we recognize the property rights.

13 MR. QUIROS: Thank you, Dr. Hudson.
14 No further questions this time, on this
15 definition.

16 JUDGE GUTHRIDGE: Are there any USDA
17 questions? Mr. Quiros?

18 MR. QUIROS: Thank you. Dr. Hudson,
19 please take a look at Section 986.32 regions, and
20 glance through that and let me know when you're
21 finished.

22 DR. HUDSON: Okay.

1 MR. QUIROS: Dr. Hudson, is this term
2 used in the industry?

3 DR. HUDSON: Yes, it is.

4 MR. QUIROS: Is this definition
5 consistent with industry usage in your
6 experience?

7 DR. HUDSON: Yes, it is.

8 MR. QUIROS: Why Section (b)?

9 DR. HUDSON: It allows us to have
10 flexibility to address future changes to the
11 industry.

12 MR. QUIROS: Thank you. Approximately
13 how many growers and handlers are there in each
14 state or region?

15 DR. HUDSON: I cannot answer that. I
16 do not know that information, as well, at this
17 time.

18 MR. QUIROS: For each state or region,
19 what is the average yield per acre?

20 DR. HUDSON: There has been testimony,
21 and there will be some more testimony,
22 identifying the average yields for production in

1 the regions.

2 In the Eastern United States, Dr.
3 Wells will testify that every production cost are
4 based on yields in the 1,200 to 1,500 pound per
5 acre range.

6 You've heard testimony from several of
7 the western growers, that indicated their average
8 yields on some of their improved varieties could
9 go as high, or higher than 2,000 pounds per acre.

10 In the central region, particularly in
11 the Oklahoma areas, the yield on a per acre basis
12 of a tree in each yield may be only a few hundred
13 pounds.

14 So, there are variations for a yield
15 across the regions.

16 MR. QUIROS: Thank you, Dr. Wells.

17 DR. HUDSON: Dr. Hudson.

18 MR. QUIROS: Dr. Hudson. Did you --
19 we know we'll have Dr. Wells' testimony in
20 Tifton, with regard to the number of pounds
21 across the production area, but do you recall in
22 Exhibit-19, Dr. Palma's report, where he used

1 1,666.67 pounds are the average production across
2 regions?

3 DR. HUDSON: Yes, I do, and that would
4 in fact, be an average used in testimony.

5 MR. QUIROS: Okay, thank you. What is
6 the volume of pecans produced in region, and I'd
7 like to -- handler in each region, if you will,
8 and I'd like to turn your attention to Exhibit-6,
9 which was entered by the USDA's Tables 7, 8 and
10 9.

11 DR. HUDSON: Okay.

12 MR. QUIROS: Would that help handlers
13 identify their --

14 DR. HUDSON: Yes, it does. If you
15 look at Tables 7, 8 and 9, in regards to the
16 percentage of total pecans produced in each
17 region, I think it draws a very significant
18 conclusion and it helps us understand why we have
19 an east, central and west section as part of our
20 order.

21 For example, if you look at each --
22 the east region, the percent of pecans produced

1 as a portion of the whole for U.S. production,
2 when you look at the last four years, 2011, 2012,
3 2013 and 2014, you see a yield of 47.5 percent,
4 35.7 percent, 35.2 percent and 28.4 percent.

5 As compared to the central region,
6 with the same four years, of 21.1 or 21.7
7 percent, 34.8 percent, 26.3 percent and 37.3
8 percent, and then looking at the west region,
9 over those same four years of 2011 through 2014,
10 you see 30.8 percent, 29.5 percent, 37.4 percent
11 and 34.3 percent.

12 MR. QUIROS: Thank you, Dr. Hudson.
13 Can you draw any conclusion with regard to the
14 volume of pecans produced then, about each
15 region?

16 DR. HUDSON: Yes, you can, that we did
17 a pretty doggone good job of designating regions
18 in regards to the amount of pecans that are
19 produced in each region.

20 MR. QUIROS: Because they're roughly
21 equal, Doctor?

22 DR. HUDSON: Yes, they are roughly

1 equal.

2 MR. QUIROS: Thank you. Explain why
3 the regions are set up as they are.

4 DR. HUDSON: Well, not only do the
5 regions quite frankly, weigh themselves out
6 distinctly, in regards to the total amount of
7 production, but many of the cultural practices,
8 expenses associated with peaks in variable costs,
9 seem to be very similar, in some regards.

10 But the east is characteristically a
11 very humid climate, that requires a lot of
12 inputs, as compared to the western areas, which
13 are very dry and might not require any inputs, in
14 regards to fungicides and pesticides, with
15 regards to some other costs, particularly land
16 and water.

17 So, the characteristics of each of
18 these regions is quite unique and makes -- and
19 quite frankly, for many years, the industry has
20 been used historically in our associations. I
21 mean, our associations, we have the southeastern,
22 the guys out west have westerns, the central

1 region has their Texas and Oklahoma units.

2 So, it was just a clear, quite
3 obviously, clear, very easy decision to make
4 about where these regions should be established.

5 MR. QUIROS: So, cultural practices in
6 the regions are similar within the region, the
7 historical grower associations then, are also, is
8 that what your testimony is?

9 DR. HUDSON: Yes, there is certainly
10 region -- within the region, the cultural
11 practices are very similar, but in some cases,
12 may be quite different from the other regions.

13 MR. QUIROS: Right, and then how about
14 transportation route for sale and other
15 distribution?

16 DR. HUDSON: Yes, that is also, in
17 some cases. In the east, most of the -- you
18 know, the pecans are built into accumulators, who
19 in turn then might sell them to the shelling
20 business, and on a national basis, go out to the
21 east coast for Gulfport.

22 Whereas, here in the west, those may

1 go out of the western Gulf or go out of the -- of
2 California.

3 So, we're a lot alike in a lot of
4 ways, but then again, we're different.

5 MR. QUIROS: Dr. Hudson, you've
6 testified with regard to growers. How about
7 shellers in this regard? Are they --

8 DR. HUDSON: Yes, there's a
9 difference, as well. The west is the west, and
10 while a portion of the central region, it's
11 always had a very close, intimate relationship
12 with the shelling industry.

13 The east on the other hand, has always
14 has quite a contentious relationship with the
15 shelling industry.

16 So, there is -- there is that
17 difference there, as well.

18 MR. QUIROS: But the shellers do break
19 up by regions, just like --

20 DR. HUDSON: Yes, they do.

21 MR. QUIROS: -- the growers do?

22 DR. HUDSON: Yes, they do. I mean,

1 you know, the shellers, in essence, located their
2 shelling around the pecans.

3 So, we also have shellers in the east.

4 MR. QUIROS: That maybe leads me to
5 the next question. What does the distribution of
6 production look like throughout the production
7 area?

8 DR. HUDSON: The distribution, as I
9 just indicated, is fairly even among each of the
10 visions that is so designated.

11 MR. QUIROS: What are the growing
12 conditions necessary for pecans?

13 DR. HUDSON: A lot of hard labor, a
14 lot of work, a lot of sunlight, a lot of eating
15 and a lot of sweat.

16 MR. QUIROS: Do all regions have the
17 same growing conditions or do they differ?

18 DR. HUDSON: They differ. As I
19 mentioned earlier, the southeast is very humid,
20 rain, and the west can get quite dry, and
21 significant less humid.

22 MR. QUIROS: Talk a little bit about

1 the harvesting season for pecans and how it might
2 differ between regions.

3 DR. HUDSON: The eastern region will
4 begin harvest in early October. We do a
5 considerable amount of what we call green
6 harvest, that is the nuts may very well still be
7 green. We do an early shake, where we might get
8 60 -- 50 to 60 percent of the nuts, including a
9 lot of green nuts, and we'll harvest these with
10 intentions of drying and marketing.

11 Now, this is in response to the need,
12 in an earlier question, to get pecans ready for
13 the holiday season, and in order to do that, it
14 forced us to do some green harvesting, as opposed
15 to the far west, where harvesting may not end
16 until late November. In fact, they prefer late
17 until after the harvest -- I mean, after a frost,
18 to get the leaves off and they will have a single
19 harvest.

20 In the east, we count on harvesting
21 the same acreage at least two times, and in some
22 cases, we'll actually go over acres three times,

1 for the pecans that are out there.

2 MR. QUIROS: One last question, Dr.
3 Hudson, before I pass you onto USDA.

4 I'd like you to turn, if you would, in
5 Exhibit-1 to 986.55(c)(1)VI, and take a look at
6 that. This is the super majority issue again.

7 Take a look at that please, and then
8 I'll ask you a question about it.

9 Yes, Dr. Hudson, isn't it true that if
10 we were to re-district any of these regions or
11 re-apportion or re-allocate the Council
12 membership inside the regions, that we would need
13 a two-thirds majority vote on the Council?

14 DR. HUDSON: Yes, it is.

15 MR. QUIROS: Thank you. No further
16 questions of this witness on this definition, at
17 this time.

18 JUDGE GUTHRIDGE: Any USDA questions?

19

20 MR. HILL: Brian Hill. Dr. Hudson,
21 were you here for the testimony of Kevin Ivey and
22 his wife?

1 DR. HUDSON: No, I was not, but I know
2 Kevin and his wife.

3 MR. HILL: So, you are aware that he
4 is the President of the Western Pecan Growers?

5 DR. HUDSON: Yes, and he's also the
6 Vice President of the U.S. Pecan Grower's
7 Council.

8 MR. HILL: And to your knowledge, is
9 the Western Pecan Grower's Association, I'll just
10 estimate, Western Pecan Grower's, are they
11 affiliated with California, Arizona and New
12 Mexico?

13 DR. HUDSON: Yes, they are.

14 MR. HILL: Was there any talk on the
15 board, in private conversations with the peers,
16 of having that area, El Paso area, as part of the
17 western region?

18 DR. HUDSON: Yes, there was some
19 discussion in that regards.

20 MR. HILL: And could you tell us what
21 -- how this was decided, that you would not be in
22 that region, and that you would be in central

1 region?

2 DR. HUDSON: Well, here again, for the
3 sake of parody, it required that we include some
4 of that area into the Central Texas for central
5 region, and that was, for the most part, the
6 deciding influence to bringing that part of Texas
7 into central region, as opposed to western.

8 MR. HILL: So, I can't ask him, so I'm
9 asking you, was there any problem with the push-
10 back on that, from the people in that area, that
11 were involved?

12 DR. HUDSON: Not that I can recall.

13 MS. CHILUKURI: So, Dr. Hudson, in
14 32(b) it states, "The approval of the Secretary
15 without reason, any district may change."

16 Is district defined, to you knowledge?
17 Would the proponents be --

18 DR. HUDSON: No, it's not.

19 MS. CHILUKURI: Would proponents be
20 able to clarify that and change regions, would
21 that more actively represent what you intend to
22 say?

1 DR. HUDSON: Yes, we would.

2 MS. CHILUKURI: Okay, and just a
3 question as it relates back to production area.

4 So, you're including the entirety of
5 the state in the production areas, so even
6 California, only Southern California produces
7 pecans, all of California is included in
8 production area, is that right?

9 DR. HUDSON: Yes.

10 MS. CHILUKURI: Okay, thank you.

11 MS. VARELA: Dr. Hudson, the Act which
12 was -- sorry, Jen Varela, USDA.

13 As you're aware, in putting together
14 the order, the Act requires that we look at the
15 smallest practical area? You're familiar with
16 that, where we're defining the area to cover the
17 marketing order?

18 DR. HUDSON: Yes.

19 MS. VARELA: Would you describe the
20 pecan market as the one large national market?

21 DR. HUDSON: Yes, I would. A few years
22 ago, I wouldn't and I'll just briefly state.

1 I've always -- I'm a majority. I
2 recently purchased five loads of pecans out here
3 in Las Cruces, at the same time, was bringing
4 those pecans from Las Cruces to Georgia, I was
5 seeking pecans from Georgia back to Mexico.

6 A few years ago, this wouldn't have
7 happened. I mean, now, with technology, quite
8 honestly, we are -- we have the potential to
9 market. We were doing business that we were
10 never doing before, without this new technology.

11 MS. VARELA: So, in your opinion, is
12 it more practical to have one marketing order
13 that covers all three of these regions instead of
14 three marketing orders that would be specific to
15 each region?

16 DR. HUDSON: One market order, one
17 industry.

18 MS. VARELA: Thank you.

19 JUDGE GUTHRIDGE: Are there anymore
20 USDA questions? Mr. Quiros?

21 MR. QUIROS: Yes, thank you. If you'd
22 please take a look at Section 986.33 and take a

1 moment to read it, Dr. Hudson, and then when you
2 finish, let me know.

3 DR. HUDSON: Okay.

4 MR. QUIROS: Is this term used in the
5 industry?

6 DR. HUDSON: No, it was created for
7 this process.

8 MR. QUIROS: Explain that.

9 DR. HUDSON: Because we have a
10 threshold for board voting participation, we
11 thought it would be best to average production
12 over a given period.

13 Pecans have an ultimate-bearing
14 inherent occurrence, and so, that last year's
15 numbers or single year's numbers may over-state
16 or under-state a profit.

17 Also, weather enters into a grower's
18 crop and it requires you to at least use multiple
19 years.

20 MR. QUIROS: Why four years?

21 DR. HUDSON: Well, four years seemed
22 very reasonable amount of time to get an average

1 since yields vary from year to year, and this
2 also allows that if a grower had a bad year, it
3 allowed him more time to get his yield back to
4 more than average. It also address the ultimate
5 barrier issue.

6 MR. QUIROS: Did you consider other
7 time periods?

8 DR. HUDSON: Yes, we did, but we
9 settled on four years as a compromise.

10 MR. QUIROS: Did this ever come up in
11 a grower meeting as controversial?

12 DR. HUDSON: No, it didn't. It was
13 not controversial.

14 MR. QUIROS: Why can the Council
15 recommend changes?

16 DR. HUDSON: Here again, it gives the
17 Council flexibility, in case that there is some
18 problems and as I said, this was a compromise,
19 but if a problem does arise, then we can address
20 it.

21 MR. QUIROS: Thank you, Dr. Hudson.
22 No further questions of this witness, at this

1 time, on this definition.

2 JUDGE GUTHRIDGE: Are there any USDA
3 questions?

4 MS. SCHMAEDICK: Melissa Schmaedick,
5 USDA.

6 Dr. Hudson, you mentioned that this
7 term was developed for the purpose of this
8 marketing order. How was it used in the marketing
9 order? Where does it become relevant?

10 DR. HUDSON: It speaks -- one second.
11 It becomes an issue in Section 986.16, in
12 defining who, in the order.

13 MS. SCHMAEDICK: Okay, so, in
14 determining whether or not a grower qualifies as
15 a grower under this definition, you would use the
16 representative barrier as part of the measure?

17 DR. HUDSON: Yes.

18 MS. SCHMAEDICK: Why is it important
19 to identify who the growers are, other than
20 simply the fact that they are growing pecans?

21 DR. HUDSON: Because we wanted the
22 market order to address the commercial

1 production, commercial growers.

2 MS. SCHMAEDICK: So, is it important
3 to identify qualified growers in terms of
4 eligibility to sit on the Council?

5 DR. HUDSON: Yes.

6 MS. SCHMAEDICK: So, just to clarify
7 that, a grower -- you would measure their
8 eligibility based on their qualification in terms
9 of this representative period?

10 DR. HUDSON: Yes.

11 MS. SCHMAEDICK: And would that
12 eligibility be reviewed every time that grower
13 needs to demonstrate that they meet this
14 definition?

15 DR. HUDSON: Yes.

16 MS. SCHMAEDICK: Thank you. No
17 further questions.

18 JUDGE GUTHRIDGE: Are there anymore
19 USDA questions?

20 MS. VARELA: Jen Varela, USDA. In the
21 practical sense, Dr. Hudson, when looking at that
22 representative period, say for the purpose of

1 voting, is it your intent that those four years
2 are the last completed four fiscal years or would
3 it be three and the current?

4 DR. HUDSON: It would have to be four,
5 I believe years. There's no way to measure
6 partial years.

7 MS. VARELA: Okay.

8 DR. HUDSON: Right.

9 MS. VARELA: I only ask because you
10 might have part of harvest --

11 DR. HUDSON: No, a whole fiscal year.

12 MS. VARELA: Okay, so, you want to the
13 fiscal year to be over?

14 DR. HUDSON: Right.

15 MS. VARELA: Okay, I just wanted to be
16 sure what your intent was.

17 DR. HUDSON: Right.

18 MS. VARELA: And then I also wanted to
19 draw your attention to Section 986.94,
20 termination. It's the section dealing with
21 continuance referenda.

22 If you look at paragraph D there.

1 MR. QUIROS: D, delta?

2 MS. VARELA: D.

3 MS. VARELA: You'll see that the Act
4 requires that the Secretary -- let me make sure
5 I'm on the right paragraph.

6 Yes, that the Secretary is looking at
7 growers who, during the representative period,
8 were engaged in production.

9 Is it your intent that that
10 representative period will also apply to this
11 section?

12 DR. HUDSON: Yes.

13 MS. VARELA: Nothing further.

14 JUDGE GUTHRIDGE: Are there anymore
15 USDA questions?

16 I do have a question, if I may. Dr.
17 Hudson, in that same four year period, you'd be
18 using in 986.45 for determining whether someone
19 is a large grower or a small grower, in terms of
20 the large grower and the small grower, does that
21 four years apply to that?

22 DR. HUDSON: Yes.

1 JUDGE GUTHRIDGE: Mr. Quiros?

2 MR. QUIROS: Thank you. Dr. Hudson,
3 if I could turn your attention to Section 986.34
4 at Exhibit-1, Secretary, why have this
5 definition?

6 DR. HUDSON: It is required by the
7 Act. It's used in the Federal marketing order
8 and it establishes the Secretary's authority over
9 the administration of this order.

10 MR. QUIROS: Is it used in other
11 Federal marketing order that you've reviewed?

12 DR. HUDSON: Yes, it is.

13 MR. QUIROS: Any discussion or
14 controversy by the board, with regard to this
15 section?

16 DR. HUDSON: No, there is not.

17 MR. QUIROS: Thank you. No further
18 questions of this definition, at this time.

19 JUDGE GUTHRIDGE: Are there any USDA
20 questions?

21 MR. QUIROS: Dr. Hudson, I'd now turn
22 your attention to Section 986.35 of Exhibit-1,

1 sheller. Please take a moment to review that
2 definition and then I'll ask you some questions.

3 DR. HUDSON: Okay.

4 MR. QUIROS: Is this term used in the
5 industry?

6 DR. HUDSON: Yes, it is.

7 MR. QUIROS: Is this definition, down
8 to the word -- the definition, down to the word
9 'provided' consistent with industry usage in your
10 experience?

11 DR. HUDSON: Yes, it is.

12 MR. QUIROS: Let's address the
13 qualification after the word 'provide'. Why have
14 this restriction?

15 DR. HUDSON: We wanted to make sure
16 that anyone smaller than one-million pounds,
17 would not be identified as a commercial sheller.

18 Growers with less than one-million
19 pounds is not provided -- is not --

20 MR. QUIROS: Sheller?

21 DR. HUDSON: I mean sheller, I'm
22 sorry, you know, I don't know any smaller, except

1 a few guys that may do this for novelty or
2 moonlighting using older machinery.

