

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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:  
IN RE: :  
: Docket Nos.  
ORANGES, GRAPEFRUIT, : AO-13-0163;  
TANGERINES, AND TANGELOS : FV-13-905-1;  
(CITRUS) GROWN IN FLORIDA : AMS-FV-12-0069  
:  
:  
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Wednesday, April 24, 2013

Florida Department of Agriculture  
and Consumer Services  
500 3rd Street NW  
Winter Haven, Florida 33881

The above-captioned rulemaking hearing  
was held pursuant to notice at 9:00 a.m.

BEFORE:

JILL CLIFTON, Administrative Law Judge  
US Department of Agriculture  
South Building Room 1031  
1400 Independence Avenue, SW  
Washington, DC 20250-9203

(202) 720-4443; (202) 720-9776

Neal R. Gross & Co., Inc.  
202-234-4433

**PRESENT :**

**ON BEHALF OF THE USDA:**

**MR. BRIAN HILL**

**MR. MARC McFETRIDGE**

**MS. MELISSA SCHMAEDICK**

**MS. MICHELLE SHARROW**

**MS. JENNIE VARELA**

**MS. KATHLEEN BRIGHT**

**MR. COREY ELLIOTT**

**MR. CHRISTIAN NISSEN**

**MS. DOLORES LOWENSTINE**

**ON BEHALF FLORIDA CITRUS:**

**MR. ARTHUR B. CHADWELL**

**MR. GEORGE F. HAMNER**

**MR. PETER CHAIRES**

**DR. FRED GMITTER, JR.**

**OTHER APPEARANCES:**

**MR. PAUL GENKE**

**MR. EMERY SMITH**

**MR. LINDSAY RALEY**

**MR. SCOTT McCLURE**

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

(9:00 a.m.)

JUDGE CLIFTON: This record is being made in Winter Haven, Florida on April 24, a Wednesday, 2013. My name is Jill Clifton, I'm a United States Administrative Law Judge and I'm here to conduct the rulemaking hearing. What that means is I'm the monitor to keep everyone's opportunity to present evidence, open so that we have a full record, and then after the hearing, to certify what the evidence is. There are two kinds: testimony and exhibits.

If you have an exhibit and you want it marked as part of the evidence, it being admitted as an exhibit makes it evidence. Many people want also to read their exhibit so that, if someone is searching the transcript of the hearing, the same ideas are there as well in the exhibit. It's perfectly fine to have your evidence presented both those ways, both as a written copy that is

1 marked and accepted as an exhibit, and as  
2 something that you read aloud so that it would  
3 be in the transcript.

4 I want to cover a few housekeeping  
5 things before I have you introduce yourselves.  
6 And when I have you introduce yourselves, I'd  
7 like you to spell your name. Now, there will  
8 be some redundancy here because when you come  
9 to testify, I'd like you to say who you are  
10 and spell your name again. But I'd much  
11 rather have it done too often than not often  
12 enough. And as you can imagine, typing the  
13 transcript from this town meeting atmosphere  
14 is somewhat difficult, because each time the  
15 speaker needs to be identified.

16 All right. So, the first thing  
17 I'd like to do is read into the record the  
18 heading caption and docket numbers. United  
19 States Department of Agriculture, Before the  
20 Secretary of Agriculture, in re: Oranges,  
21 Grapefruit, Tangerines, and Tangelos (Citrus)  
22 Grown in Florida, AMAA, Docket Nos. A0-13-

1       0163; FV-13-905-1; AMS-FV-12-0069. I did not  
2       recite where the hyphens are because the court  
3       reporter has the written copy.

4               When you're citing from your own  
5       prepared statement, you may want to put in  
6       little punctuation marks, or not, just  
7       depending on how you want to clarify what  
8       you're presenting.

9               All right. With regard to this  
10      transcript that is being prepared, the  
11      original copy, the first copy is a high-priced  
12      one under a contract with Neal Gross whereby  
13      the first copy is the market price copy, and  
14      USDA AMS pays for that. Thereafter, the  
15      additional copies are at a very inexpensive  
16      rate. And if any of you wants to order a  
17      copy, you may do it so long as you order it  
18      from the court reporter while we're still here  
19      and get the bargain rate.