3 You know, this could put very clear
4 demarcation of who should be identified as a
5 sheller.

6 Now, I can relate to this. I'm a
7 sheller. We shell for a business. We shell less
8 than one-million pounds, an average. While we
9 are not a sheller, there's no way we could make a
10 living shelling one-million pounds. It's just
11 absolutely not viable, there's no way to sustain
12 it.

13 MR. QUIROS: Dr. Hudson, knowing that
14 the industry is on the verge of new health and
15 food safety requirements which will require
16 additional machinery and testing, does that make
17 it even more difficult to be commercially viable
18 as a sheller?

19 DR. HUDSON: Absolutely. In fact, even
20 with our small shelling, we're thinking about
21 getting out of the shelling business completely
22 because of these regulations, in regards to

1 health, yes.

2 MR. QUIROS: Let's turn back to that
3 one-million pounds.

4 How did the board arrive at one-
5 million pounds?

6 DR. HUDSON: Here again, you've been
7 given testimony by Bruce Caris and you will hear
8 subsequent testimony from Helen Weiss, both
9 shellers, and what they will do is, they will
10 substantiate the fact as to what is, where the
11 line ends.

12 So, basically, this one-million pound
13 designation came as a result of considerable
14 listening and input from the shelling industry
15 itself.

16 MR. QUIROS: Is a sheller that handles
17 between one-million and 12.5 million pounds of
18 in-shell nuts per year, will that capture most
19 small businesses, as defined in the Small
20 Business Administration?

21 DR. HUDSON: Yes.

22 MR. QUIROS: Yes.

1 DR. HUDSON: Yes, it will, and it's
2 pretty simple math.

3 You know, on the upside of margins and
4 shelling pecans, maybe 50 to 60 percent per pound
5 on an in-shell basis.

6 So, if you just did the math of 12.5
7 million pounds at a 50 percent yield, that is
8 6.25 million pounds of meets, times .5 would be
9 less than \$3 million.

10 So, you would certainly be less. You
11 would be a very small business, even by just the
12 term business.

13 MR. QUIROS: Did you consider other
14 sizes as thresholds, besides the 12.5 million?

15 DR. HUDSON: Yes, we did, because
16 quite honestly, we debated quite a bit.

17 MR. QUIROS: What was the debate
18 around, Dr. Hudson?

19 DR. HUDSON: Well, what we wanted to
20 make sure was that we included the small
21 shellers. Here again, it goes back to this issue
22 that I mentioned in my very first statement, and

1 that was the fact that we maintain diversity in
2 our marketing order, and we wanted to highlight
3 that diversity in our industry.

4 So, we also wanted -- just like the
5 growers, we wanted the shellers to be
6 represented, but we wanted both large and small
7 shellers.

8 MR. QUIROS: In each region, Dr.
9 Hudson?

10 DR. HUDSON: Yes, in each region.

11 MR. QUIROS: Thank you, Dr. Hudson.
12 No further questions at this time, on this
13 definition.

14 JUDGE GUTHRIDGE: Are there any USDA
15 questions?

16 MS. SCHMAEDICK: Melissa Schmaedick,
17 USDA.

18 Dr. Hudson, back to the definition of
19 a sheller, which is 986.35, there's a statement
20 that reads, "The Council may recommend changes to
21 this definition subject to the rule of the
22 Secretary."

1 Do you foresee any need to change this
2 definition or potentially, the threshold within
3 that definition, at some point in the future?

4 DR. HUDSON: I can't answer that. We
5 have the flexibility to do it.

6 MS. SCHMAEDICK: So, if something were
7 to change in the industry, and the technology
8 were to become less expensive, for example, for
9 the change -- or the prices were to change
10 drastically and the one-million pound threshold
11 could be lower, would these be types of changes
12 in the industry that might cause a review of the
13 definition?

14 DR. HUDSON: Yes.

15 MS. SCHMAEDICK: And at that point,
16 the Council could then make a recommendation to
17 change that definition?

18 DR. HUDSON: Yes, it could.

19 MS. SCHMAEDICK: And that type of
20 change, would that be considered a substantial
21 change?

22 DR. HUDSON: Yes.

1 MS. SCHMAEDICK: Therefore, it would
2 require a thorough debate and a super majority
3 consensus?

4 DR. HUDSON: Yes.

5 MS. SCHMAEDICK: Thank you very much.
6 No further questions.

7 MS. VARELA: Jen Varela, USDA. Dr.
8 Hudson, I'd like to refer back to some earlier
9 testimony we had on the tie-in of numbers, and on
10 defining the exemptions to handling requirements.

11 If you'll recall, there is an
12 exemption, or there's a proposed exemption for
13 those who handle, I believe it was less than
14 1,000 pounds.

15 DR. HUDSON: Yes.

16 MS. VARELA: So, given that, is it
17 your understanding that the intent of this
18 definition is to apply more to representation on
19 the board than it is to subjecting a sheller to
20 handling standards?

21 DR. HUDSON: I don't really understand
22 the question, but I think --

1 MS. VARELA: Let me break it down in
2 a different way. Let me just look at shellers
3 for now.

4 The use of this definition, as you put
5 it together, was your intent for this to apply to
6 Council representation? Who would qualify for
7 seats on the Council?

8 DR. HUDSON: Yes.

9 MS. VARELA: Okay, and is it your
10 understanding that that's independent from the
11 way we are defining who is a handler subject to
12 this?

13 DR. HUDSON: Yes.

14 MS. VARELA: Okay, thank you. No
15 further questions from me.

16 MR. HINMAN: Don Hinman, USDA. A
17 short while ago, you gave a -- I think it was a
18 representative computation relating to small
19 sheller. Could you repeat that computation?

20 DR. HUDSON: Okay, if you take one-
21 million pounds as an example, and you shell that
22 million pounds, assuming that you would get a 50

1 percent shell out, which was the number that was
2 used in our Exhibit-21, then you would get a
3 half-million pounds of meats.

4 If your same margin was say, 50 cents
5 per shelled pound of meat, on 500,000 pounds,
6 that would be \$250,000.

7 MR. HINMAN: Thank you. Appreciate
8 that. No further questions.

9 MS. SCHMAEDICK: Melissa Schmaedick,
10 USDA.

11 So, Dr. Hudson, I want to just refer
12 back to Jen Varela's question.

13 You mentioned that you are a sheller,
14 as well as a grower, is that correct?

15 DR. HUDSON: Yes.

16 MS. SCHMAEDICK: Although you shell --

17 DR. HUDSON: Wait, wait, wait. Let me
18 clarify that. No, I'm not a sheller.

19 MS. SCHMAEDICK: Thank you.

20 DR. HUDSON: But I do shell pecans.

21 MS. SCHMAEDICK: Okay, my mistake. I
22 apologize. So, you do have a business that

1 shells?

2 DR. HUDSON: Yes.

3 MS. SCHMAEDICK: Is that a fair --

4 DR. HUDSON: Yes, I own a business
5 that also shells some pecans.

6 MS. SCHMAEDICK: But it's below the
7 one-million pound threshold in this definition?

8 DR. HUDSON: Yes.

9 MS. SCHMAEDICK: So, for you, for the
10 pecans that you shell, are you anticipating that
11 you will be assessed as a handler of those
12 pecans?

13 DR. HUDSON: Yes.

14
15 MS. SCHMAEDICK: But in terms of
16 representation on the Council, you would not
17 qualify as representing sheller interests?

18 DR. HUDSON: No.

19 MS. SCHMAEDICK: Thank you very much.

20 JUDGE GUTHRIDGE: Are there anymore
21 USDA questions?

22 MS. CHILUKURI: Dr. Hudson, do you

1 know with the one-million pound threshold, do you
2 know how many shellers there are that are
3 merchant valuable, a number?

4 DR. HUDSON: No, I do not. I do not
5 know.

6 MS. CHILUKURI: And in terms of the
7 outreach efforts that have been undertaken, have
8 you come across any people who define themselves
9 as shellers and are below that threshold and
10 express opposition or thoughts about this, about
11 the threshold?

12 DR. HUDSON: No, I am not. I've met
13 no opposition, that I have heard in regards to
14 this.

15 MS. CHILUKURI: Thank you.

16 JUDGE GUTHRIDGE: Are there anymore
17 USDA questions? Mr. Quiros?

18 MR. QUIROS: Thank you. Dr. Hudson,
19 if you'd turn your attention to Exhibit-1,
20 Section 986.36 shelled pecans, and take a moment
21 to look at that definition and I'll ask you a few
22 questions.

1 DR. HUDSON: Okay.

2 MR. QUIROS: Is this term used in the
3 industry?

4 DR. HUDSON: Yes, it is.

5 MR. QUIROS: Is this the definition
6 consistent with industry usage, in your
7 experience?

8 DR. HUDSON: Yes, it is.

9 MR. QUIROS: Why define?

10 DR. HUDSON: Well, because it reflects
11 the industry practices, and it's a basis for
12 this.

13 MR. QUIROS: Thank you. No further
14 questions of this witness, on this definition, at
15 this time.

16 JUDGE GUTHRIDGE: Are there any USDA
17 questions? No? Mr. Quiros?

18 MR. QUIROS: Thank you. Dr. Hudson,
19 if you'd turn to Exhibit-1, Section 986.37 stick-
20 tights. Take a moment to look at that
21 definition.

22 DR. HUDSON: Okay.

1 MR. QUIROS: Is that a term used in
2 the industry?

3 DR. HUDSON: Yes, it is.

4 MR. QUIROS: Is that definition
5 consistent with industry usage, in your
6 experience?

7 DR. HUDSON: Yes, it is.

8 MR. QUIROS: Why did you define it?

9 DR. HUDSON: Here again, stick-tights
10 are a type of substandard pecan, as identified in
11 Section 986.28 paragraph three, and they are
12 assessed less as indicated in paragraph -- or
13 Section 986.61.

14 MR. QUIROS: No further questions of
15 the proponent's counsel at this time, on this
16 definition.

17 JUDGE GUTHRIDGE: Are there any USDA
18 questions?

19 MS. SCHMAEDICK: Melissa Schmaedick,
20 USDA.

21 Dr. Hudson, for those of us who are
22 not familiar with what pecans look like, could

1 you describe to us, what a stick-tight looks
2 like, please?

3 DR. HUDSON: In the growing process,
4 the pecans begin obviously, as a very small
5 flower, and this flower begins to grow, and the
6 pecan becomes a small tree.

7 Now, you're familiar with the pecans,
8 you see a grey pecan, and this pecan has this
9 green, it's a shell that in essence, is around
10 the core or the pecan, which is on the inside.

11 Now, as the pecan matures, this shell
12 will open up, kind of like a flower and then the
13 nut will fall out.

14 In the cases, particularly in these,
15 will be green shaped, we get green pecans that
16 are on the ground and these green pecan hulls
17 will, as they dry, tighten around that, so that
18 it becomes what we call a stick-tight.

19 Now, stick-tights can also occur in
20 other ways. Years where we have hurricanes in
21 the east, we'll get nuts falling out late in the
22 season that are immature, are not completely

1 filled and they'll fall on the ground, and
2 they're also stick -- that is also how we get
3 stick-tights.

4 So, stick-tights, although it's
5 prevalent in the industry as a whole, will
6 probably be more prevalent in the east where
7 there's a lot of green shaping.

8 MS. SCHMAEDICK: Thank you. No
9 further questions from me.

10 JUDGE GUTHRIDGE: Are there anymore
11 USDA questions?

12 MR. HILL: I do have one question, and
13 I missed my opportunity. It's actually about
14 986.36, yes.

15 Can you explain pecan meal for me,
16 please?

17 DR. HUDSON: Yes, pecan meal is an
18 extremely small piece.

19 MR. HILL: That's it?

20 DR. HUDSON: Are you familiar with
21 corn meal?

22 MR. HILL: A bit.

1 DR. HUDSON: Okay, so, it's just a --
2 here again, it's a very small piece and it's sold
3 into the industry.

4 MR. HILL: And does that differ any
5 from the kernel or kernel pieces?

6 DR. HUDSON: The pieces are part of
7 the kernel. They're small parts of the kernel.

8 MR. HILL: Thank you.

9 JUDGE GUTHRIDGE: Any further USDA
10 questions? Mr. Quiros?

11 MR. QUIROS: Thank you. Dr. Hudson,
12 if you'd look at -- again, at Exhibit-1, Section
13 986.38 trade supply and take a moment to read
14 that definition and then I have a few questions
15 for you.

16 DR. HUDSON: Okay.

17 MR. QUIROS: Is this a term used in
18 the industry?

19 DR. HUDSON: Yes, it is.

20 MR. QUIROS: Is this definition
21 consistent with industry usage in your
22 experience?

1 DR. HUDSON: Yes, it is.

2 MR. QUIROS: Why did you define it?

3 DR. HUDSON: Well, quite frankly, we
4 defined it because we need better data on the
5 industry.

6 The Federal marketing order will allow
7 the Council to collect the data. We have to give
8 an estimate of the trade supply to the Secretary,
9 to be part of this, and this refers to Section
10 986.65 paragraph (a) Section 6.

11 MR. QUIROS: Why do we need better
12 data and how will that help the industry?

13 DR. HUDSON: When I began my ranting
14 and raving yesterday, this was the section that I
15 was talking about.

16 The opportunity to have better data in
17 regards to trade supply will help us make better
18 pricing decisions, which can in fact, operate as
19 a modern business, having a business plan.

20 MR. QUIROS: Dr. Hudson, I'm going to
21 ask you to turn to Section 986.65, you just
22 identified it as 986.65(a)(6). Did you mean

1 985.65(f)?

2 DR. HUDSON: Yes, I did.

3 MR. QUIROS: Thank you. No further
4 questions at this time, from this witness, on
5 this question.

6 JUDGE GUTHRIDGE: Are there any USDA
7 questions?

8 MS. SCHMAEDICK: Melissa Schmaedick,
9 USDA.

10 Dr. Hudson, could you turn your
11 attention to the overhead that has the definition
12 displayed for 986.38 trade supply, and I'm going
13 to briefly read it into the record.

14 "Trade supply means the quantity of
15 the merchantable in-shell or shelled pecans that
16 grows as supply to handlers during the fiscal
17 year for sale in the United States and abroad."

18 I want you to focus on the word
19 'merchantable'.

20 As you recall, you gave a definition
21 for merchantable pecans both in-shell and
22 shelled, and that definition was tied to handling

1 regulations that may be in effect.

2 So, my question here is, if there are
3 no handling regulations in effect, can you say
4 that you're still looking at merchantable pecans
5 or if there are no handling regulations in
6 effect, are you wanting to look at the sum of
7 grower and handler clean production?

8 Let me rephrase that. What I'm trying
9 to understand is, trade supply, is that the
10 amount of production that is put into the market
11 for sale each fiscal year in the United States
12 and abroad?

13 DR. HUDSON: Yes.

14 MS. SCHMAEDICK: And that supply,
15 could it be either merchantable pecans or in the
16 event of there are no handling regulations in
17 effect, could it simply be the sum of grower and
18 handler claimed production?

19 DR. HUDSON: Yes.

20 MS. SCHMAEDICK: Would it be important
21 to clarify that in this proposed definition?

22 DR. HUDSON: Yes, it would.

1 MS. SCHMAEDICK: Thank you. No
2 further questions.

3 JUDGE GUTHRIDGE: Are there anymore
4 USDA questions? No? Mr. Quiros?

5 MS. CHILUKURI: It's not a question,
6 but I just wanted to point out that clarifying
7 merchantable pecans, that will also impact
8 disappearance and other definitions as well.
9 Thank you.

10 MR. QUIROS: Yes, Dr. Hudson answers
11 that it might be clarified, that we did use the
12 word 'may' in that definition, so right now, we
13 would assume that that was the -- Dr. Hudson, you
14 just assumed that all of the trade supply would
15 be in currently, is that correct?

16 DR. HUDSON: Yes, that's my
17 understanding.

18 MR. QUIROS: And it might change if
19 there are handler regulations put in, and as
20 986.69 allows in the future by the Council, is
21 that correct?

22 DR. HUDSON: That is true.

1 MR. QUIROS: In other words, the trade
2 supply number today without those handler
3 regulations that affect the merchantable supply,
4 may be changed if merchants -- if handler
5 regulations are put into effect?

6 DR. HUDSON: That is true.

7 MR. QUIROS: So, the definition works
8 today, is that correct?

9 DR. HUDSON: Yes, it does.

10 MR. QUIROS: As the industry
11 understands it.

12 DR. HUDSON: Right.

13 MR. QUIROS: But in the future, if the
14 Council accepts some of those changes to handler
15 authorities, that definition may change, but the
16 definition of merchantable in-shell pecans will
17 change, is that correct?

18 DR. HUDSON: Yes, it would.

19 MR. QUIROS: Thank you. No further
20 questions of this witness, at this time.

21 JUDGE GUTHRIDGE: Are there anymore
22 USDA questions?

1 MR. HILL: Under the current
2 definition, what is a merchantable pecan?

3 DR. HUDSON: I would refer you to
4 Section 986.26 and I'm going to read that for
5 you.

6 MR. HILL: Please do.

7 DR. HUDSON: Are you willing to accept
8 that?

9 MR. HILL: Please do.

10 DR. HUDSON: "A merchantable pecan, in
11 regards to Section in-shell, merchantable pecan
12 in-shell pecans mean all shelled pecans meeting
13 minimum grade regulations that may be effective
14 pursuant to Section 986.69, authorities
15 regulating merchantable, Paragraph B, shelled,
16 are merchantable shell pecans means all shell
17 pecans meeting minimum grade regulation that may
18 be effective pursuant to Section 986.69 authority
19 to regulate handling."

20 MR. HILL: So, as there are no
21 regulations regulating handling right now, what
22 is your understanding of what is currently

1 merchantable pecan?

2 DR. HUDSON: As identified in that
3 section.

4 JUDGE GUTHRIDGE: I'm not sure that
5 answered the question. I think he was asking
6 since this definition has currently not be
7 adopted, what is your proof --

8 MR. QUIROS: Judge, may I ask a
9 question?

10 JUDGE GUTHRIDGE: Yes.

11 MR. QUIROS: Dr. Hudson, the board
12 wishes to have clarity, with regard to the
13 proposed Federal marketing order on pecans. Is
14 that correct?

15 DR. HUDSON: Yes.

16 MR. QUIROS: If there are any
17 clarifying changes that need to be made, to make
18 the definitions more clear, is the board willing
19 to entertain those?

20 DR. HUDSON: Yes, they are.

21 MR. QUIROS: Thank you.

22 JUDGE GUTHRIDGE: Are there anymore

1 USDA questions? Mr. Quiros?

2 MR. QUIROS: Thank you. It might be
3 a little early to declare, but I'm going to
4 declare this a bit of the home stretch.

5 Dr. Hudson, take a look at Exhibit-1,
6 Section 986.39 un-assessed inventory. Take a
7 moment to look at that definition.

8 DR. HUDSON: Okay.

9 MR. QUIROS: Is this a term that's
10 common in the industry?

11 DR. HUDSON: No, it's not.

12 MR. QUIROS: Why did you define it?

13 DR. HUDSON: Because this will reflect
14 industry practice, where pecans can be placed in
15 the cold storage or stored without selling them
16 to the consumer, usually by a grower or sheller.

17 This definition addressed the fact
18 that is later used to explain an assessment will
19 be made when an un-assessed nuts are put into the
20 stream Commerce, and I will refer to 986.61(h)
21 paragraph I and 986.62.