20              The bargain rate is about 5 cents  
21      a page. And you could order just your own  
22      testimony, or just the testimony of a certain

1 witness you wanted, or the whole thing. And  
2 if you also want an accompanying DVD or CD,  
3 that's \$300. There's usually a separate one  
4 for each day of the hearing. And that's  
5 searchable and you can specify what language  
6 you want it in such as WordPerfect plus PDF  
7 plus Microsoft Word, whatever you want. So,  
8 be thinking about whether you want to order  
9 any transcript of your own, and if so, let me  
10 help you fill out the form so that it's clear  
11 that you're getting the USDA contract rate for  
12 that because the form itself doesn't provide  
13 that.

14 Now, you've all been warned not to  
15 participate in ex parte communication with  
16 USDA officials. I want all of the USDA people  
17 to identify themselves. You can talk with  
18 them about the procedures here, about timing  
19 of witnesses, about anything like that. You  
20 can talk with them about anything that's of  
21 interest, sports, weather, law enforcement,  
22 anything like that. What you may not do is

1 try to influence them in any way as to how  
2 their decisions should be made. So, you have  
3 to be very careful if you're trying to talk  
4 about the marketing order or your experience  
5 under it because it just would be perceived  
6 that you are trying to influence them.

7 So, I want now -- oh, before I do  
8 this, I like mobile phones, I think you should  
9 have yours with you. If you have not yet put  
10 it on vibrate or silent, please do that.  
11 Sometimes you'll have to take a call and  
12 you'll need to go out to do that, but I don't  
13 want anyone to feel you're not allowed to use  
14 your mobile phone. Just make it so it doesn't  
15 interrupt.

16 All right. I'm a USDA employee,  
17 an Administrative Law Judge who is assigned to  
18 USDA to do USDA cases. So, every case I hear  
19 has USDA involved in some way or another.

20 I'd like now for the rest of the  
21 people in this room who work for the United  
22 States Department of Agriculture to locate

1 near a microphone to identify yourself.

2 Mr. Hill, would you begin?

3 MR. HILL: Yes, my name is Brian

4 Hill,

5 B-r-i-a-n H-i-l-l. I'm with the Office of the

6 General Counsel and I'm representing the

7 Agricultural Marketing Service.

8 MR. MCFETRIDGE: I am Marc

9 McFetridge, M-a-r-c M-c-F-e-t-r-i-d-g-e. I'm

10 with the Ag Marketing Service, Fruit and

11 Vegetable Programs, Promotion and Economic

12 Division.

13 MS. SCHMAEDICK: My name is

14 Melissa Schmaedick, M-e-l-i-s-s-a, Schmaedick,

15 S-c-h-m-a-e-d-i-c-k. I am with the USDA

16 Agricultural Marketing Service, Fruit and

17 Vegetable Programs. I am a Senior Marketing

18 Specialist.

19 MS. SHARROW: My name is Michelle

20 Sharrow, Michelle, M-i-c-h-e-l-l-e, Sharrow,

21 S-h-a-r-r-o-w. And I am the Rulemaking Branch

22 Chief with AMS Fruit and Vegetable Programs.

1 MS. VARELA: My name is Jennie  
2 Varela, J-e-n-n-i-e, V-a-r-e-l-a. I am with  
3 AMS, Agricultural Marketing Service,  
4 representing the Southeast Marketing Field  
5 Office.

6 MS. BRIGHT: I'm Kathleen Bright,  
7 K-a-t-h-l-e-e-n B-r-i-g-h-t. I am also a  
8 Senior Marketing Specialist, I am with the  
9 Marketing Order and Agreement Division as  
10 well.

11 JUDGE CLIFTON: Are there any  
12 other USDA employees here?

13 MR. ELLIOTT: Yes. Yes, ma'am.  
14 My name is Corey Elliott, I'm a USDA Marketing  
15 Specialist representing the Southeast  
16 Marketing Field Office. Again, Corey Elliott,  
17 C-o-r-e-y E-l-l-i-o-t-t.

18 MR. NISSEN: My name is Christian  
19 Nissen, C-h-r-i-s-t-i-a-n N-i-s-s-e-n. I am  
20 the Regional Director of the Southeast  
21 Marketing Field Office.

22 MS. LOWENSTINE: I'm Dolores

1 Lowenstine, D-o-l-o-r-e-s L-o-w-e-n-s-t-i-n-e.  
2 And I'm the Marketing Assistant with the  
3 Southeast Marketing Field Office.

4 JUDGE CLIFTON: All right. Are  
5 there any other USDA employees in the room?

6 All right. Those of you who are  
7 normally officed in Washington, DC, please  
8 raise your hand. All right. Those of you who  
9 are normally in Florida, I think those of you  
10 who introduced yourselves last are, and who is  
11 seated at this front table is normally here?  
12 All right, Ms. Varela. All right. And those  
13 of you who are normally officed in Utah,  
14 please raise your hand.