22 Also, needs to report to the Secretary

1 in Section 986.65 paragraph (a)(5).

2 MR. QUIROS: Dr. Hudson, your
3 reference to Section 986.65(a)(5), let me take a
4 quick moment and I'd ask you to do the same
5 thing, if you could just look at that definition
6 at Exhibit-1.

7 Did you mean, Dr. Hudson, Section
8 986.65(e)?

9 DR. HUDSON: Yes, I did. Sorry.

10 MR. QUIROS: Thank you for clarifying
11 that.

12 No further questions at this time of this
13 witness, on this question.

14 JUDGE GUTHRIDGE: Are there any USDA
15 questions? Mr. Quiros?

16 MR. QUIROS: Yes, Section 986.40 of
17 Exhibit-1, variety, would you take a moment to
18 look at that definition?

19 DR. HUDSON: Okay.

20 MR. QUIROS: Is this term used in the
21 industry?

22 DR. HUDSON: Yes, it is.

1 MR. QUIROS: Is this definition
2 consistent with industry usage in your
3 experience?

4 DR. HUDSON: Yes, it is.

5 MR. QUIROS: No further questions of
6 this witness, at this time, on this definition.

7 JUDGE GUTHRIDGE: Are there any USDA
8 questions? No? Mr. Quiros?

9 MR. QUIROS: Thank you. Dr. Hudson,
10 please turn to Exhibit-1, Section 986.41
11 warehousing, and take a moment to look at that
12 definition.

13 DR. HUDSON: Okay.

14 MR. QUIROS: Is this term used in the
15 industry?

16 DR. HUDSON: Yes, it is.

17 MR. QUIROS: Is this definition
18 consistent with industry usage, in your
19 experience?

20 DR. HUDSON: Yes, it is.

21 MR. QUIROS: Why did you define it?

22 DR. HUDSON: We defined this because

1 we recognize how business is done. Pecans are
2 warehoused and we need information on volume for
3 assessment purposes and in the term warehousing
4 is used throughout the market.

5 MR. QUIROS: How will this information
6 help the industry?

7 DR. HUDSON: Here again, the actual
8 crop size will allow growers and shellers to make
9 more accurate pricing decisions in regards to
10 their plans.

11 MR. QUIROS: Thank you, Dr. Hudson.
12 No more questions of this witness, at this time,
13 on this definition.

14 JUDGE GUTHRIDGE: Are there any USDA
15 questions?

16 MS. VARELA: Dr. Hudson, maybe you
17 could make a little distinction for me.

18 Does the industry ever use the term
19 warehousing to describe cold storage that has
20 been done, say after a product had been assessed?

21 DR. HUDSON: Yes, it does, but in the
22 case of the assessment, that's not for purposes -

1 -

2 MS. VARELA: So, this was put in there
3 just to make that distinction?

4 DR. HUDSON: Yes.

5 MS. VARELA: So, for the purposes of
6 the order --

7 DR. HUDSON: Yes.

8 MS. VARELA: -- it's only talking
9 about --

10 DR. HUDSON: Right, un-assessed.

11 MS. VARELA: Okay, and again, I'm
12 always concerned with practical use.

13 How do you envision -- or when the
14 Council was discussing the need for this and the
15 practice of having inventory that say, a grower
16 might have in the warehouse, how do you envision
17 that that would be reported? How is this going
18 to be taken into account?

19 DR. HUDSON: The office doing the
20 reporting will govern that.

21 MS. VARELA: And do you envision that
22 the Council might make some recommendations in

1 the future, as to the particular procedures for
2 collecting that information?

3 DR. HUDSON: Yes, there will be
4 procedures in place for that.

5 MS. VARELA: That's all for us. Thank
6 you.

7 JUDGE GUTHRIDGE: Are there anymore
8 USDA questions?

9 MR. HILL: No, Your Honor.

10 JUDGE GUTHRIDGE: Mr. Quiros?

11 MR. QUIROS: Yes, Dr. Hudson, I'm now
12 turning you to Exhibit-1, Section 986.42, our
13 last definition, weight. Could you take a moment
14 to look at that?

15 DR. HUDSON: Okay.

16 MR. QUIROS: Is this term used in the
17 industry?

18 DR. HUDSON: Yes, it is.

19 MR. QUIROS: Is this definition
20 consistent with industry usage, in your
21 experience?

22 DR. HUDSON: Yes, it is.

1 MR. QUIROS: Why is in-shell weight
2 set at twice shell weight?

3 DR. HUDSON: It is a good estimate,
4 and we came up with this after lots of discussion
5 among the regional representatives and quite
6 honestly, it's already being used in determining
7 cold storage for shelled product.

8 MR. QUIROS: Thank you. No further
9 questions of this witness, at this time, on this
10 definition.

11 JUDGE GUTHRIDGE: Are there any USDA
12 questions?

13 MR. HILL: We have no questions on
14 this, but we do have one other matter.

15 JUDGE GUTHRIDGE: Well, let's finish
16 up. You have no further questions --

17 MR. HILL: On this document.

18 MS. CHILUKURI: On this document.

19 JUDGE GUTHRIDGE: -- or you do have
20 questions?

21 MR. HINMAN: Not on 42. I want to
22 revisit a previous one.

1 JUDGE GUTHRIDGE: Okay, go ahead.

2 MR. HINMAN: Okay, for this question,
3 I would like to put up Exhibit-19, Dr. Palma's
4 study. Do you have that? Page nine of the
5 Exhibit-19. I have it here, if you want to use
6 this.

7 MR. QUIROS: Page nine?

8 MR. HINMAN: Page nine.

9 MR. QUIROS: We have it. I'm sorry,
10 can everybody see that?

11 MR. DAVIS: Can you see that?

12 MR. SHARROW: But we have our copies
13 from earlier in the hearing.

14 MR. HINMAN: We have copies. I will
15 read off the number that I am trying to use.
16 Page nine of Exhibit-19. What I'm referring to
17 is the very top table 'estimate of handler price
18 received', and we could use -- I intend to use --
19 ask a question that would relate to just one of
20 those -- either of those prices.

21 For example, 2014, the representative
22 price used by Dr. Palma to represent handler

1 price received, in 2014 was \$2.70. So, do you
2 see that, because I want to ask you --

3 DR. HUDSON: Yes, I see that. Yes.

4 MR. HINMAN: Now, the question is, I
5 found your sample computation related to the
6 million pounds threshold, and I want to revisit
7 that, and that is that -- I want to make sure I
8 understand that, because I do find this helpful.

9 JUDGE GUTHRIDGE: I'm sorry, this
10 relates to the definition of?

11 MR. QUIROS: Handler, the one that --

12 MR. HINMAN: Yes, this would be the
13 threshold for defining a seller. Excuse me,
14 sheller.

15 JUDGE GUTHRIDGE: So, this relates to

16 --

17 MR. HINMAN: The one-million --

18 JUDGE GUTHRIDGE: -- 986.35?

19 MR. HINMAN: Yes, the one-million
20 pound threshold in 986.35.

21 My question is, you -- I believe your
22 computation was as follows:

1 You had one-million pounds times a 50
2 percent shell-out is 500,000, correct?

3 DR. HUDSON: Yes.

4 MR. HINMAN: And the 50 cents you used
5 was --

6 DR. HUDSON: That was a margin.

7 MR. HINMAN: That's a margin, it's
8 close to the 58 cents used in this study, is that
9 correct?

10 DR. HUDSON: Yes.

11 MR. HINMAN: Yes, and so, the \$250,000
12 in there representing the value of the that size
13 shelling operation or handling operation, is in
14 fact, the value of the margin, is that correct?

15 DR. HUDSON: Yes.

16 MR. HINMAN: And what -- so,
17 generally, when we're talking about, you know, a
18 size, for example, the Small Business
19 Administration threshold of \$7 million, would it
20 be -- I'm asking, could it possibly be a more
21 accurate representation to in fact, multiple the
22 one-million pounds times the 270, or account --

1 DR. HUDSON: No, that's the gross
2 figure. That in fact, would be the gross amount
3 that -- let's just say this is a hypothetical
4 situation where the -- a small shelling lab was
5 shelling, in this case, improved varieties.

6 It just is false for purchasing the
7 nut would be -- you can just times it by one-
8 million. That is the purchase price of the nut,
9 and then you also have prices because a lot of
10 very expensive processing equipment, like labor,
11 and what we were doing was saying out of 250 nut
12 once it's processed and sold, then that margin
13 might approximate 50,000.

14 Now, in here again, this is a farm
15 sheller. Very few pecans give you this amount,
16 but I can tell you even at 50 cents, the profit
17 that would occur in shelling one-million pounds
18 is far less than that was produced, as it's
19 described by the Small Business Association, very
20 small business.

21 MR. HINMAN: Well, that threshold is
22 quite a bit larger. It's \$7 million, right.

1 DR. HUDSON: And we're talking about
2 gross. We've been talking about value, and in
3 that scenario, you know, of less than \$250,000.

4 MR. HINMAN: Right, but I just want to
5 understand, I think this may be -- I believe that
6 your conclusion would still hold, in relation to
7 say the Small Business Administration, if you in
8 fact, used one of these representative prices in
9 Table ES7.

10 DR. HUDSON: Well, buying pecans is
11 just a very small component of the shelling
12 process. You still have to get the shell -- the
13 meat out of the shell and that requires this
14 process, and even on very small quantities.

15 MR. HINMAN: I believe the -- well,
16 okay, the intent, I thought, of the
17 representative margin in the Palma study was
18 saying they acquire, you know, the previous -- on
19 average, they would acquire the -- the handler
20 would acquire at the grower price represented in
21 this study.

22 You add 58 cents to that, and then --

1 I initially thought that out the backdoor of the
2 handler, you add the 58 cents, and you have what
3 the sheller receives going into the next chain,
4 next part of the chain of Commerce there.

5 So, the 270 --

6 DR. HUDSON: No, I don't understand it
7 that way.

8 MR. HINMAN: Okay.

9 DR. HUDSON: No, I --

10 MR. HINMAN: That was my
11 understanding, is that the margin represents all
12 costs between the backdoor of the grower and the
13 backdoor of the sheller. Do you not accept that
14 conclusion?

15 DR. HUDSON: No, no, no, that would
16 not be the margin.

17 MR. HINMAN: Okay, no further
18 questions. Thank you.

19 JUDGE GUTHRIDGE: Mr. Quiros?

20 MR. QUIROS: No further questions with
21 regard to the definitions, Your Honor, but I'd
22 like to move onto some general testimony from Dr.

1 Hudson.

2 Sorry, did USDA have additional
3 questions?

4 MS. SCHMAEDICK: Yes, we do, and I
5 apologize for being slow here this morning.

6 Melissa Schmaedick, USDA.

7 Dr. Hudson, on further consideration
8 of the definition of warehousing, I do want to
9 ask you some questions.

10 For the record, 986.41 warehousing
11 reads, "Warehousing means to hold un-assessed
12 inventory," and if I look at that definition, in
13 the context of the definition to handle,
14 warehousing is included in the activities of 'to
15 handle'.

16 So, my question is, is that -- is
17 warehousing defined because of this part of the
18 definition of 'to handle'?

19 Let me put it another way around.
20 Warehousing is handler activity, is that your
21 understanding?

22 DR. HUDSON: Yes, it can be.

1 MS. SCHMAEDICK: Okay, but in the
2 definition of warehousing, it refers only to un-
3 assessed inventory.

4 So, my question is, if I were to look
5 at the other activities, for example, roast or
6 shell, could a handler be roasting or shelling
7 un-assessed pecans?

8 DR. HUDSON: Yes, they can.

9 MS. SCHMAEDICK: Okay, so, again, just
10 trying to figure out where the assessment is
11 placed. Is the assessment collected then on the
12 outbound process of those pecans or is it an
13 outbound assessment or an inbound assessment?

14 If you need to take time to --

15 DR. HUDSON: I understand your
16 question, and this is -- this is a continuing
17 issue.

18 But I would say this. There is an
19 opportunity, okay, for un-assessed inventory to
20 be processed by a grower, by myself and then
21 sold, okay.

22 Here again, it would have to be at

1 that point of transaction, where it becomes not
2 just a process, but it becomes a product, and so,
3 does warehousing occur in both instances of
4 assessed and un-assessed? I think that is -- I
5 don't know, I will defer. I will take the Fifth
6 on that one.

7 MS. SCHMAEDICK: Thank you for your
8 answer there. My concern is over the
9 applicability of the term un-assessed and the
10 definition of warehousing.

11 But I believe your explanation does
12 help to --

13 DR. HUDSON: Okay.

14 MS. SCHMAEDICK: Thank you, and then
15 Dr. Hudson, with regard to trade supply, would
16 you be amenable to considering a clarifying
17 change along the lines of the following:

18 Trade supply means the quantity of
19 merchantable in-shell or shelled pecans or in the
20 absence of handling regulations, under 986.69,
21 grower and handler-cleaned pecans during fiscal
22 year, for sale in the United States and abroad?

1 DR. HUDSON: Yes, we would.

2 MS. SCHMAEDICK: Thank you. No
3 further questions.

4 JUDGE GUTHRIDGE: Are there anymore
5 USDA questions?

6 MR. HILL: None.

7 JUDGE GUTHRIDGE: Could I ask a
8 question about the definition from yesterday,
9 because it's bothered me all night.

10 DR. HUDSON: It's been bothering me
11 all night too.

12 JUDGE GUTHRIDGE: It will bother you
13 tonight. Is there a definition of pecan acres in
14 the reg?

15 MR. QUIROS: Yes, there's an FSA pecan
16 acre, and so, the definition says it's normally
17 an acre, Your Honor. In the absence of a change,
18 it's normally thought to be an acre. That's
19 what's in this thing.

20 However, in certain parts of the
21 country, the FSA defines it as more than 46,000
22 square feet, and so, in those, we're willing to

1 accept --

2 DR. HUDSON: Forty-three.

3 MR. QUIROS: Forty-six-thousand?

4 DR. HUDSON: Forty-three-five-sixty.

5 MR. QUIROS: Thank you, 43,560. So, in
6 those cases, the Council, the board is willing to
7 accept the judgment of the FSA, that there's more
8 or less space, with regard to an FSA pecan acre.

9 But in normal usage, it's just an
10 acre.

11 JUDGE GUTHRIDGE: I think what I was
12 getting -- what it was coming to me as, which did
13 sort of come up in your testimony, I mean, is a
14 pecan acre of one of these pecan farms here along
15 the river, that's all planted out in nice rows
16 and everything, the production on that is
17 probably going to be greater than one of your
18 pecan acres -- one of your acres with 10 pecan
19 trees on it.

20 DR. HUDSON: Yes, it is.

21 JUDGE GUTHRIDGE: Thank you.

22 MR. QUIROS: Yes, Your Honor, we'll

1 have some cultural testimony later that will
2 explain some of the differences in the region,
3 and but it is -- it is fascinating.

4 FSA does take that into account, with
5 regard to tighter planting, sketching, some other
6 issues. Thank you, Your Honor.

7 Your Honor, we have a few more
8 questions of Dr. Hudson and a few more minutes
9 before he needs to leave. Would it be
10 permissible for us to finish with Dr. Hudson's
11 testimony?

12 JUDGE GUTHRIDGE: It's his constraint,
13 but remember, I think I'm required at some point
14 to ask the audience if they have any questions.

15 Does anyone have any questions of Dr.
16 Hudson?

17 (No audible response)

18 JUDGE GUTHRIDGE: Then I've asked the
19 public.

20 MR. QUIROS: Dr. Hudson, are you
21 familiar with the summary of economic findings,
22 executive summary of economic findings in Federal

1 marketing order, as delivered in Exhibit-23 to
2 this hearing by Dr. Palma?

3 DR. HUDSON: Yes, I am.

4 MR. QUIROS: Do you agree with Dr.
5 Palma's finding, that the Federal marketing order
6 is likely to increase pecan prices?

7 DR. HUDSON: Yes, I do.

8 MR. QUIROS: What do you believe, as
9 a grower, about the balance between the benefits
10 of the Federal marketing order and the costs of
11 the proposed Federal marketing order?

12 DR. HUDSON: The benefits would exceed
13 costs.

14 MR. QUIROS: From a handler
15 perspective, what do you believe about the
16 balance between the benefits of the Federal
17 marketing order and the cost of the Federal
18 marketing order?

19 DR. HUDSON: The benefits will exceed
20 cost.

21 MR. QUIROS: What do you think of the
22 Council's authority through its product handling

1 authority, Section 986.69 regarding quantity,
2 quality size, packaging of pecans would improve
3 pecan prices?

4 DR. HUDSON: The future handling
5 regulations can increase price.

6 MR. QUIROS: What do you believe about
7 the balance between the costs of product handling
8 and the benefits?

9 DR. HUDSON: I think the benefits
10 outweigh the costs.

11 MR. QUIROS: Do you think the Federal
12 marketing order has any other benefits?

13 DR. HUDSON: Well, I think all of the
14 authorities in 986.68 and 69 are absolutely
15 essential and beneficial to the pecan industry.
16 In fact, I will be testifying on that later.

17 One other benefit is the market
18 order's collection of pecan product data for
19 publication and delivery to the USDA is quite
20 essential.

21 For too long, this industry, without
22 accurate data on supply, demand, prices and

1 inventories, these are extremely important
2 components for any business, whether it's pecan
3 business or whether it's IBM, whoever, this
4 information is extremely important.

5 A very important benefit of this
6 proposed Federal marketing order is the data
7 collection for the benefit of all industry
8 participant, whether it's growers, shellers,
9 handlers or consumers.

10 MR. QUIROS: Overall, you're in favor
11 of this Federal marketing order for pecans?

12 DR. HUDSON: Without being a rough
13 South Georgia redneck, hell yes.

14 MR. QUIROS: Explain that answer, for
15 the rest of us.

16 DR. HUDSON: I am in favor.

17 JUDGE GUTHRIDGE: Would you define
18 hell for us?

19 MR. QUIROS: Maybe it's listening to
20 him answer the definitions of it.

21 DR. HUDSON: I apologize.

22 MR. QUIROS: Why are you in favor, Dr.

1 Hudson, in all seriousness?

2 DR. HUDSON: Well, quite honestly, our
3 industry needs a unified voice, more than
4 anything, we need a strong domestic shelling
5 industry, and in order to do this, we have to
6 have a voice, we have to work together, growers
7 and shellers, and we have to be able to
8 understand domestic demand and prices.

9 We need better measurements. We need
10 more accurate information in regards to markets
11 and the opportunities that exist there.

12 We need all of the authorities of the
13 FMO as outlined in 986.67 through 69, to increase
14 pecan products for all the growers and parties
15 interested, and most importantly, we need to be
16 able to play on a level playing field, where we
17 can with accurate data, compete with other tree
18 nuts.

19 MR. QUIROS: Have you been active in
20 any other industry organizations?

21 DR. HUDSON: Yes, I have. In fact,
22 over the last several years, I've been very

1 active in just about every growing organization
2 in this country, to include the Georgia Pecan
3 Grower Association, where I've been both a board
4 member and past president of Georgia Pecan
5 Grower's, U.S. Pecan Grower's Council, where for
6 the last six years, I have served as second vice
7 president and first vice president, and in this
8 past week, became president of the U.S. Pecan
9 Grower's Council.

10 I've been active in other grower
11 organizations, including as I said, in the
12 western cases, and tri-state pecan growers.

13 So, I have been actively involved in
14 all of these organizations.

15 MR. QUIROS: Will the proposed
16 Council's mission and duties conflict with the
17 mission and duties of these other organizations
18 that you have led or that you're a member of?

19 DR. HUDSON: Absolutely not. In fact,
20 they're complementary.

21 MR. QUIROS: Thank you very much, Dr.
22 Hudson. We have no further questions of this

1 witness, at this time.

2 JUDGE GUTHRIDGE: Does USDA have any
3 questions?

4 MR. HILL: No questions.

5 JUDGE GUTHRIDGE: No questions from
6 the audience, and that's all our witnesses for
7 today. So, we will recess at this time, and this
8 hearing will resume tomorrow at 8:00 a.m., right,
9 in Dallas?

10 This young lady out here in the green,
11 did you want to testify in this hearing?

12 PARTICIPANT: Actually, I wanted to
13 respond to something else.

14 JUDGE GUTHRIDGE: Okay, all right.
15 Thank you. All right, then this hearing is
16 recessed. Off the record.

17 (Whereupon, the above-entitled matter
18 went off the record at 10:50 a.m.)

19
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21
22

A

\$2.70 135:1
\$250,000 112:6 136:11
 138:3
\$3 107:9
\$7 136:19 137:22
a.m 1:12 3:2,6 67:3,4
 151:8,18
ability 21:16 34:8 35:7
 39:8 55:19 63:2 76:8
able 21:15 31:16 37:9
 38:19 39:13 50:15,18
 59:19 61:9 70:22
 71:20 76:22 78:1
 94:20 149:7,16
above-entitled 67:2
 151:17
abroad 121:17 122:12
 142:22
absence 16:5 34:8
 142:20 143:17
absolute 72:11
absolutely 105:11,19
 147:14 150:19
accept 20:9 125:7
 139:13 144:1,7
accepts 20:14 124:14
account 131:18 136:22
 145:4
accredited 21:1
accumulator 26:16,17
 33:1,3,4,5,13 35:4
 36:9
accumulators 18:15
 33:21,22 34:18 36:17
 88:18
accurate 130:9 136:21
 147:22 149:10,17
acquire 138:18,19,20
acre 13:1,3,4 83:19 84:5
 84:9,11 143:16,17,18
 144:8,10,14
acreage 91:21
acres 12:19 91:22
 143:13 144:18,18
Act 82:1 95:11,14 102:3
 103:7
active 149:19 150:1,10
actively 94:21 150:13
activities 140:14 141:5
activity 140:20
actors 61:1
actual 130:7
add 9:11 50:18 67:11
 138:22 139:2
additional 105:16 140:2
address 11:7 18:1
 23:18 83:10 98:4,19

99:22 104:12
addressed 127:17
adheses 63:10
adjustment 37:9
adjustments 57:10
administration 103:9
 106:20 136:19 138:7
Administrative 1:14,18
adopted 126:7
advantage 64:16
affect 124:3
affiliated 93:11
affiliates 82:8
Ag 24:19
agency 24:13
ago 95:22 96:6 111:17
agree 146:4
agreement 1:5 3:5 20:4
 21:6 55:18
agricultural 24:15
Agriculture 1:1 2:2,3,8
 24:11
ahead 134:1
ALABAMA 1:6
alike 59:7 89:3
allow 16:15 21:16,21
 33:22 39:10,12 66:18
 77:3 120:6 130:8
allowed 98:3
allowing 11:3
allows 17:6 39:17 83:9
 98:2 123:20
amber 23:10 25:6 44:13
 44:18,18
amenable 142:16
American 23:18 30:20
 31:4 33:19
amount 20:1 86:18 87:6
 91:5 97:22 122:10
 137:2,15
amounts 80:7
analysis 42:13
anecdotally 70:10
answer 24:17 75:22
 83:15 109:4 142:8
 148:14,20
answered 126:5
answers 123:10
anticipate 68:21 69:20
anticipating 113:10
antiquated 19:19
anymore 7:3 9:22 11:21
 24:7 45:18 47:7 64:6
 65:9 66:11 67:19
 78:12 81:12 96:19
 100:18 102:14 113:20
 114:16 118:10 123:3
 124:21 126:22 132:7
 143:4

apologize 112:22 140:5
 148:21
APPEARANCES 2:1
applicability 142:9
applied 49:12
apply 66:5 72:15 78:1
 78:18 102:10,21
 110:18 111:5
Appreciate 112:7
appropriate 55:20
approval 62:10 72:10
 76:15 94:14
approving 62:13
approximate 137:13
Approximately 83:12
area 8:22 27:4 29:11
 30:1,7 31:18 32:4
 36:2,2,5 49:4 63:13
 79:19 81:6 84:21 90:7
 93:16,16 94:4,10 95:3
 95:8,15,16
areas 31:12 84:11 87:12
 95:5
Arizona 1:6 93:11
ARKANSAS 1:6
arrive 106:4
asked 145:18
asking 40:13 94:9
 126:5 136:20
assess 25:11 31:18
 71:20
assessed 3:20 9:7
 31:17 113:11 116:12
 130:20 141:3 142:4
assessment 6:4,18,22
 26:20 27:1 32:8,11
 33:14 34:1,14 35:16
 36:8 73:20 127:18
 130:3,22 141:10,11
 141:13,13
assessments 4:12
 29:21 62:5
assessors 32:16
assist 35:4 71:14
associated 87:8
Association 20:5 93:9
 137:19 150:3
associations 87:20,21
 88:7
assume 66:4 123:13
assumed 48:15 123:14
assuming 111:22
Atlanta 2:17
atrophies 75:19
attach 53:18
attention 3:9 4:19 7:20
 20:16 45:21 73:4 74:3
 85:8 101:19 103:3,22
 114:19 121:11

audible 145:17
audience 145:14 151:6
auditor 69:17
Auditorium 1:12
authorities 16:12
 124:15 125:14 147:14
 149:12
authority 33:22 64:4
 103:8 125:18 146:22
 147:1
authorization 24:18
authorized 20:19
available 23:20,20
 42:21 64:21
Avenue 2:4,9
average 83:19,22 84:7
 85:1,4 97:11,22 98:4
 105:8 138:19
aware 80:11 93:3 95:13

B

b 51:2 62:9 76:12 78:15
 83:8 125:15
baby 59:5
back 3:3 18:4 33:18
 36:18 65:13 66:1
 94:10 95:3 96:5 98:3
 106:2 107:21 108:18
 110:8 112:12
backdoor 139:1,12,13
bad 23:4 98:2
bag 11:18
bags 33:6
balance 146:9,16 147:7
barrens 52:20
barrier 98:5 99:16
based 40:16 41:3 42:14
 63:22 69:11 70:16,17
 77:19 84:4 100:8
basically 38:16 106:12
basis 14:7,11 18:18
 76:19 84:11 88:20
 107:5 115:11
becoming 32:14
began 120:13
beginning 6:21 50:9
begins 117:5
behalf 2:2,14 55:11
believe 21:8 22:16 25:6
 43:7 62:19 67:10
 101:5 110:13 135:21
 138:5,15 142:11
 146:8,15 147:6
beneficial 147:15
benefit 147:17 148:5,7
benefits 146:9,12,16,19
 147:8,9,12
best 12:8 22:7,7 74:12
 74:17 77:15 97:11

better 17:7 38:19 39:11
 120:4,11,16,17 149:9
big 35:13
Bill 69:6
bit 30:19 43:9 45:12
 51:17 54:11 55:2
 90:22 107:16 118:22
 127:4 137:22
bitter 23:11 25:7
blend 20:8
blended 9:1
blends 70:17
blow-outs 74:21
blurred 71:22 72:1
board 6:20 9:14 32:12
 39:17,20 55:22 72:16
 78:17 93:15 97:10
 103:14 106:4 110:19
 126:11,18 144:6
 150:3
bother 143:12
bothered 143:9
bothering 143:10
branch 53:12
break 47:21 65:12,15
 65:20,22 66:9 67:6
 89:18 111:1
breeding 49:21
Brian 2:3 62:8 72:8
 92:20
brian.hill@usda.gov
 2:7
brief 31:13 39:3
briefly 7:8 17:15 47:11
 51:22 95:22 121:13
bringing 94:6 96:3
brings 33:7
broad 48:15 57:8
Bruce 106:7
budget 42:14
Building 2:5
built 88:18
burden 34:1,4
business 34:12,12 65:7
 88:20 96:9 105:7,21
 106:20 107:11,12
 112:22 113:4 120:19
 120:19 130:1 136:18
 137:19,20 138:7
 148:2,3
businesses 34:10
 82:10 106:19
buy 23:6 32:5 54:14,17
buyer 28:10,13 32:20
 41:7 68:15,22
buyer's 69:13
buyers 68:22
buying 33:4,13 138:10
buys 32:20 33:5

C

California 1:6 89:2
 93:11 95:6,6,7
call 91:5 117:18
called 25:6
capacity 8:14 81:17
capture 106:18
Caris 106:7
CAROLINA 1:7,7
carrier 27:11
Carya 48:2
case 28:9 52:17 98:17
 130:22 137:5
cases 30:11 41:20 71:9
 88:11,17 91:22
 117:14 144:6 150:12
cash 31:19
categories 6:9
category 62:12 76:17
 78:16,18
cause 109:12
central 84:10 85:19
 86:5 87:22 89:10
 93:22 94:4,4,7
cents 112:4 136:4,8
 137:16 138:22 139:2
certain 19:5 23:17 52:2
 55:5 60:16 68:7,14
 143:20
certainly 9:13 15:20
 16:2 22:4 23:17 34:20
 37:6 39:10 62:17 81:2
 88:9 107:10
certification 18:15 19:6
 21:9 22:14 29:18 71:3
certified 18:3 70:21
certify 19:1,2,3
certifying 18:21,22 19:9
chain 139:3,4
chance 26:4 47:12
 73:19
chances 60:12
change 72:14,17 77:19
 94:15,20 109:1,7,9,9
 109:17,20,21 123:18
 124:15,17 142:17
 143:17
changed 124:4
changes 39:18 77:4
 83:10 98:15 108:20
 109:11 124:14 126:17
characteristically 87:10
characteristics 58:11
 58:20 60:16 87:17
Chicago 30:7 31:15
 32:6
Chief 1:18
CHILUKURI 2:8 10:2,6

10:14 57:14 59:22
 60:21 61:7,11,16 62:7
 66:13,17,19 94:13,19
 95:2,10 113:22 114:6
 114:15 123:5 133:18
China 10:11 20:4,8 30:7
Chinese 10:10
circumstance 62:22
circumstances 26:20
 63:15
claimed 122:18
clarification 54:21
clarified 123:11
clarify 4:8 23:1 77:1,22
 94:20 100:6 112:18
 122:21
clarifying 123:6 126:17
 128:10 142:16
clarity 126:12
classic 49:21 50:4
classification 41:13
 48:10,19 71:20 74:14
classifications 57:1
 75:3,4
classified 56:13 69:18
Clay 1:14,18
clean 4:19 5:18,21 6:5
 7:10,11,14 122:7
cleaned 6:8 41:6,6 42:8
 42:17
cleaner 6:1
cleaning 6:8 41:19
clear 38:2 76:8 88:2,3
 105:3 126:18
clearly 26:19
climate 87:11
close 6:18 13:5 89:11
 136:8
closely 10:12
coast 88:21
cold 127:15 130:19
 133:7
coli 16:20
collateral 20:4
collect 120:7
collected 141:11
collecting 132:2
collection 147:18 148:7
color 19:6 23:11 44:11
 44:12,12 60:8,19
combine 6:13,16
come 21:11 33:2 44:7
 53:17 58:18 65:13,22
 98:10 114:8 144:13
comes 32:3 41:5 59:9
coming 42:7 144:12
commerce 8:17 10:16
 27:8 43:13 127:20
 139:4

commercial 8:14 99:22
 100:1 104:17
commercially 105:17
Commission 1:19
 24:10 28:12,16
commission-based
 27:20 29:2
commodities 55:5
common 27:10 30:5
 43:17 48:11 127:10
communication 39:11
communications 34:11
compared 86:5 87:12
compete 149:17
competitive 64:16
competitors 65:4
complementary 150:20
completed 101:2
completely 105:21
 117:22
compliance 35:2,5,8
 60:5 69:16
complicated 31:8
component 138:11
components 148:2
compromise 98:9,18
computation 111:18,19
 135:5,22
concept 31:8
concern 142:8
concerned 131:12
concerns 26:19
conclusion 85:18 86:13
 138:6 139:14
conditions 90:12,17
conducted 18:19
conducts 17:21
confidence 16:11
conflict 150:16
confuse 59:3
confused 31:8
confusing 73:22
conjunction 4:11 44:16
consensus 110:3
consider 9:14 20:1 55:4
 59:2 60:5 63:1 98:6
 107:13
considerable 91:5
 106:13
consideration 140:7
considered 27:5,11
 28:2 41:7 42:2 46:11
 46:19 54:11 57:1 81:3
 109:20
considering 142:16
consistency 54:5
consistent 3:13 5:1 8:2
 13:18 46:7 47:18 80:4
 83:5 104:9 115:6

116:5 119:21 129:2
129:18 132:20
constraint 145:12
consumer 14:9 16:10
127:16
consumers 17:3 38:10
38:11,14 148:9
consumption 24:1
contact 35:3
contentious 89:14
context 140:13
continuance 101:21
continued 66:1
continuing 141:16
contract 27:10
contracts 71:10
contrary 63:9
contributions 39:19
control 63:16 82:6
controversial 98:11,13
controversy 79:9
103:14
conversations 93:15
cool 52:14
copies 134:12,14
core 117:10
corn 60:11,14 118:21
correct 7:17 12:3 14:13
17:17 28:22 35:16,21
35:22 36:14 40:18,21
41:8,13,16 44:3,21
53:18 64:11 68:9,15
68:16 76:19 112:14
123:15,21 124:8,17
126:14 136:2,9,14
correctly 4:9 9:16 69:18
cost 84:3 146:17,20
costs 87:8,15 139:12
146:10,13 147:7,10
Council 5:8 10:14 20:3
23:18 39:5,21,22
50:14 55:13 62:9,15
63:1 67:13 71:14
72:18 76:7,14 77:17
92:11,13 93:7 98:14
98:17 100:4 108:20
109:16 111:6,7
113:16 120:7 123:20
124:14 131:14,22
144:6 150:5,9
Council's 146:22
150:16
counsel 2:4,9 116:15
count 18:7,18 19:2,3
44:21 45:1,15 91:20
counted 3:20
country 9:1 57:6 143:21
150:2
couple 61:21 73:2

cover 36:10 95:16
covered 8:8
covers 96:13
cows 12:18
cracks 74:21
crafting 55:22
created 97:6
creates 53:21 63:11
creating 50:6
crisis 16:18
crop 97:18 130:8
Cruces 1:13 3:6 96:3,4
cultivators 56:2
cultural 87:7 88:5,10
145:1
current 6:15 19:13
36:12 43:11 62:22
63:3,4 101:3 125:1
currently 9:18 16:18
18:14 19:18 22:17
31:3 40:17 123:15
125:22 126:6
customer-specific
19:11
cut 13:11 52:12
cutting 59:15

D

D 101:22 102:1,2
D.C 2:5,10
Dallas 151:9
damage 43:18
damaged 42:1 43:9
dark 23:11
darker 60:8
data 120:4,7,12,16
147:18,22 148:6
149:17
date 40:21
DAVIS 2:15 134:11
deal 25:1
dealing 101:20
debate 107:17 110:2
debated 107:16
debating 78:17
decided 31:4 93:21
deciding 94:6
decision 88:3
decisions 17:7 64:5
120:18 130:9
declare 127:3,4
deemed 19:16
deeper 11:15
defer 142:5
define 3:15 5:4,5 8:4
13:20 47:2 51:12 79:4
82:3 114:8 115:9
116:8 120:2 127:12
129:21 148:17
defined 3:16 44:13
94:16 106:19 120:4
129:22 140:17
defines 42:21 143:21
defining 95:16 99:12
110:10 111:11 135:13
definitely 68:22
definition 3:12 4:2,22
5:11,17 6:12 8:1,10
13:17 14:22 15:18
17:10 20:17,17 26:2
30:15 33:1,3 38:22
40:5 46:6,14,20 47:3
47:17,22 48:4 51:6
56:1,7,21 57:8 67:12
74:11 75:9,18 76:5,8
76:13 78:8,22 79:15
80:3,13 81:21 82:2,15
83:4 92:16 99:1,15
100:14 103:5,18
104:2,7,8 108:13,18
108:21 109:2,3,13,17
110:18 111:4 113:7
114:21 115:5,14,21
116:4,16 119:14,20
121:11,20,22 122:21
123:12 124:7,15,16
125:2 126:6 127:7,17
128:5,18 129:1,6,12
129:17 130:13 132:13
132:19 133:10 135:10
140:8,12,13,18 141:2
142:10 143:8,13,16
definitions 56:21 74:21
82:7 123:8 126:18
139:21 148:20
delete 67:11 76:16
deleterious 63:8,11
delivered 14:5 31:15
44:21 146:1
delivery 147:19
delta 102:1
demand 16:14 147:22
149:8
demarcation 105:4
demonstrate 100:13
Department 1:1 2:2,3,8
24:10,19
describe 44:6 95:19
117:1 130:19
described 137:19
describing 5:14
design 52:7
designated 90:10
designating 86:17
designation 106:13
desire 21:17
determine 22:7 39:9,13
60:1,3 81:7

determining 99:14
102:18 133:6
develop 20:5 71:14
developed 49:19 64:20
80:21 99:7
developing 20:1
develops 75:16,17
differ 90:17,18 91:2
119:4
difference 11:10 58:7
89:9,17
differences 145:2
different 8:6 11:2 14:1
14:16,19 42:6,16
44:18 48:5 52:16,20
55:16,17 56:17 57:21
59:10 61:14 62:5
64:15 68:1 72:13
88:12 89:4 111:2
difficult 57:16 105:17
disappearance 123:8
discuss 44:2 75:21
82:1
discussed 27:14 72:16
discussing 131:14
discussion 15:5 26:18
72:20 79:9 93:19
103:13 133:4
discussions 30:21
33:19 55:21
disease 63:12
disgraceful 16:21
displayed 121:12
distinction 130:17
131:3
distinctly 87:6
distinguish 10:3 13:21
57:16 60:2,17,22
61:13 73:7,13 82:5
distinguished 8:7
distinguishing 57:18
distribution 88:15 90:5
90:8
district 94:15,16
diverse 55:15
diversion 49:7
diversity 108:1,3
Doctor 86:21
document 133:17,18
documentation 33:12
69:8
documents 19:22
doggone 86:17
doing 96:9,10 131:19
137:11
domestic 14:13 15:16
15:20 19:15 149:4,8
domestically 18:13
dominant 50:20