15 And in what locales have you  
16 participated in rulemaking hearings, Ms.  
17 Schmaedick?

18 MS. SCHMAEDICK: This is Melissa  
19 Schmaedick. I have participated in roughly a  
20 dozen rulemaking hearings in Florida, Oregon,  
21 Washington, California, and then most recently  
22 across the United States for the leafy green

1 marketing agreement hearings.

2 JUDGE CLIFTON: All right. Now,  
3 part of this, and I'm going to have those who  
4 are not USDA employees who are here introduce  
5 themselves next, part of this is a practice on  
6 where we need to be for these microphones to  
7 be effective. So, I'm going to go off record  
8 just a moment.

9 (Off the record.)

10 JUDGE CLIFTON: All right. We're  
11 back on record at 9:12. I'd now like to turn  
12 to the table of Florida citrus people located  
13 to my right and have each of you introduce  
14 yourselves similarly.

15 MR. CHADWELL: My name is Arthur  
16 Chadwell, A-r-t-h-u-r C-h-a-d-w-e-l-l. I'm  
17 the Manager of the Citrus Administrative  
18 Committee.

19 MR. HAMNER: My name is George  
20 Hamner, Jr., G-e-o-r-g-e H-a-m-n-e-r, Jr., J-  
21 r. And I'm a grower-shipper here in Florida.

22 MR. CHAIRES: My name is Peter

1       Chaires, P-e-t-e-r C-h-a-i-r-e-s. I'm  
2       Executive Vice President of Florida Citrus  
3       Packers.

4                   DR. GMITTER: My name is Fred  
5       Gmitter, Jr. Fred, F-r-e-d, Gmitter, G-m-i-t-  
6       t-e-r, Jr. I'm a Professor at the University  
7       of Florida, Citrus Research and Education  
8       Center in Lake Alfred.

9                   JUDGE CLIFTON: Good. And those  
10      of you who are not seated at that table but  
11      are involved in Florida citrus, would each of  
12      you come to the podium and identify yourself  
13      and spell your name at this time?

14                  MR. GENKE: My name is Paul Genke,  
15      P-a-u-l G-e-n-k-e. And I'm Director of Sales  
16      and Marketing for the Packers of Indian River  
17      in Vero Beach, Florida.

18                  MR. SMITH: My name is Emery  
19      Smith, E-m-e-r-y S-m-i-t-h. I work for Ben  
20      Hill Griffin, Inc., a grower-shipper here in  
21      Florida.

22                  JUDGE CLIFTON: Would you spell

1       your first name again for me?

2                   MR. SMITH:   Emery, E-m-e-r-y.

3                   JUDGE CLIFTON:   E-r-y.   I knew  
4       that was something I didn't quite catch, thank  
5       you.

6                   MR. RALEY:   Good morning.   My name  
7       is Lindsay Raley, L-i-n-d-s-a-y R-a-l-e-y.  
8       I'm President and Chairman of the Board of  
9       Dundee Citrus Growers Association and  
10      Treasurer of the Citrus Administrative  
11      Committee.   Thank you.

12                  MR. McCLURE:   Good morning.   I'm  
13      Scott McClure, S-c-o-t-t M-c-C-l-u-r-e.   I'm  
14      the Research and Training Specialist for the  
15      Division of Fruit and Vegetables.

16                  JUDGE CLIFTON:   Mr. Hill, I'd like  
17      now to turn the meeting over to you for  
18      whatever you would like to present at this  
19      time.

20                  MR. HILL:   It's not much, so don't  
21      worry about it.   The first thing, first, we'd  
22      like to mark some exhibits for addition to the

1 record, the first one being the publication of  
2 the notice of the hearing in the Federal  
3 Register. We can mark that as Exhibit No. 1.

4 (Whereupon Exhibit No. 1  
5 was marked for  
6 identification.)

7 JUDGE CLIFTON: Yes. Now, I'm  
8 just going to receive a copy but I'm going to  
9 leave all the marking to the USDA team. And  
10 so, Mr. Hill, this is just to be marked as EX-  
11 1?

12 MR. HILL: Yes, I believe so.

13 JUDGE CLIFTON: All right, EX-1  
14 for Exhibit 1. And all the exhibits, no  
15 matter who they come from, will just be in  
16 sequential order.