Don 43:4 111:16
door 11:2 20:21
Dr 3:8,11,14,16 4:6,7,14
 4:18,21 5:3,5,13,21
 6:17,22 7:5,12,13,18
 7:22 8:3,5,13,15,18
 8:21 9:13,20 10:2,5,8
 10:18 11:12 12:1,4,7
 12:9,13,15,18,21 13:2
 13:8,11,14,16,19,21
 14:3,7,10,14,17,20
 15:5,8,12,20,22 16:8
 16:9 17:2,4,15,18
 18:1 19:1,12 21:2,4
 23:1 24:4,16 25:4,9
 25:13,16,20 26:5,6,8
 26:10 27:6,12,15,19
 27:22 28:4,7,11,14,16
 28:22 29:4,8,13,16,19
 29:22 30:4,9,13,18
 31:7 33:2 34:6,20
 35:6,17,18,22 36:4,7
 36:14,19 37:1,6,11,12
 37:15,18,21 38:9,15
 38:18 39:2,7,22 40:4
 40:19,22 41:9,17 42:9
 42:18,22 43:14,16
 44:4,8,10,14,17,22
 45:3,7,11,14,20 46:2
 46:5,9,12,19,22 47:4
 47:9,13,16,20 48:2,7
 48:12,14,20 49:5,10
 49:17,20 50:4,13,17
 50:22 51:3,11,13,19
 51:22 53:3,8,14,19,22
 54:3,7,13,22 55:10
 56:4,9,11 57:3,11,14
 57:20 60:4 61:3,10,15
 61:20 62:17 64:1,8,12
 64:17 65:6 66:4,8
 67:10,16,21 68:10,16
 68:19 69:3,10,15,19
 70:1,6,9,13,15 71:2,4
 71:6,8,16 72:19 73:9
 73:11,14,18 74:1,7,10
 74:15 75:1,6,13,22
 76:3,10,20 77:2,6,12
 78:4,7,9,20 79:2,5,10
 79:13,18,21 80:2,6,10
 80:18 81:2,8,15,19,20
 81:22 82:4,13,18,22
 83:1,3,7,9,15,20 84:2
 84:16,17,17,18,19,22
 85:3,11,14 86:12,16
 86:22 87:4 88:9,16
 89:5,8,20,22 90:8,13
 90:18 91:3 92:2,9,14
 92:20 93:1,5,13,18
 94:2,12,13,18 95:1,9

95:11,18,21 96:16
 97:1,3,6,9,21 98:8,12
 98:16,21 99:6,10,17
 99:21 100:5,10,15,21
 101:4,8,11,14,17
 102:12,16,22 103:2,6
 103:12,16,21 104:3,6
 104:11,15,21 105:13
 105:19 106:6,21
 107:1,15,18,19 108:8
 108:10,11,18 109:4
 109:14,18,22 110:4,7
 110:15,21 111:8,13
 111:20 112:11,15,17
 112:20 113:2,4,8,13
 113:18,22 114:4,12
 114:18 115:1,4,8,10
 115:18,22 116:3,7,9
 116:21 117:3 118:17
 118:20 119:1,6,11,16
 119:19 120:1,3,13,20
 121:2,10 122:13,19
 122:22 123:10,13,16
 123:22 124:6,9,12,18
 125:3,7,10 126:2,11
 126:15,20 127:5,8,11
 127:13 128:2,7,9,19
 128:22 129:4,9,13,16
 129:20,22 130:7,11
 130:16,21 131:4,7,10
 131:19 132:3,11,15
 132:18,22 133:3
 134:3,22 135:3 136:3
 136:6,10,15 137:1
 138:1,10 139:6,9,15
 139:22 140:7,22
 141:8,15 142:13,15
 143:1,10 144:2,4,20
 145:8,10,15,20 146:2
 146:3,4,7,12,19 147:4
 147:9,13 148:12,16
 148:21,22 149:2,21
 150:19,21

drastically 109:10

draw 86:13 101:19

draws 85:17

Dripping 1:13

dry 87:13 90:20 117:17

drying 91:10

duties 150:16,17

DWIGHT 2:15

E

E 16:20

earlier 5:17 22:13 40:16

42:14 72:9 82:7 90:19

91:12 110:8 134:13

early 91:4,7 127:3

easily 73:7

east 9:1 85:19,22 87:10

88:17,21 89:13 90:3

91:20 117:21 118:6

eastern 84:2 91:3

easy 10:3 61:13 88:3

eating 90:14

economic 145:21,22

educated 12:17 38:11

effect 40:18 41:2,11,14

42:5 43:22 63:11

122:1,3,6,17 124:5

effective 125:13,18

efforts 114:7

either 21:11 36:13

62:13 122:15 134:20

EI 93:16

elaborate 10:6 16:17

electronic 34:21 37:2

element 31:5

elevated 52:18

eligibility 100:4,8,12

Elliott 52:5

Ellis 62:1

encompass 75:19

ends 106:11

engaged 102:8

enlargement 70:12,14

ensure 10:15

enter 8:17 55:18

entered 19:16 85:9

enters 97:17

entertain 126:19

entire 67:15

entirety 95:4

entities 34:4

entity 24:14

envision 131:13,16,21

equal 86:21 87:1

equipment 137:10

ES7 138:9

ESQ 2:3,8,15,15,16

essence 45:1 90:1

117:9

essential 147:15,20

essentially 34:1

establish 76:8

established 40:15 68:4

88:4

establishes 103:8

establishing 7:2

estimate 7:10 93:10

120:8 133:3 134:17

etcetera 37:5

evaluated 69:11

event 122:16

everybody 134:10

evidenced 31:8

evolve 55:12 75:18

example 19:11 26:14

30:5 31:12 32:19

43:16 52:10 62:2 63:6

68:17 79:8 85:21

109:8 111:21 134:21

136:18 141:5

examples 33:17 56:19

exceed 146:12,19

Excel 62:2

excellent 19:12

exchange 31:19

exchanged 31:20

excludes 48:6,8

exclusive 49:1

Excuse 32:22 135:13

executive 145:22

exemption 110:12,12

exemptions 110:10

Exhibit-1 46:21 74:3

92:5 103:4,22 114:19

115:19 119:12 127:5

128:6,17 129:10

132:12

Exhibit-19 84:22 134:3

134:5,16

Exhibit-21 112:2

Exhibit-23 146:1

Exhibit-6 85:8

exist 56:2 74:19 149:11

existing 24:13

expenses 87:8

expensive 109:8

137:10

experience 3:13 5:2 8:2

13:18 18:2 22:22

30:20 46:8 47:19

70:20 80:5 83:6

104:10 115:7 116:6

119:22 129:3,19

132:21

explain 8:19 26:9 31:2

37:19 43:9,21 45:12

48:13,19 51:17 74:8

79:6 87:2 97:8 118:15

127:18 145:2 148:14

explained 82:1

explanation 142:11

explanations 43:5

explore 43:20

export 15:15 17:16,21

18:3,9,21 19:14 70:5

70:16,21

exported 22:1

exporting 22:15

expound 5:16

express 26:19 114:10

extent 19:5

extremely 7:1 9:2,3

11:17 20:7 64:18 82:4

118:18 148:1,4

F

facilitate 34:2
facility 21:12,14 27:5
 29:10
fact 11:12 31:19 57:5
 72:4 77:10,18 85:4
 91:16 99:20 105:19
 106:10 108:1 120:18
 127:17 136:14,21
 137:2 138:8 147:16
 149:21 150:19
factor 44:10
factors 44:6
fair 6:17 113:3
fairly 90:9
fall 25:14 117:13 118:1
falling 117:21
false 137:6
familiar 36:12 51:20
 95:15 116:22 117:7
 118:20 145:21
familiarity 75:16
far 70:20 91:15 137:18
farm 1:13 12:2,6 32:4
 137:14
farms 144:14
fascinating 145:3
fat 58:14
favor 55:8 148:10,16,22
fax 2:6,11,18
Federal 1:19 15:13 24:9
 24:12,22 37:21 79:12
 103:7,11 120:6
 126:13 145:22 146:5
 146:10,11,16,17
 147:11 148:6,11
fee 28:13,16
feel 15:17 65:1
feet 143:22
fellow 62:1
felt 32:12
female 50:2
field 42:7 149:16
Fifth 142:5
figure 137:2 141:10
filled 118:1
finance 33:8
financial 73:12
find 23:6 38:3 135:8
finding 146:5
findings 145:21,22
finish 47:12 65:13 97:2
 133:15 145:10
finished 74:5 81:18
 82:21
first 7:9 31:7 39:12
 41:19 52:22 73:6

107:22 150:7
fiscal 101:2,11,13
 121:16 122:11 142:21
fit 45:5
five 66:21 96:2
flavor 11:15
flexibility 83:10 98:17
 109:5
FLORIDA 1:6
flour 23:13 25:8 77:13
flower 117:5,5,12
flowers 50:2
FMO 149:13
focus 121:18
focusing 33:20
follow 5:17 22:12 43:6
 72:9 73:3
following 142:17
follows 135:22
food 17:7 38:16 105:15
force 22:18
forced 91:14
foreign 19:10
foresee 80:22 109:1
forever 57:12 58:2
form 14:4 37:10
formatting 38:2
Forty-six-thousand
 144:3
Forty-three 144:2
Forty-three-five-sixty
 144:4
found 135:5
four 86:2,6,9 97:20,21
 98:9 101:1,2,4 102:17
 102:21
frankly 21:5 63:18
 64:17 87:5,19 120:3
frequently 29:2,5
friend 11:19
frost 91:17
fruit 11:5 59:15
FSA 143:15,21 144:7,8
 145:4
fudge 21:16
full 6:15
function 54:16
fungicides 87:14
further 14:21 22:10
 35:10 37:13 38:21
 41:12,15 42:20 43:20
 45:17 47:6 51:4,17
 75:8 77:1 78:1,11
 80:12 82:14 92:15
 98:22 100:17 102:13
 103:17 108:12 110:6
 111:15 112:8 115:13
 116:14 118:9 119:9
 121:3 123:2 124:19

128:12 129:5 133:8
 133:16 139:17,20
 140:7 143:3 150:22
future 9:10 50:16 55:2,4
 57:9 63:5 64:18 65:1
 80:19 83:10 109:3
 123:20 124:13 132:1
 147:4

G

G 1:14,18
gears 30:19
gene 63:8,8
general 2:4,9 45:15
 55:8 58:10 70:16 79:5
 139:22
generally 44:10 69:10
 71:8 136:17
genetically 11:1 51:13
geographic 60:18
Georgia 1:6 2:17 21:5,5
 21:9 22:21 24:19 32:7
 52:4 61:22 96:4,5
 148:13 150:2,4
Georgia's 21:6
getting 7:16 105:21
 144:12
give 6:15 12:8 16:10
 17:5 21:12 32:9 39:3
 39:8 56:8 82:10 120:7
 137:15
given 22:15 68:18
 97:12 106:7 110:16
gives 38:11 39:17 64:4
 98:16
glance 82:20
gluten-free 23:13 25:7
GMO 50:6 51:11
GMOs 50:6
go 23:12 43:13 52:12
 84:9 88:20 89:1,1
 91:22 134:1
goes 18:4 23:10 107:21
going 22:1 32:6,10
 33:18 36:9 60:13 66:5
 120:20 121:12 125:4
 127:3 131:17 139:3
 144:17
good 4:6,7 11:18 21:21
 22:3 43:4 60:4,5
 65:21 71:18 86:17
 133:3
goods 3:18
gosh 10:20 13:4
govern 131:20
governing 23:5
grade 18:7,18 19:1,10
 40:10 43:21 44:2 45:5
 55:6 69:11 70:18
 71:11 125:13,17
grades 21:20,20 22:17
grading 18:17
graft 49:7,12 52:9 59:15
grafted 48:15,21 50:8
 50:10 59:1
grafters 50:11
grafting 51:17 52:6,8
 52:13,15,16 53:11
 65:4
great 13:8 45:4 51:4
 63:10
greater 16:3 17:5 77:15
 144:17
green 91:5,7,9,14 117:9
 117:15,15,16 118:7
 151:10
grey 31:12 36:2,2,4,7
 117:8
grocery 36:20
gross 137:1,2 138:2
ground 53:6 117:16
 118:1
group 21:8,10
grow 55:19 117:5
grower 5:17,19,21,22
 7:10 14:5 18:17 27:4
 29:6,9,14,19 30:8,11
 31:15,18,21,22 32:2
 33:16 41:5 42:16
 54:14 61:8 63:22 88:7
 98:2,11 99:14,15
 100:7,12 102:19,19
 102:20,20 112:14
 122:7,17 127:16
 131:15 138:20 139:12
 141:20 142:21 146:9
 150:3,10
grower's 63:2 93:6,9,10
 97:17 150:5,5,9
growers 18:15 20:3
 36:13 50:12 54:15,17
 56:16 57:6 61:1 63:13
 82:11 83:13 84:7 89:6
 89:21 93:4 99:19
 100:1,3 102:7 104:18
 108:5 130:8 148:8
 149:6,14 150:12
growing 55:16 61:5
 90:11,17 99:20 117:3
 150:1
grown 1:5 57:5 68:13
 80:8,21
grows 121:16
growth 58:20
guarantee 16:1 18:6
guess 11:9 12:17 53:16
 81:14
guessing 56:5

Gulf 89:1
Gulfport 88:21
Guthridge 1:14,18 3:3
 4:4,16 5:12 7:3 8:11
 9:22 11:21 15:1 17:11
 24:7,20 25:3,19 30:16
 35:11 37:14 39:1,20
 43:2 45:18 46:15 47:7
 51:7 64:6 65:9,15,19
 66:2,11,20 67:1,5,19
 72:22 75:10 78:12
 79:1,16 80:14 81:12
 82:16 92:18 96:19
 99:2 100:18 102:14
 103:1,19 108:14
 113:20 114:16 115:16
 116:17 118:10 119:9
 121:6 123:3 124:21
 126:4,10,22 128:14
 129:7 130:14 132:7
 132:10 133:11,15,19
 134:1 135:9,15,18
 139:19 143:4,7,12
 144:11,21 145:12,18
 148:17 151:2,5,14
guys 87:22 105:1

H

half-million 112:3
hand 6:5 89:13
handle 46:20 47:3 58:4
 110:13 140:13,15,18
handled 33:12 39:10
handler 3:9 4:19 6:5,7
 7:14 14:5,9 25:21
 26:11,12,21 27:11
 28:6,10,19 29:7,12,15
 30:8,12 31:19 32:1,2
 32:5 34:2 35:15 41:5
 42:17 61:8,8 68:12,14
 73:15,16 85:7 111:11
 113:11 122:7,18
 123:19 124:2,4,14
 134:17,22 135:11
 138:19 139:2 140:20
 141:6 146:14
handler-cleaned
 142:21
handlers 3:17 26:18
 36:13,15,17 37:8 61:1
 82:12 83:13 85:12
 121:16 148:9
handles 30:11 106:16
handling 7:14 16:12
 27:4,5 28:3 29:10
 40:14,17 41:1,11,14
 41:18 42:4 44:1 55:3
 62:5 75:17 110:10,20
 121:22 122:3,5,16

125:19,21 136:13
 142:20 146:22 147:4
 147:7
hands 31:21
happen 23:15 60:10
 63:21
happened 96:7
happening 55:18
happens 18:9
hard 10:9 11:17 60:7
 90:13
harder 58:12
harm 63:16
harvest 91:4,6,9,17,19
 101:10
harvesting 91:1,14,15
 91:20
hate 31:12
health 38:10 105:14
 106:1
hear 106:7
heard 22:13,16 70:11
 84:6 114:13
hearing 1:3,12 3:4 81:6
 134:13 146:2 151:8
 151:11,15
held 21:10
Helen 106:8
hell 148:13,18
help 16:7 17:3 38:8,13
 85:12 120:12,17
 130:6 142:12
helpful 20:16 82:5
 135:8
helps 85:18
Heritage 1:13
hican 7:22 8:5 11:11,13
 11:14 12:2,12
hicans 8:13,21 9:5,11
 9:16 10:4,8 11:18
 48:6,8 57:17
hickory 8:22 11:15
hide 60:15
high 42:1 43:9 84:9
higher 84:9
highlight 108:2
highly 37:1
Hill 2:3 11:8,20 62:8,8
 63:20 66:15 72:8,8,21
 92:20,20 93:3,8,14,20
 94:8 118:12,19,22
 119:4,8 125:1,6,9,20
 132:9 133:13,17
 143:6 151:4
hinder 63:16
Hinman 43:3,4,4,15,19
 44:5,9,12,15,19 45:1
 45:4,9,12,16 111:16
 111:16 112:7 133:21

134:2,8,14 135:4,12
 135:17,19 136:4,7,11
 136:16 137:21 138:4
 138:15 139:8,10,17
hired 21:8
historical 88:7
historically 87:20
hold 3:18 81:5 138:6
 140:11
holiday 91:13
home 127:4
Hondo 1:12
honest 24:16
honestly 10:18 11:1,13
 16:4,9,22 20:11 21:7
 42:1 71:17 96:8
 107:16 133:6 149:2
Honor 3:7 65:11 66:10
 132:9 139:21 143:17
 144:22 145:6,7
Hopefully 40:22
hour 65:12,16,18,20
Hudson 3:8,11,14,16
 4:6,7,14,18,21 5:3,5
 5:14,21 6:17,22 7:5
 7:12,13,18,22 8:3,5
 8:13,15,18,21 9:13,20
 10:2,5,8,18 11:12
 12:1,4,7,9,13,15,18
 12:21 13:2,8,11,14,16
 13:19,21 14:3,7,10,14
 14:17,20 15:5,8,12,20
 15:22 16:8,9 17:2,4
 17:15,18 18:1 19:1,12
 21:2,4 23:1 24:4,16
 25:5,9,13,16,20 26:5
 26:6,8,10 27:6,12,15
 27:19,22 28:4,7,11,14
 28:16,22 29:4,8,13,16
 29:19,22 30:4,9,13,18
 31:7 33:2 34:6,20
 35:6,17,18,22 36:4,7
 36:14,19 37:1,6,11,12
 37:15,18,21 38:9,15
 38:18 39:3,7,22 40:4
 40:19,22 41:9,17 42:9
 42:18,22 43:14,16
 44:4,8,10,14,17,22
 45:3,7,11,14,20 46:2
 46:5,9,12,19,22 47:4
 47:9,13,16,20 48:2,7
 48:12,14,20 49:5,10
 49:17,20 50:4,13,17
 50:22 51:3,11,13,19
 51:22 53:3,8,14,19,22
 54:3,7,13 55:1,10
 56:4,9,11 57:3,11,14
 57:20 60:4 61:3,10,15
 61:20 62:17 64:1,9,12

64:17 65:6 66:4,8
 67:10,16,22 68:10,16
 68:19 69:3,10,15,19
 70:1,6,9,13,15 71:2,4
 71:6,8,16 72:19 73:9
 73:11,14,18 74:1,7,10
 74:15 75:1,6,13,22
 76:3,10,20 77:2,6,12
 78:4,7,9,20 79:2,5,10
 79:13,18,21 80:2,6,10
 80:18 81:2,8,15,19,20
 81:22 82:4,13,18,22
 83:1,3,7,9,15,20
 84:17,17,18 85:3,11
 85:14 86:12,16,22
 87:4 88:9,16 89:5,8
 89:20,22 90:8,13,18
 91:3 92:3,9,14,20
 93:1,5,13,18 94:2,12
 94:13,18 95:1,9,11,18
 95:21 96:16 97:1,3,6
 97:9,21 98:8,12,16,21
 99:6,10,17,21 100:5
 100:10,15,21 101:4,8
 101:11,14,17 102:12
 102:17,22 103:2,6,12
 103:16,21 104:3,6,11
 104:15,21 105:13,19
 106:6,21 107:1,15,18
 107:19 108:9,10,11
 108:18 109:4,14,18
 109:22 110:4,8,15,21
 111:8,13,20 112:11
 112:15,17,20 113:2,4
 113:8,13,18,22 114:4
 114:12,18 115:1,4,8
 115:10,18,22 116:3,7
 116:9,21 117:3
 118:17,20 119:1,6,11
 119:16,19 120:1,3,13
 120:20 121:2,10
 122:13,19,22 123:10
 123:13,16,22 124:6,9
 124:12,18 125:3,7,10
 126:2,11,15,20 127:5
 127:8,11,13 128:2,7,9
 128:19,22 129:4,9,13
 129:16,20,22 130:7
 130:11,16,21 131:4,7
 131:10,19 132:3,11
 132:15,18,22 133:3
 135:3 136:3,6,10,15
 137:1 138:1,10 139:6
 139:9,15 140:1,7,22
 141:8,15 142:13,15
 143:1,10 144:2,4,20
 145:8,16,20 146:3,7
 146:12,19 147:4,9,13
 148:12,16,21 149:1,2

149:21 150:19,22
Hudson's 145:10
huge 16:4
hull 11:17
hulls 117:16
human 23:22
humid 87:11 90:19,21
hundred 84:12
hurricanes 117:20
hypothetical 137:3

I

IBM 148:3
idea 6:15 21:21 39:3
65:22 68:1
ideas 35:14,21 36:10
identification 71:13
identified 9:8 68:3
69:22 104:17 105:4
116:10 120:22 126:2
identify 9:4 61:9 69:1
72:6 85:13 99:19
100:3
identifying 83:22
illinoisensis 48:3
imagine 6:19 59:6
immature 117:22
immediate 33:5
impact 123:7
importance 74:14,15
important 5:19 6:20 7:1
15:14 20:7 31:4 39:4
39:16 42:20 44:20
47:2 64:14,18 71:17
76:7 99:18 100:2
122:20 148:1,4,5
importantly 38:15
149:15
impossible 16:6
impression 15:10
improve 35:7 147:2
improved 48:18,20 49:1
49:3,15,18 50:15,20
54:6,10 57:19 58:3,5
58:9,16 59:3,13,16,20
61:6,12,14 66:7 68:12
73:8,16,21 75:5 77:16
84:8 137:5
in-shell 13:14 14:2,7,15
40:9,9 106:18 107:5
121:15,21 124:16
125:11,12 133:1
142:19
inbound 141:13
incentive 73:13
include 31:5 42:13
70:22 74:20 76:5 94:3
150:2

included 11:5 74:11
95:7 107:20 140:14
includes 48:4 76:9
including 56:6 91:8
95:4 150:11
increase 16:14 61:22
77:19 146:6 147:5
149:13
increased 16:10
Independence 2:4,9
independent 21:8
111:10
indicated 84:7 90:9
116:12
indicating 32:10
indigenous 10:11 58:1
industry 3:10,17 4:20
5:1 7:21 10:3 13:15
15:7,10,15 16:5,8,10
16:15,19 17:1 20:22
21:3 26:7,11 29:3
36:12 37:17 38:8 46:4
46:7 47:15,18 48:11
54:5 55:4,7,11,15
56:3 57:9,12 61:4
63:17 73:7,22 75:7
76:22 77:22 80:1,4
81:21 83:2,5,11 87:19
89:12,15 96:17 97:5
104:5,9 105:14
106:14 108:3 109:7
109:12 115:3,6,11
116:2,5 118:5 119:3
119:18,21 120:5,12
124:10 127:10,14
128:21 129:2,15,18
130:6,18 132:17,20
147:15,21 148:7
149:3,5,20
industry's 75:15
industry-wide 38:3
inferior 76:6
influence 63:12,12 94:6
information 5:7 17:5
38:12,19 39:5 42:13
56:8 83:16 130:2,5
132:2 148:4 149:10
informed 38:10
ingredient 56:16
inherent 97:14
initially 139:1
input 106:14
inputs 87:12,13
inside 32:4 92:12
117:10
insinuate 36:5
inspected 17:21
inspection 15:4,13,18
16:6 20:22 22:16

24:13 25:1 30:1 70:22
71:14
inspections 15:11
17:16,22
inspects 24:14
instance 68:7
instances 21:18 142:3
intend 94:21 134:18
intent 76:22 77:22
101:1,16 102:9
110:17 111:5 138:16
intention 25:11
intentional 9:19
intentions 91:10
inter-handler 33:15
35:2,19
inter-transfer 34:9
interest 28:20
interested 149:15
interests 113:17
interfere 62:4
interpretation 21:7
intimate 89:11
introduced 63:8
inventories 148:1
inventory 3:9,19,20
4:10 7:15 127:6
131:15 140:12 141:3
141:19
involved 70:4 94:11
150:13
involves 4:12
isolating 50:1
issue 16:2,4 18:10
20:11 34:15 63:17
70:2 82:9 92:6 98:5
99:11 107:21 141:17
issues 7:15 145:6
Ivey 92:21

J

J 2:15
Jen 5:13 39:2 67:21
95:12 100:20 110:7
112:12
Jennie 2:22 22:11
54:22
job 86:17
Judge 1:14,18 3:3 4:4
4:16 5:12 7:3 8:11
9:22 11:21 15:1 17:11
24:7,20,22 25:3,19
30:16 35:11 37:14
39:1,20 43:2 45:18
46:15 47:7 51:7 64:6
65:9,15,19 66:2,11,20
67:1,5,19 72:22 75:10
78:12 79:1,16 80:14
81:12 82:16 92:18

96:19 99:2 100:18
102:14 103:1,19
108:14 113:20 114:16
115:16 116:17 118:10
119:9 121:6 123:3
124:21 126:4,8,10,22
128:14 129:7 130:14
132:7,10 133:11,15
133:19 134:1 135:9
135:15,18 139:19
143:4,7,12 144:11,21
145:12,18 148:17
151:2,5,14
judgment 144:7
July 1:10 3:5

K

KANSAS 1:6
Katy 2:21 64:8
keep 9:5 34:18 38:10,19
52:14
kernel 119:5,5,7,7
Kevin 92:21 93:2
kind 117:12
kinds 32:13
King 2:16
know 6:21 9:7 10:17
13:5 24:17,18 26:3,10
36:16 39:7,9 43:12
47:11 54:14 56:14
58:2,4 60:8,10,13,15
60:19 61:4,5,18 64:2
64:22 70:4 71:18 72:4
74:16 81:9,18 82:20
83:16 84:19 88:18
90:1 93:1 97:2 104:22
104:22 105:3 107:3
114:1,2,5 136:17
138:3,18 142:5
knowing 39:4 105:13
knowledge 24:3,4
56:13 64:10 65:3 93:8
94:16
knows 24:11

L

L 2:16
lab 137:4
labeling 69:9
labor 90:13 137:10
labor-intensive 54:11
lading 69:7
lady 151:10
land 87:15
language 36:2 64:3
76:5
large 35:21 36:16 60:6
82:10 95:20 102:19

102:20 108:6
larger 26:16 31:5 34:2
 45:14 137:22
Las 1:13 3:5 96:3,4
late 91:16,16 117:21
Law 1:14,18
lays 82:6
lead 33:15 80:22
leading 72:11
leads 90:4
leakage 32:15,15
leave 145:9
leaves 91:18
leaving 31:17
led 62:1 150:18
left 67:5
legal 43:17
lends 52:6
lessen 34:3
let's 25:21 40:7 47:21
 47:22 48:9,17 63:5,9
 80:19 104:12 106:2
 133:15 137:3
level 6:4 22:18 57:21
 149:16
levels 20:10
liability 18:4
licensed 61:22
licensing 62:3
limit 55:19 78:2
limiting 63:1
line 106:11
lines 142:17
list 48:15 49:1,2 50:8,19
 56:18 57:2 58:21
 61:12 67:11 72:13
 79:20
listed 49:15 69:6 75:19
listening 106:14 148:19
little 5:16 30:19 51:17
 53:12 55:2 56:8 90:22
 127:3 130:17
living 105:10
LLP 2:16
load 18:3 60:11
loads 42:1 70:20,21
 96:2
localize 16:16
located 90:1
location 60:18,18
long 58:13 147:21
longer 31:22
Looft 2:21 64:8,8,13
 65:3,8
look 7:7,8,9 15:6 40:5
 45:22 47:10,11 48:22
 55:1,5 59:19 62:8
 67:14 71:15 76:12
 79:3,20 81:17 82:19

85:15,21 86:2 90:6
 92:5,7 95:14 96:22
 101:22 111:2 114:21
 115:20 116:22 119:12
 122:6 127:5,7 128:5
 128:18 129:11 132:14
 140:12 141:4
looked 61:20
looking 10:20 42:12
 52:11 60:12 68:15
 69:1,17 75:13 86:8
 100:21 102:6 122:4
looks 117:1
loosely 21:10
lot 21:22 41:11,15
 55:16,16 68:8 87:11
 89:3,3 90:13,14,14,14
 90:15 91:9 118:7
 137:9
lots 43:12 44:20 133:4
LOUISIANA 1:6
love 11:14
low 13:3 23:2
lower 45:15 109:11
lucrative 65:7

M

M 2:22
ma'am 67:16
machinery 105:2,16
main 58:18
maintain 32:13 34:13
 54:5 64:15 108:1
majority 57:6 63:22
 64:2 72:14,15,17 82:2
 92:6,13 96:1 110:2
making 5:20
mandated 18:14 19:4
margin 112:4 136:6,7
 136:14 137:12 138:17
 139:11,16
margins 107:3
Maritime 1:19 24:10
market 14:13 23:3,9,12
 42:11 44:20 68:2,21
 70:5,11 95:20,20 96:9
 96:16 99:22 122:10
 130:4 147:17
market's 41:7
marketer 32:1
marketing 1:5 3:4 5:6,6
 5:15,20 8:8 9:11
 10:17 11:6 20:6 37:22
 38:6 55:14 79:12
 91:10 95:17 96:12,14
 99:8,8 103:7,11 108:2
 120:6 126:13 146:1,5
 146:10,11,17,18
 147:12 148:6,11
markets 14:2,16 23:14
 149:10
matched 18:12
math 107:2,6
matter 23:3 64:22 67:2
 133:14 151:17
matures 117:11
meal 23:13 77:13
 118:15,17,21
mean 13:2 32:16 36:5,7
 39:21 50:4 54:15 58:1
 75:21 78:18 87:21
 89:22 91:17 96:7
 104:21 120:22 125:12
 128:7 144:13
means 40:9 51:18 77:1
 121:14 125:16 140:11
 142:18
measurable 11:10
measure 99:16 100:7
 101:5
measurements 149:9
measures 10:15
meat 23:11 60:20 112:5
 138:13
meats 112:3
medium 44:11
meet 41:16 59:12
 100:13
meeting 40:9 98:11
 125:12,17
meets 44:2 71:9 107:8
Melissa 2:21 4:5 8:12
 17:13 24:21 30:17
 40:2 46:17 51:9 67:8
 80:16 99:4 108:16
 112:9 116:19 121:8
 140:6
member 150:4,18
membership 92:12
mention 17:15
mentioned 16:12 17:5
 25:5 31:2 49:22 57:15
 61:17 64:9 90:19 99:6
 107:22 112:13
merchant 114:3
merchantable 37:16
 38:4 39:13 40:8 41:20
 42:2,6,15 121:15,19
 121:21 122:4,15
 123:7 124:3,16 125:2
 125:10,11,15,16
 126:1 142:19
merchants 124:4
merely 27:17
met 114:12
Mexico 1:7,13,13 93:12
 96:5
Michelle 75:11

mill 23:21
million 53:8 106:5,17
 107:7,8,9,14 111:21
 111:22 135:6 136:19
 137:8,22
mind 55:1
minimum 22:17 24:3,5
 37:22 40:10 125:13
 125:17
minimums 22:21
minute 26:1
minutes 66:20,21 67:1
 145:8
mis-spoke 67:16
missed 118:13
mission 150:16,17
MISSISSIPPI 1:7
MISSOURI 1:6
mistake 112:21
misunderstood 19:8
modern 120:19
modified 51:13
modify 67:11
moisture 18:8 19:4,4
 42:1 43:9 70:18
moment 15:6 40:5
 45:22 74:5 79:19 97:1
 104:1 114:20 115:20
 119:13 127:7 128:4
 128:17 129:11 132:13
moonlighting 105:2
morning 4:6,7 43:5
 140:5
move 68:2,11 139:22
moved 33:16
moving 68:20
multi-tier 82:10
multiple 97:18 136:21
Museum 1:13
MYERS 2:16

N

N.E 2:17
name 43:17
names 58:21
narrow 58:14
national 22:18 88:20
 95:20
native 9:17 10:11 48:9
 48:16 54:11 57:19,22
 58:1,8,22 59:2 66:6
 73:7,21 75:4
natives 58:11 60:13
 61:6 68:5 73:17
naturally 9:17
near 57:9
nearly 16:6
necessarily 53:6

necessary 5:14 37:2,20
74:9 77:4 90:12
need 5:8 9:11 18:6
20:12 31:18 34:11,18
35:18 38:3 50:19
91:11 92:12 109:1
120:4,11 126:17
130:2 131:14 141:14
149:4,9,9,12,15
needed 15:18,21,22
19:17 79:6
needs 22:5 100:13
127:22 145:9 149:3
negative 77:7
never 28:17,19 55:13
73:15,16 96:10
new 1:7,12,13 49:18
50:5,15 52:18 62:13
76:15 78:3 93:11
96:10 105:14
nice 52:5 144:15
night 143:9,11
nine 134:4,7,8,16
nominations 79:7
non 41:19 48:22
non-merchantable 43:8
non-payment 18:5
normal 144:9
normally 143:16,18
NORTH 1:7
note 22:18
novelty 105:1
November 91:16
number 12:8 13:1 16:1
19:3 39:4 42:16 45:7
45:8 56:1 59:6 61:13
84:20 112:1 114:3
124:2 134:15
numbers 5:18 97:15,15
110:9
nurseries 54:15
nursery 54:16,17
nut 10:9 27:6 45:15
49:8,10 54:2 58:18
59:8 60:19 68:20 69:1
74:12 117:13 137:7,8
137:11
nutmeat 43:17
nuts 26:11 33:5,7 41:20
45:8 58:7 62:4 69:18
91:6,8,9 106:18
117:21 127:19 149:18

O

obligated 32:11
obligation 36:8
obsolete 62:11,14
76:16 78:3

obtains 28:17
obviously 9:9 21:15
32:9 44:17 62:1 88:3
117:4
occasion 64:5 69:4
occur 16:17 17:16 29:2
117:19 137:17 142:3
occurred 21:18
occurrence 97:14
occurring 63:19
occurs 64:5
October 91:4
office 2:4,9 131:19
oil 25:7 77:12
oiling 23:21
okay 7:2 13:10 30:2,14
36:15 42:3,10 43:19
45:9,16 47:13,21
51:19 53:10 54:4,20
56:5 59:22 65:19
66:19,20 70:19 72:7
74:7,13 77:5,21 78:10
81:11,19 82:22 85:5
85:11 95:2,10 97:3
99:13 101:7,12,15
104:3 111:9,14,20
112:21 115:1,22
119:1,16 127:8
128:19 129:13 131:11
132:15 134:1,2
138:16 139:8,17
141:1,9,19,21 142:13
151:14

Oklahoma 1:7 84:11
88:1

older 49:22 105:2
once 21:20 23:16 68:11
137:12

One-hundred-thousa...
12:11

one-million 104:16,18
105:8,10 106:3,12,17
109:10 113:7 114:1
135:17,19 136:1,22
137:17

one-tenth 10:21
open 11:2 20:21 117:12

openness 64:22

operate 120:18

operation 33:8 136:13
136:13

opinion 6:20 11:9,13
33:21 57:7 64:13 76:6
96:11

opportunities 149:11
opportunity 22:3 38:12
39:17 118:13 120:16
141:19

opposed 50:5 52:19

91:14 94:7
opposition 114:10,13
option 21:13 77:3
order 1:5,12 5:6 8:8
9:12 10:17 11:6 25:15
27:21 30:21 31:4 33:4
33:19 37:22 38:6
59:18 64:15 67:11
85:20 91:13 95:14,17
96:12,16 99:8,9,12,22
103:7,9,11 108:2
120:6 126:13 131:6
146:1,5,10,11,17,18
147:12 148:6,11
149:5

order's 147:18

orders 9:19 79:12 96:14

Oregon 80:21

organisms 51:14

organization 150:1

organizations 149:20
150:11,14,17

outbound 141:12,13

outbreak 16:20

outlined 149:13

outreach 114:7

outside 29:11,22 30:6
80:8

outweigh 147:10

over-state 97:15

overall 34:3 49:13
148:10

overhead 121:11

ownership 28:8 82:5

owns 28:20

P

P-R-O-C-E-E-D-I-N-G-S
3:1

pack 45:22 46:19

packaging 147:2

packer 26:15

Page 134:4,7,8,16

paid 28:13,19

Palma 134:22 138:17
146:2

Palma's 84:22 134:3
146:5

paper 34:21

papers 32:10

paperwork 32:9

paragraph 16:13 40:7
73:5 76:12 101:22
102:5 116:11,12
120:10 125:15 127:21
128:1

parent 50:2

parody 94:3

part 5:7 15:14 20:13
21:6 24:19 26:13 31:5
31:9 44:20 45:2 46:20
57:22 58:11 61:15
71:18 81:22 85:19
93:16 94:5,6 99:16
101:10 119:6 120:9
139:4 140:17

partial 101:6

participant 148:8
151:12

participation 97:10

particular 56:22 132:1

particularly 5:19 10:11
84:10 87:15 117:14

parties 149:14

parts 119:7 143:20

party 18:19 28:6

Paso 93:16

pass 34:1 92:3

patent 62:3

patented 49:16 61:18
61:19,21 64:10

patenting 64:14

PAUL 2:15

Pawnee 52:11,13,16,19
52:20 53:1,2,6,12,21
53:21 54:2

pawning 53:5

pay 33:7 37:4 73:16

paying 32:8 36:8

payment 18:5

pays 35:15

Peachtree 2:17

peaks 87:8

pecan 8:7 10:4,13 11:7
11:11,14 12:5 13:8,14
16:19 20:3 23:3,18
25:6 30:21 31:4 32:20
33:19 47:22 48:2,5
50:12 52:5,21 53:5
54:15 55:14 56:22
57:4 58:8 59:9,10,11
62:6 63:17 70:11 73:7
73:22 74:18 76:18
77:1,12 93:4,6,9,10
95:20 116:10 117:6,8
117:8,10,11,16
118:15,17 125:2,10
125:11 126:1 143:13
143:15 144:8,14,14
144:18,18 146:6
147:3,15,18 148:2
149:14 150:2,4,5,8,12

pecans 1:5 3:5 8:7
10:16 11:2 13:22 14:2
14:4,16 16:11 18:8,9
19:3 21:22 23:5,19,22
25:11 27:3,17 28:17