17 MR. HILL: Right. And the second  
18 one I would also like to mark Exhibit No. 2  
19 is a true copy of the notice of hearing to  
20 interested persons.

21 (Whereupon Exhibit No. 2  
22 was marked for

1 identification.)

2 JUDGE CLIFTON: Now, Mr. Hill,  
3 there are extra copies of these in the back,  
4 is that correct? If someone wants one and  
5 didn't get one?

6 MR. HILL: We could make some.  
7 I'm not sure how many copies we have right  
8 now. We have ten maybe, well, these we only  
9 have five but we can make more copies if need  
10 be.

11 JUDGE CLIFTON: Okay. Well, there  
12 are still some back there. If there is anyone  
13 who wants a copy of these and doesn't have it,  
14 they're just back there with that wonderful  
15 grapefruit juice and orange juice that we  
16 have.

17 MR. HILL: The third exhibit would  
18 be the press release.

19 And the fourth exhibit would be a  
20 certificate of officials notified, the  
21 Governor of Florida, would be No. 4.

22 If there is no objection, I'd like

1       these three admitted to the record.

2                               (Whereupon Exhibit Nos.  
3                               3 and 4 were marked for  
4                               identification.)

5                   JUDGE CLIFTON: Is there any  
6       objection to these four exhibits being  
7       admitted into evidence? There is none.  
8       Exhibits 1, 2, 3 and 4 are hereby admitted  
9       into evidence.

10                              (Whereupon Exhibit Nos.  
11                              1, 2, 3 and 4 were  
12                              received into evidence.)

13                   MR. HILL: So, at this point, we'd  
14       like to call our first and only witness for  
15       now which would be Marc McFetridge.

16                   JUDGE CLIFTON: All right. And if  
17       you're seated at one of these two tables  
18       closest to me, you're welcome to stay in place  
19       to testify. Or if you would prefer, you can  
20       come to the witness stand to my left. It's  
21       your option.

22                   Mr. McFetridge, please be seated

1 elsewhere. You went in a seated position.

2 Please raise your right hand.

3 Whereupon,

4 MARC McFETRIDGE

5 was called as a witness and, having been first

6 duly sworn, was examined and testified as

7 follows:

8 JUDGE CLIFTON: Please begin by

9 stating and spelling your name.

10 THE WITNESS: My name is Marc

11 McFetridge,

12 M-a-r-c M-c-F-e-t-r-i-d-g-e.

13 JUDGE CLIFTON: Thank you. Mr.

14 Hill, you may proceed.

15 EXAMINATION

16 BY MR. HILL:

17 Q Okay. Hello, how are you doing  
18 this morning?

19 A I'm doing well.

20 Q Very well, good. Okay, let's get  
21 right into this then.

22 JUDGE CLIFTON: Now, there are

1       copies for the rest of us so.

2                   MR. HILL: Right.

3                   BY MR. HILL:

4           Q       We do have the copies of both your  
5 testimony and some charts, is that correct?

6           A       That is correct.

7                   MR. HILL: I'm going to let these  
8 be handed out very quickly.

9                   JUDGE CLIFTON: Thank you.

10                  BY MR. HILL:

11          Q       While we're waiting for that, can  
12 you just tell us once again, you've already  
13 mentioned it, but who do you work for?

14          A       I work for the Ag Marketing  
15 Service, Fruit and Vegetable Programs,  
16 Promotion and Economic Division. I'm an  
17 agricultural economist.

18          Q       And how long have you been doing  
19 that?

20          A       I have been an economist for over  
21 three years now.

22          Q       With the --

1           A       With USDA, yes.

2           Q       Okay. And right now we're handing  
3 out some documents. One is your testimony and  
4 the other is some charts that you prepared?

5           A       That is correct.

6           Q       And you did prepare both of these  
7 personally?

8           A       Yes.

9           Q       Okay. And in your preparation,  
10 you did not prepare them to take a side, is  
11 that correct?

12          A       That is correct.

13          Q       And you're not making, there is  
14 nothing, you're not making anything off of  
15 this, it's not personal for you?

16          A       No, it is not.

17          Q       Okay. If you can go ahead, you  
18 can go ahead and start then.

19                   JUDGE CLIFTON: Let me know which  
20 is which as far as numbers please.

21                   MR. HILL: Let's go ahead and mark  
22 the testimony as Exhibit No. 5 if we could,

1       which would leave the charts as Exhibit No. 6.  
2                               (Whereupon Exhibit Nos.  
3                               5 and 6 were marked for  
4                               identification.)