28:20 29:10 30:11
 31:14 37:17 38:1 40:9
 40:9 41:12 42:6,12,16
 43:17 47:11 49:12
 50:6 52:2 53:2 54:10
 54:12 57:15,16,19,19
 57:22 59:4,4 60:6,11
 61:9 66:5,6,7 67:12
 68:2,8 73:8 74:4 75:7
 75:14,18 76:6,9 77:12
 78:2 80:8,20 85:6,16
 85:22 86:14,18 88:18
 90:2,12 91:1,12 92:1
 95:7 96:2,4,5 97:13
 99:20 107:4 112:20
 113:5,10,12 114:20
 116:22 117:4,7,15
 121:15,21 122:4,15
 123:7 124:16 125:12
 125:12,16,17 126:13
 127:14 130:1 137:15
 138:10 141:7,12
 142:19,21 147:2
 148:11
peers 93:15
people 36:17 59:6,7
 73:22 94:10 114:8
percent 10:21 11:17
 18:7 44:2 85:22 86:3
 86:4,4,4,7,7,7,8,10,10
 86:10,11 91:8 107:4,7
 112:1 136:2
percentage 9:3,3 19:2
 85:16
period 97:12 100:9,22
 102:7,10,17
periods 98:7
permissible 145:10
person 28:13 29:10
 73:6 79:3
personal 18:2 55:12
personally 62:19
perspective 146:15
pesticides 87:14
phase 41:18,19,19
phases 56:12
phonetic 63:10
phrases 43:7 44:16
pick 58:6
piece 53:12,20 65:1
 118:18 119:2
pieces 45:8 119:5,6
place 10:15 31:6 32:18
 37:7 41:18 132:4
placed 127:14 141:11
plains 60:14
plan 120:19
plans 130:10
plant 6:8 32:3 49:10

54:18 58:16 59:8,9,11
 59:13 63:3
planted 9:18 49:3 59:4
 144:15
planting 49:8 145:5
play 149:16
playing 149:16
please 8:20 45:13 74:4
 79:19 81:16 82:19
 92:7 96:22 104:1
 117:2 118:16 125:6,9
 129:10
point 9:6 20:11 23:2,17
 32:6,15 33:11,13 71:5
 76:11 109:3,15 123:6
 142:1 145:13
policies 20:2
policy 5:7,15,20
pollen 50:1 63:11
pool 63:8
portion 86:1 89:10
position 22:7
positive 77:8
possibility 11:4
possible 55:3 56:21
possibly 36:10 136:20
potential 77:7 80:22
 96:8
potentially 20:22 75:17
 109:2
pound 45:8 84:4 106:12
 107:4 109:10 112:5
 113:7 114:1 135:20
pounds 84:9,13,20 85:1
 104:16,19 105:8,10
 106:3,5,17 107:7,8
 110:14 111:21,22
 112:3,5 135:6 136:1
 136:22 137:17
pours 33:6
pquiros@kslaw.com
 2:19
practical 95:15 96:12
 100:21 131:12
practice 36:12 43:11
 127:14 131:15
practices 3:17 55:8
 87:7 88:5,11 115:11
prefer 52:4 91:16
preponderance 75:7
Present 2:20
president 93:4,6 150:4
 150:7,7,8
presiding 1:14
pretty 58:4 86:17 107:2
prevalent 118:5,6
prevent 35:3
previous 74:21 133:22
 138:18

price 16:14 134:17,22
 135:1 137:8 138:20
 147:5
prices 73:16 109:9
 134:20 137:9 138:8
 146:6 147:3,22 149:8
pricing 120:18 130:9
primary 28:17
Principally 14:10 15:13
principles 35:15
private 93:15
probably 10:21 12:15
 22:6 24:11 53:16
 56:12 62:20 118:6
 144:17
problem 11:16 16:16
 34:16 94:9 98:19
problems 98:18
procedure 26:13 67:15
 81:9
procedures 82:7 132:1
 132:4
proceed 3:6 4:17
process 3:18 22:5
 26:13 31:10 53:11
 97:7 117:3 138:12,14
 141:12 142:2
processed 41:15
 137:12 141:20
processing 137:10
produced 8:13 85:6,16
 85:22 86:14,19
 137:18
produces 95:6
producing 54:6 60:6
product 16:12 17:17,20
 18:10 29:18 33:14
 38:20 41:4,6,15 42:7
 69:8 82:6 130:20
 133:7 142:2 146:22
 147:7,18
production 4:20 5:18
 5:22,22 6:3,6,6 7:11
 7:14 24:15 27:4 29:11
 30:6 31:18 32:4 42:17
 77:9 79:19 81:6 83:22
 84:3,21 85:1 86:1
 87:7 90:6,6 95:3,5,8
 97:11 100:1 102:8
 122:7,10,18 144:16
production/handler
 7:11
products 24:14 31:20
 39:9 149:14
profit 97:16 137:16
program 25:10 31:1,6
 75:16
programs 49:21,22
project 28:8

projected 40:6
projecting 80:19
projection 42:14
proliferous 52:3
promulgate 59:16
promulgated 9:18
proof 126:7
properly 32:13
property 82:12
proponent's 116:15
proponents 2:14 94:17
 94:19
proposal 67:13
proposed 1:5 3:4 27:3
 27:21 29:11 110:12
 122:21 126:13 146:11
 148:6 150:15
proprietary 6:2 28:20
 31:20 81:16
protected 65:2
provide 104:13
provided 104:9,19
provides 27:18 29:6
provision 34:9 37:7
 66:5
provisions 10:15
public 1:3 145:19
publication 147:19
pull 21:12,13,15,20
 62:20
pulled 21:19 22:2
purchase 3:18 137:8
purchased 6:6 96:2
purchasing 137:6
purpose 10:22 11:6
 26:12 51:1 99:7
 100:22
purposes 20:6 74:16
 130:3,22 131:5
pursuant 40:11 125:14
 125:18
push 94:9
put 10:16 23:22 27:7
 31:6 32:17 34:10 36:9
 36:10 52:13 61:12
 71:21 105:3 111:4
 122:10 123:19 124:5
 127:19 131:2 134:3
 140:19
puts 16:22
putting 7:6 95:13

Q

qualification 100:8
 104:13
qualified 100:3
qualifies 99:14
qualify 18:7 111:6
 113:17

qualities 43:22 44:7
59:12 68:14
quality 16:11,16 18:11
23:10 38:12 42:5 44:7
44:8 45:4 74:12 76:6
147:2
quantities 138:14
quantity 121:14 142:18
147:1
question 11:8,9 19:8,13
21:19 24:8 66:16 67:7
72:9,9 76:1,18 90:5
91:12 92:2,8 95:3
102:16 110:22 112:12
118:12 121:5 122:2
123:5 126:5,9 128:13
134:2,19 135:4,21
140:16 141:4,16
143:8
questioning 65:13 66:1
questions 4:2,4,16 5:11
5:12 7:4 8:9,11 10:1
11:22 14:21 15:1 17:9
17:12 22:10 24:8 26:3
30:15,16 35:10,12
37:13 38:22 39:1 43:3
45:17,19 46:13,16
47:6,8 51:5,8 64:7
65:10 66:11 67:18,20
67:22 73:1,3 74:6
75:8,10 78:11,13,22
79:14,17 80:12,15
81:13 82:14,17 92:16
92:18 96:20 98:22
99:3 100:17,19
102:15 103:18,20
104:2 108:12,15
110:6 111:15 112:8
113:21 114:17,22
115:14,17 116:14,18
118:9,11 119:10,14
121:4,7 123:2,4
124:20,22 127:1
128:12,15 129:5,8
130:12,15 132:8
133:9,12,13,16,20
139:18,20 140:3,9
143:3,5 145:8,14,15
150:22 151:3,4,5
quick 22:12 32:19 66:3
72:9 128:4
Quiros 2:15 3:7,12,15
4:1,18,22 5:4,10 7:4,5
7:13,19 8:1,4,9 11:22
12:1,5,8,11,14,17,19
12:22 13:6,10,13,17
13:20 14:1,4,8,12,15
14:18,21 15:2,3,9,17
15:21 16:7 17:2,8

25:19,20 26:6,9 27:2
27:10,13,16,20 28:2,5
28:9,12,15,18 29:1,6
29:9,14,17,20 30:2,5
30:10,14 35:12,13,18
36:1,6,11,15,20 37:4
37:8,12,15,19 38:7,13
38:17,21 45:19,20
46:3,6,10,13 47:8,9
47:14,17,21 48:6,9,13
48:17,22 49:6,14,18
50:3,8,14,18 51:1,4
65:11,17,21 66:9,18
66:22 73:1,2,10,12,15
73:19 74:2,8,13,20
75:2,8 78:13,14,21
79:1,2,8,11,14,18,22
80:3,7,12 81:14,15,20
82:3,13,17,18 83:1,4
83:8,12,18 84:16,18
85:5,12 86:12,20 87:2
88:5,13 89:5,18,21
90:4,11,16,22 92:2,15
96:20,21 97:4,8,20
98:6,10,14,21 102:1
103:1,2,10,13,17,21
104:4,7,12,20 105:13
106:2,16,22 107:13
107:17 108:8,11
114:17,18 115:2,5,9
115:13,17,18 116:1,4
116:8,14 119:10,11
119:17,20 120:2,11
120:20 121:3 123:4
123:10,18 124:1,7,10
124:13,19 126:8,11
126:16,21 127:1,2,9
127:12 128:2,10,15
128:16,20 129:1,5,8,9
129:14,17,21 130:5
130:11 132:10,11,16
132:19 133:1,8 134:7
134:9 135:11 139:19
139:20 143:15 144:3
144:5,22 145:20
146:4,8,14,21 147:6
147:11 148:10,14,19
148:22 149:19 150:15
150:21
quite 10:18,22 11:12
16:3,9,22 21:4 29:4
63:18 64:17 71:16
72:6 87:5,18,19 88:2
88:12 89:14 90:20
96:7 107:16,16 120:3
133:5 137:22 147:19
149:2

R

rain 90:20
Ranch 1:13
Randy 35:13 78:14
range 84:5
ranting 120:13
raving 120:14
raw 44:17,18
re-allocate 92:11
re-apportion 92:11
re-district 92:10
reaches 23:16
read 20:18 26:4,5 40:8
74:5 76:13 78:14
81:17 97:1 119:13
121:13 125:4 134:15
reads 108:20 140:11
ready 3:6 91:12
real 7:8 25:1,1,5,7
really 6:20 20:8 22:2
25:2 52:5 55:13 56:14
57:21 60:15 62:21
63:9 110:21
reason 6:11 18:4 32:17
38:17 56:18 94:15
reasonable 97:22
reasons 16:1 56:6
69:17
recall 72:18,19 84:21
94:12 110:11 121:20
receipts 34:19
received 134:18 135:1
receives 139:3
receiving 26:21 33:14
recess 151:7
recessed 151:16
recognize 3:17 62:10
76:15 82:12 130:1
recognized 77:18
recommend 98:15
108:20
recommendation
109:16
recommendations
131:22
recommended 77:17
record 3:3 20:18 40:8
67:3 76:13 121:13
140:10 151:16,18
recording 34:21
records 34:13 69:13,14
redneck 148:13
refer 3:21 28:7 46:21
110:8 112:11 125:3
127:20
reference 128:3
referenda 101:21
referred 5:9
referring 134:16
refers 120:9 141:2

refining 78:2,6
reflect 127:13
reflected 69:13
reflects 115:10
refrigerator 52:14
53:17
reg 143:14
regard 71:10,10 73:21
84:20 86:13 89:6,7
103:14 126:12 139:21
142:15 144:8 145:5
regarding 3:4 4:9 147:1
regardless 55:9 62:16
regards 15:16 17:6,7
18:5,6,11,13 21:19
23:8,9 38:9,16,20
55:10 58:6,13 72:4
85:15 86:18 87:6,9,14
87:15 93:19 105:22
114:13 120:17 125:11
130:9 149:10
REGINA 2:16
region 68:6 83:14,18
84:10 85:6,7,17,22
86:5,8,15,19 88:1,6
88:10,10 89:10 91:3
93:17,22 94:1,5,7
96:15 108:8,10 145:2
regional 133:5
regionally 68:5
regions 73:10 82:19
84:1,15 85:2 86:17
87:3,5,18 88:4,6,12
89:19 90:16 91:2
92:10,12 94:20 96:13
regrettably 21:17
regular 56:16
regulate 50:15 125:19
regulating 23:16
125:15,21
regulation 18:14
125:17
regulations 23:5 40:10
40:14,18 41:2,11,14
41:17 42:5 75:17
105:22 122:1,3,5,16
123:19 124:3,5
125:13,21 142:20
147:5
relate 45:9 105:6
134:19
related 30:21 135:5
relates 47:2 95:3
135:10,15
relating 111:18
relation 43:8 138:6
relationship 40:14
89:11,14
relevance 30:22

relevant 99:9
remember 145:13
remembering 24:9
removed 41:21 43:12
 57:2 81:7
repeat 111:19
rephrase 122:8
report 5:8 84:22 127:22
reported 131:17
reporting 30:2 34:3
 131:20
represent 94:21 134:22
representation 110:18
 111:6 113:16 136:21
representative 49:2
 99:16 100:9,22 102:7
 102:10 111:18 134:21
 138:8,17
representatives 133:5
represented 108:6
 138:20
representing 113:17
 136:12
represents 139:11
require 67:13 71:21
 72:13 87:13 105:15
 110:2
required 76:19 94:3
 103:6 145:13
requirement 34:4 81:5
requirements 19:20
 24:3,5 44:1 105:15
 110:10
requires 87:11 95:14
 97:18 102:4 138:13
requiring 72:17
resembles 10:12
respective 6:9
respond 81:9 151:13
response 16:19 91:11
 145:17
responsibility 34:13
responsible 26:22 28:5
 29:18,21 32:8
rest 20:13 148:15
restriction 104:14
result 63:21 106:13
resume 151:8
resumed 67:3
review 26:1 47:12 104:1
 109:12
reviewed 56:20 100:12
 103:11
revise 81:6
revising 81:1
revisit 133:22 135:6
right 15:11 24:2 28:21
 36:19 41:6 44:14
 72:21 77:11 88:13

95:8 101:8,14,17
 102:5 123:12 124:12
 125:21 131:10 137:22
 138:4 151:8,14,15
rights 6:2 28:17 82:12
Rio 1:12
risk 17:1
river 144:15
Road 1:13
roast 141:5
roaster 26:15
Roasters 20:5
roasting 141:6
Room 1:12 2:5,10
root 52:1,3,4,6,17 53:18
rough 148:12
roughly 86:20,22
round 10:9,13 60:7
route 88:14
rows 144:15
rule 45:15 70:17 108:21
RUPA 2:8
rupa.chilukuri@ogc....
 2:12
rural 34:11

S

safety 16:2,11,17 17:7
 38:10,16 105:15
sake 94:3
sale 23:5,16 61:21
 88:14 121:17 122:11
 142:22
sales 27:21 28:12 29:2
salmonella 16:20
sample 21:22 22:2
 135:5
samples 21:12,13,16
 21:19
saying 40:12 137:11
 138:18
says 20:18 62:9 76:14
 78:16 143:16
scenario 17:20 80:22
 138:3
schedule 52:8
Schmaedick 2:21 4:5,6
 4:8,15 8:12,12,16,19
 9:10,15,21 17:13,13
 17:19 18:20 19:7
 20:15 21:3 22:9 24:21
 24:21 25:4,10,14,17
 30:17,17 32:22 33:18
 34:17 35:1,9 40:2,2
 40:20 41:1,10 42:3,10
 42:19 43:1 46:17,17
 47:1,5 51:9,9,15,20
 53:1,4,10,15,20 54:1
 54:4,9,20 67:7,8,9,17

75:11,11 76:2,4,11,21
 77:5,11,21 78:5,8,10
 80:16,16 81:4,11 99:4
 99:4,13,18 100:2,6,11
 100:16 108:16,16
 109:6,15,19 110:1,5
 112:9,9,16,19,21
 113:3,6,9,15,19
 116:19,19 118:8
 121:8,8 122:14,20
 123:1 140:4,6 141:1,9
 142:7,14 143:2
science 63:3
scientist 49:7
scientists 64:19
scope 9:11
screen 26:2 40:6
seamless 37:11
season 91:1,13 117:22
seats 111:7
second 99:10 150:6
Secretary 20:20 22:6
 37:22 62:10 64:4
 76:15 94:14 102:4,6
 103:4 108:22 120:8
 127:22
Secretary's 103:8
section 3:9,21,21 4:12
 4:19 5:7,15 7:6,16,20
 13:13 15:3 20:19
 25:21 27:1,13 28:8
 35:14 37:16 38:6
 45:22 46:21 47:10
 48:18 49:15 50:10
 67:14 74:3 79:3,7,18
 81:1,16 82:19 83:8
 85:19 96:22 99:11
 101:19,20 102:11
 103:3,15,22 114:20
 115:19 116:11,13
 119:12 120:9,10,14
 120:21 125:4,11,14
 125:18 126:3 127:6
 128:1,3,7,16 129:10
 132:12 147:1
sections 39:16
see 9:10 16:3 34:6
 36:22 55:17 62:21,22
 63:18 68:8 70:1,2
 72:12 76:4 86:3,10
 102:3 117:8 134:10
 134:11 135:2,3
seed 59:5
seeding 52:22
seedling 9:7 48:10,16
 49:11 58:8,19 59:2,5
 59:20 60:9 66:6 73:8
 73:21 75:5
seedlings 9:1,8 58:12

58:17 61:6 71:19
 73:17
seeds 10:13 52:19
seeking 96:5
seen 55:13
selected 58:17,19
 59:14
selections 56:15 58:22
 58:22
sell 23:7 31:14 88:19
seller 28:15 68:15
 135:13
seller's 69:13
selling 61:8 127:15
send 18:8
sense 100:21
separate 9:5
series 67:22
seriousness 149:1
serve 57:8,11
served 150:6
service 15:4,14,18
 18:17 20:19 21:1
 24:13 27:18 70:22
services 25:1 29:7
set 19:10 37:22 55:5
 72:5 87:3 133:2
settled 98:9
shades 44:18
shake 91:7
shan 10:10
shape 58:13
shaped 117:15
shaping 118:7
SHARROW 134:12
shell 10:13 11:16 13:22
 14:2,10,16 26:14
 105:7,7 111:21 112:1
 112:16,20 113:10
 117:9,11 125:16,16
 133:2 138:12,13
 141:6
shell-out 136:2
shelled 38:1 112:5
 114:20 121:15,22
 125:12,15 133:7
 142:19
sheller 104:1,17,20,21
 105:5,7,9,18 106:16
 108:19 110:19 111:19
 112:13,18 113:17
 127:16 135:14 137:15
 139:3,13
shellers 89:7,18 90:1,3
 106:9 107:21 108:5,7
 111:2 114:2,9 130:8
 148:8 149:7
shelling 88:19 89:12,15
 90:2 105:10,20,21

106:14 107:4 136:13
137:4,5,17 138:11
141:6 149:4
shells 113:1,5
shift 30:19
shipping 18:13 30:6
short 65:22 111:17
show 69:21
side 77:7,8,9
signed 19:22 20:3 21:6
significant 32:15 33:12
39:18,19 80:7 85:17
90:21
similar 9:16 10:10
20:10 87:9 88:6,11
simple 52:10 77:19
107:2
simply 42:8 49:10 54:14
77:8 99:20 122:17
single 56:7 63:22 91:18
97:15
sir 40:4 73:2
sit 100:4
situation 41:3 81:3
137:4
six 150:6
size 45:10,14 58:20
60:19 68:18 70:17
71:10 130:8 136:12
136:18 147:2
sizes 22:17 43:22 45:6
107:14
sketching 145:5
Slight 49:6
slow 140:5
small 8:22 9:2,3 10:9,12
26:16 33:4,20,22
34:10,11,17 35:4 36:9
58:14 60:7 102:19,20
105:20 106:19,19
107:11,20 108:6
111:18 117:4,6
118:18 119:2,7
136:18 137:4,19,20
138:7,11,14
smaller 34:4 58:12
82:11 104:16,22
smallest 95:15
softer 10:13
sold 29:9 39:14 69:8
119:2 137:12 141:21
somebody 23:6
someone's 55:19
sophisticated 36:21
37:1
sorbet 32:20
sorry 19:7 40:1 95:12
104:22 128:9 134:9
135:9 140:2

sort 63:12 69:7 144:13
sorted 6:8
sorting 41:13
sound 52:3
sounds 65:21
South 1:7 2:5 20:4
148:13
southeast 90:19
southeastern 87:21
southern 48:3 95:6
space 144:8
Spalding 2:16
speak 70:3,7
speaking 22:14 55:11
speaks 99:10
species 8:6 10:11 11:5
48:5 55:14 58:1
specific 55:14 72:20
96:14
specifically 33:20 35:3
70:4
specifications 69:6
70:8
specified 27:1
specifying 72:5
speckled 60:8
spend 20:1
splicing 54:8
spring 52:15
Springs 1:13
springtime 53:17
square 143:22
standard 6:9,10 18:12
20:6 23:8 38:19 45:5
55:6,8 59:13 66:5
standardized 22:5
standards 18:21 19:10
19:10,11,13,14,15,18
20:7,8,9,14 23:2,9,16
38:1,3,7 41:16 55:3
70:16 71:9 72:5
110:20
standpoint 55:12
stands 72:2
start 40:7,12 59:14
starts 50:20
state 15:13,13 21:5,9
22:21 24:12,22 33:10
83:14,18 95:5,22
stated 26:19 42:15
67:10
statement 4:9 107:22
108:19
states 1:1 37:5 55:16
59:7 80:9 84:2 94:14
121:17 122:11 142:22
stick 53:5,16 115:19
118:2
stick-tight 117:1,18

stick-tights 74:22 116:9
117:19 118:3,4
stock 52:1,1,4,17 53:18
storage 127:15 130:19
133:7
store 36:20
stored 127:15
stream 8:17 127:20
Street 2:17
stretch 127:4
strong 149:4
study 134:4 136:8
138:17,21
sub 6:9 66:4
sub-categories 78:1
sub-Section 50:9 51:2
62:9
sub-standard 25:15
73:4 74:4,10,14 75:5
75:14,18 76:9,18 77:1
77:9,14,20 78:6
sub-varieties 62:11
76:16
subject 6:3 77:18
108:21 111:11
subjecting 110:19
subjects 41:12
submit 32:10
subsequent 106:8
subsidiary 33:9
substandard 116:10
substantial 57:10
109:20
substantiate 106:10
substantive 74:16
sufficient 59:12 71:19
72:6
sum 122:6,17
summary 145:21,22
sunlight 90:14
super 64:2 72:14,15,17
92:6 110:2
superior 50:9,11
supplemental 67:13
supply 6:16 42:21
119:13 120:8,17
121:12,14,16 122:9
122:14 123:14 124:2
124:3 142:15,18
147:22
suppose 63:5
sure 3:19 8:6 22:12
25:4,4 43:20 69:17
71:9 101:16 102:4
104:15 107:20 126:4
135:7
sustain 105:11
SW 2:4,9
sweat 90:15

system 52:3,6

T

T 2:3
table 134:17 138:9
Tables 85:9,15
take 7:7,8 15:6 21:14,21
26:1 32:6 40:4 45:22
47:10 48:22 51:16
53:5,11 64:1,2 65:11
65:15 66:9 74:4 79:3
79:19 81:17 82:19
92:5,7 96:22,22 104:1
111:20 114:20 115:20
119:13 127:5,6 128:3
128:17 129:11 132:13
141:14 142:5 145:4
taken 6:7 52:8 131:18
takes 41:11
talk 17:19 30:20 47:22
48:9,17 57:18 90:22
93:14
talked 5:15 43:21 57:15
talking 36:16 49:22
60:22 120:15 131:8
136:17 138:1,2
tao 10:10
taste 11:10
taxes 37:4
team 16:19
techniques 52:16
technologies 50:5
62:22 64:20,21
technology 63:4,7 65:2
96:7,10 109:7
tell 22:19 32:7 58:7
59:19 60:3 93:20
137:16
tells 45:7
Ten 67:1
tend 55:8 68:5 70:8
tendency 58:12
tens 13:6
term 3:10 4:11,20 7:21
13:14 15:6 26:7 30:22
31:3 37:17 38:5 40:13
46:3 47:2,14 51:11
79:5,22 83:1 97:4
99:7 104:4 107:12
115:2 116:1 119:17
127:9 128:20 129:14
130:3,18 132:16
142:9
termination 101:20
terms 30:22 35:1 36:21
42:10 44:13 46:10
60:21 61:7,11 65:5
100:3,8 102:19
113:15 114:6

testified 89:6
testify 84:3 151:11
testifying 147:16
testimony 19:16 40:16
 41:4 42:15 83:20,21
 84:6,19 85:4 88:8
 92:21 106:7,8 110:9
 139:22 144:13 145:1
 145:11
testing 105:16
Texas 1:7 12:18 37:6
 88:1 94:4,6
thank 3:7 4:1,15 5:10
 7:13,19 9:21 11:20
 13:10,13 14:15 15:3
 17:2,8 20:15 22:9
 24:6,20 25:3,17,18,20
 26:6 29:1 30:10,14,18
 35:9 37:12 38:21 43:1
 43:5 45:16,20 47:1,5
 47:9,14 48:17 49:6
 51:15 54:9,20 57:13
 62:7 65:8 67:17 72:7
 73:19 74:2 75:2 78:10
 78:21 81:11,15 82:13
 82:18 83:12 84:16
 85:5 86:12 87:2 92:15
 95:10 96:18,21 98:21
 100:16 103:2,17
 108:11 110:5 111:14
 112:7,19 113:19
 114:15,18 115:13,18
 118:8 119:8,11 121:3
 123:1,9 124:19
 126:21 127:2 128:10
 129:9 130:11 132:5
 133:8 139:18 142:7
 142:14 143:2 144:5
 144:21 145:6 150:21
 151:15
Thanks 14:12
theory 63:6
thing 128:5 143:19
things 60:1
think 16:13 34:15 39:15
 49:2 55:2 56:1 57:11
 61:16 64:18 66:13
 68:17 70:10 71:17
 72:2 77:7 85:17
 110:22 111:17 126:5
 138:5 142:4 144:11
 145:13 146:21 147:9
 147:11,13
thinking 105:20
third 18:18
third-party 18:11 22:2,8
thorough 110:2
thought 22:13 65:19
 97:11 138:16 139:1

143:18
thoughts 114:10
thousands 13:6
three 73:5 75:4 78:15
 91:22 96:13,14 101:3
 116:11
threshold 97:10 109:2
 109:10 113:7 114:1,9
 114:11 135:6,13,20
 136:19 137:21
thresholds 107:14
tie-in 110:9
tied 121:22
Tifton 84:20
tighten 117:17
tighter 145:5
tights 115:20
time 4:3 9:6 14:22
 15:19 17:9 20:1 30:15
 32:7 38:22 39:12
 46:14 51:5,16 57:1
 58:17 75:9,15 78:22
 79:15 80:13 82:14
 83:17 92:17 96:3
 97:22 98:3,7 99:1
 100:12 103:18 108:12
 115:15 116:15 121:4
 124:20 128:12 129:6
 130:12 133:9 141:14
 151:1,7
times 8:22 18:16 60:7
 91:21,22 107:8 136:1
 136:22 137:7
today 58:16 81:21
 124:2,8 151:7
tomorrow 151:8
tonight 143:13
top 134:17
topic 65:14
total 56:1 85:16 87:6
totally 59:10
trace 16:16
trace-ability 16:4,6 17:6
 39:11
track 31:16 34:18 35:19
tracking 35:20 36:21
 37:3
trade 119:13 120:8,17
 121:12,14 122:9
 123:14 124:1 142:15
 142:18
trademarked 49:16
 61:17,19
trading 20:6
trail 69:21
traits 50:9,11,11
transaction 28:10
 142:1
transactions 32:14

33:6 34:22 35:19
transfer 25:22 26:11,14
 26:15,16,22 33:11,15
 35:19
transferred 27:7
transfers 35:3
transgenic 50:5 63:7
translation 27:8,9
transportation 27:3
 88:14
trash 6:10
treated 27:21 28:1
tree 11:5 12:2 13:9 50:1
 50:2 53:2,2,7,12,21
 53:21 58:18 59:10,11
 59:15,16 84:12 117:6
 149:17
trees 9:17 12:12,20
 13:1,3,4,7 52:18
 54:18 144:19
tress 12:5
tri-state 150:12
tried 77:3
trigger 62:20
true 42:9 54:2 92:9
 123:22 124:6
try 9:5 63:10
trying 34:7 42:4,12
 122:8 134:15 141:10
turn 3:8 7:20 25:21
 37:16 45:21 73:4 74:3
 81:16 85:8 88:19 92:4
 103:3,21 106:2
 114:19 115:19 120:21
 121:10 129:10
turning 4:18 20:16
 132:12
twice 133:2
two 6:14,16 33:17 52:19
 58:7 59:7 60:2 61:13
 91:21
two-thirds 92:13
type 17:20 22:15 69:1,9
 71:12 82:5 109:19
 116:10
types 64:9 68:2 109:11
typically 14:6 43:11

U

U.S 2:3,8 19:9 20:3
 64:19 80:8 86:1 93:6
 150:5,8
ultimate 68:22 98:4
ultimate-bearing 97:13
ultimately 29:17
un 141:2
un-assessed 127:6,19
 131:10 140:11 141:7
 141:19 142:4,9

un-shelled 38:1
under-state 97:16
understand 12:1 53:11
 58:15 74:17 85:18
 110:21 122:9 135:8
 138:5 139:6 141:15
 149:8
understanding 9:16
 31:10 41:3 42:11
 63:21 68:12 110:17
 111:10 123:17 125:22
 139:11 140:21
understands 124:11
understood 4:9
undertaken 114:7
unified 20:5 149:3
uniform 54:19
uniformity 16:3 49:12
unique 87:18
United 1:1 59:6 84:2
 121:17 122:11 142:22
units 88:1
unnecessary 10:19
upside 107:3
usage 3:13 5:1 8:2
 13:18 46:7 47:19
 48:11 80:4 83:5 104:9
 115:6 116:5 119:21
 129:2,18 132:20
 144:9
USDA 2:21,21,22 4:4,6
 4:17 5:12,13 7:3 8:11
 8:13 10:1 11:21 15:1
 17:11,14 19:13,15
 20:8,14 22:11 24:7,11
 24:22 30:16,18 35:11
 37:14 39:1,2 40:3
 43:3,4 45:19 46:15,18
 47:8 51:7,10 54:22
 64:7,8 65:9 66:1 67:6
 67:9,19,21 72:22
 75:10,12 78:12 79:1
 79:16 80:14,17 81:13
 82:16 92:3,18 95:12
 96:20 99:2,5 100:19
 100:20 102:15 103:19
 108:14,17 110:7
 111:16 112:10 113:21
 114:17 115:16 116:17
 116:20 118:11 119:9
 121:6,9 123:4 124:22
 127:1 128:14 129:7
 130:14 132:8 133:11
 140:2,6 143:5 147:19
 151:2
USDA's 85:9
use 19:19 20:22 35:2
 39:5 52:1,5 97:18
 99:15 111:4 123:11

130:18 131:12 134:5
134:15,18,18
usually 127:16

V

valuable 77:13 114:3
value 23:15 34:15 74:12
74:18,18 77:15,20
136:12,14 138:2
values 14:19
Varela 2:22 5:13,13
6:13,19 7:2 22:11,11
24:2,6 39:2,2 54:22
54:22 55:21 56:5,10
56:20 57:7,13 67:21
67:21 68:11,17,20
69:5,12,16,20 70:3,7
70:10,14,19 71:3,5,7
71:12 72:7 95:11,12
95:19 96:11,18
100:20,20 101:7,9,12
101:15,18 102:2,3,13
110:7,7,16 111:1,9,14
130:16 131:2,5,8,11
131:21 132:5
Varela's 112:12
variable 87:8
variations 84:14
varies 13:2
varieties 48:4 49:1,3,15
49:19 50:15 52:2,21
54:6 55:17 56:2,13,17
56:19,19,22 57:4 58:3
58:5,16 61:6,12,14
62:11 64:15 67:12
68:13 71:18 72:4,10
72:11,13 76:16 78:3
84:8 137:5
variety 49:8,9,11 50:20
52:9 55:6,9,19 58:9
59:3,14,17,20 62:6,13
62:14 63:2 69:11
70:17,17 71:1,13,21
72:3 73:16 76:19
77:16 80:20 128:17
various 82:9
vary 98:1
verge 105:14
verified 18:10
viable 105:11,17
vice 93:6 150:6,7
visions 90:10
visually 60:3
vital 77:10
voice 149:3,6
volume 42:7,12 85:6
86:14 130:2
vote 62:15 92:13

votes 82:11
voting 79:6 82:7 97:10
101:1

W

wait 112:17,17,17
want 3:19 30:19 40:12
43:6 52:9 67:22 77:21
101:12 112:11 121:18
133:21 134:5 135:2,6
135:7 138:4 140:8
151:11
wanted 7:6 8:6 43:19
51:16 63:2 65:20
99:21 101:15,18
104:15 107:19 108:2
108:4,5,6 123:6
151:12
wanting 31:6 122:6
wants 32:5
warehouse 131:16
warehoused 130:2
warehousing 129:11
130:3,19 140:8,10,11
140:14,17,20 141:2
142:3,10
Washington 2:5,10
water 87:16
way 19:15,17 23:10
31:16 32:12 48:3
49:21 68:6,13 101:5
105:9,11 111:2,11
139:7 140:19
ways 89:4 117:20
we'll 26:3 31:16 66:18
84:19 91:9,22 117:21
144:22
we're 7:5 32:10 36:9
38:19 49:22 55:15
60:6 66:17 80:18 89:3
89:4 95:16 105:20
136:17 138:1 143:22
we've 13:3 15:4 65:17
68:4 70:11 77:3 138:2
weather 97:17
WEDNESDAY 1:9
week 150:8
weigh 87:5
weight 132:13 133:1,2
Weiss 106:8
Wells 84:3,16,19
went 59:1 67:3 151:18
west 9:2 68:8 85:19
86:8 87:22 88:22 89:9
89:9 90:20 91:15
western 71:19 84:7
87:12 89:1 93:4,9,10
93:17 94:7 150:12

westerns 87:22
whichever 52:8
wife 92:22 93:2
willing 125:7 126:18
143:22 144:6
winter 52:12
wish 50:12
wishes 126:12
witness 4:2 5:11 8:10
14:22 17:9 46:14 51:5
75:9 92:16 98:22
115:14 121:4 124:20
128:13 129:6 130:12
133:9 151:1
witnesses 151:6
wondering 75:15 76:21
wood 52:13,16 53:15
53:16
word 104:8,8,13 121:18
123:12
words 44:15 78:15
124:1
work 36:17 55:7 64:14
90:14 149:6
worked 20:12 36:8
works 124:7
world 20:13 64:21
worse 19:22
worth 34:15
wouldn't 13:11 68:8
95:22 96:6

X

Y

year 6:21 52:22 98:1,1,2
101:11,13 102:17
106:18 121:17 122:11
142:22
year's 97:14,15
years 80:19 86:2,6,9
87:19 95:21 96:6
97:19,20,21 98:9
101:1,2,5,6 102:21
117:20 149:22 150:6
yesterday 27:14 120:14
143:8
yield 53:6 83:19 84:11
84:12,14 86:3 98:3
107:7
yields 53:2 54:1 83:22
84:4,8 98:1
young 53:13,15,16
151:10

Z

0

1

1 7:10 47:17 78:19
1,000 52:20 110:14
1,200 84:4
1,500 84:4
1,666.67 85:1
10 13:3 66:20 72:13
144:18
10:50 151:18
100,000 12:9,14
1180 2:17
12 18:6
12.5 106:17 107:6,14
1400 2:4,9
15 80:8

2

2 50:10 78:19
2,000 12:19 84:9
20 11:17 80:19
2011 86:2,9
2012 86:2
2013 86:3
2014 86:3,9 134:21
135:1
2015 1:10
202-690-4299 2:6,11
202-720-4982 2:11
202-720-9237 2:6
20250 2:5,10
21.1 86:6
21.7 86:6
22 1:10
22nd 3:5
2325 2:5
2331-C 2:10
250 137:11
26.3 86:7
270 136:22 139:5
28(a)(3) 66:4
28.4 86:4
29.5 86:10

3

3 47:18 78:19
30.8 86:10
30309-3521 2:17
32(b) 94:14
34.3 86:11
34.8 86:7
35.2 86:4
35.7 86:4
37.3 86:7
37.4 86:10

4

40 13:4
404-572-4604 2:18

404-572-5133 2:18	135:18,20
4100 1:13	986.36 114:20 118:14
42 133:21	986.37 115:19
43,560 144:5	986.38 119:13 121:12
450 56:13	986.39 127:6
46,000 143:21	986.40 128:16
47.5 86:3	986.41 129:10 140:10
<hr/> 5 <hr/>	986.42 132:12
5 107:8 128:1	986.45 102:18
50 23:20 91:8 107:4,7	986.48 79:7
111:22 112:4 136:1,4	986.55 72:12
137:16	986.55(c)(1)VI 92:5
50,000 137:13	986.61 116:13
500,000 112:5 136:2	986.61(h) 3:21 127:20
58 136:8 138:22 139:2	986.62 27:1 127:21
<hr/> 6 <hr/>	986.65 7:6 120:10,21
6 120:10	128:1
6.25 107:8	986.65(a)(1) 7:16
60 91:8,8 107:4	986.65(a)(5) 128:3
69 40:15 147:14 149:13	986.65(a)(6) 120:22
<hr/> 7 <hr/>	986.65(a)(6)(1) 5:9
7 85:9,15	986.65(e) 128:8
<hr/> 8 <hr/>	986.67 149:13
8 85:9,15	986.68 147:14
8:00 1:12 3:2,6 151:8	986.69 16:13 40:11
<hr/> 9 <hr/>	123:20 125:14,18
9 85:10,15	142:20 147:1
9:05 67:3	986.75 3:22
9:17 67:4	986.76 38:6
982.28(a)(2) 48:18	986.94 101:19
985.65(f) 121:1	
986 7:9 67:14	
986.16 99:11	
986.19 27:13 46:21	
986.20 3:9	
986.21 4:19	
986.22 7:20	
986.23 13:14	
986.24 15:4	
986.25 25:21	
986.26 37:16 40:7 125:4	
986.27 45:22	
986.28 47:10 116:11	
986.28(a)(2) 49:16	
986.28(a)(3) 74:4 75:14	
986.28(b) 78:15	
986.29 79:3	
986.30 79:19	
986.31 28:8 81:16	
986.32 82:19	
986.33 96:22	
986.34 103:3	
986.35 103:22 108:19	

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Proposed Marketing Order and
Agreement for Pecans

Before: USDA

Date: 07-22-2015

Place: Las Cruces, New Mexico

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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Court Reporter

NEAL R. GROSS

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