5                       BY MR. HILL:

6               Q       And to those, okay, you can begin.

7               A       My name is Marc McFetridge. I've  
8       worked for the US Department of Agriculture  
9       (USDA) since 2006. I worked for the Marketing  
10      Order Administration Division from July 2006  
11      through December 2009. From December 2009 to  
12      the present, I've worked with the Promotion  
13      and Economic Division as an agricultural  
14      economist. And my duties include preparing  
15      economic and statistical analyses which are  
16      used by government officials to help  
17      administer federal programs for Fruits and  
18      Vegetable Programs. All this part of my work  
19      is related to the Federal Marketing Order  
20      issues.

21                       I received a Bachelor's degree in  
22      Agriculture Business Management in 2001 from

1 Oregon State University, and a Master's degree  
2 in Agricultural and Resource Economics in 2004  
3 from Oregon State University.

4 Concerning the various proposed  
5 amendments, the Department takes a neutral  
6 position. For the hearing on Florida citrus,  
7 I've prepared a report titled "US and Florida  
8 Citrus Crop Years 2000-01 through 2011-12."  
9 The data source is the National Agricultural  
10 Statistics Service (NASS USDA).

11 The purpose of the report is to  
12 introduce US government data and other  
13 relevant information into the hearing record.

14 JUDGE CLIFTON: Let me stop you  
15 there. Let's go off record.

16 (Off the record.)

17 JUDGE CLIFTON: All right. We're  
18 back on record at 9:23. Thank you, you may  
19 resume, Mr. McFetridge.

20 THE WITNESS: These graphs are  
21 intended to be used by all parties involved in  
22 the hearing in discussion and analyzing the

1 merits of the various proposed amendments. In  
2 the report, graphs are shown for US. Data for  
3 tangelos was only available from Florida, and  
4 Florida for oranges, grapefruit, tangelos,  
5 tangerines, and mandarins in bearing acres.

6 The graphs on pages 3 through 6  
7 show the total bearing acres. For oranges,  
8 bearing acres reached a high during the 2000-  
9 01 crop year at 818,700 acres for the total US  
10 and 605,000 acres for Florida. Since the --

11 JUDGE CLIFTON: Now, let me make  
12 sure those numbers are right. So, the first  
13 number of acres that you said is printed in  
14 this transcript at 818,700?

15 THE WITNESS: Yes.

16 JUDGE CLIFTON: All right. And  
17 the second number you said will be printed in  
18 the transcript as 605,000?

19 THE WITNESS: That is correct.

20 JUDGE CLIFTON: All right, thank  
21 you.

22 THE WITNESS: Would it be easier

1       for me just to read out the numbers instead of  
2       trying to --

3                   JUDGE CLIFTON:  No, you did fine.  
4       It's just that it's tricky when you hear it,  
5       trying to figure out how to type it.  So, just  
6       if you need to clarify as you go on or expand  
7       on what you say, you may, and you do not have  
8       to stick exactly to the script.

9                   THE WITNESS:  All right.  Since  
10      the 2000-01 crop year, bearing acres for  
11      oranges have decreased 24 percent and 28  
12      percent for the total US and Florida,  
13      respectively.  For grapefruit, bearing acres  
14      reached a high for the 2000-01 crop year at  
15      145,200 acres for the total US, and 107,800  
16      acres for Florida.  Since the 2000-01 crop  
17      year, bearing acres for grapefruit have  
18      decreased 49 percent and 58 percent for the  
19      total US and Florida, respectively.  For  
20      tangelos, bearing acres reached a high for the  
21      2000-01 crop year at 10,800 acres for Florida.  
22      Note NASS, the National Agricultural Statistic

1 Service, publishes data only for Florida on  
2 tangelos, so no data for total US will be  
3 available.

4 Since the 2000-01 crop year,  
5 bearing acres for tangelos have decreased 62  
6 percent. For tangerines and mandarins,  
7 bearing acres reached a high for the 2011-12  
8 crop year at 52,600 acres for the total US,  
9 and reached a high for Florida at 25,500 acres  
10 during the 2000-01 crop year. Note, NASS  
11 published aggregated data combining tangerines  
12 and mandarins. Since the 2000-01 crop year,  
13 bearing acres for tangerines and mandarins  
14 have increased 32 percent for the total US but  
15 has decreased 53 percent for Florida.

16 Average yield. The graphs on  
17 pages 7 through 10 show the average yield.  
18 For oranges, the average yield reached a high  
19 during the 2003-04 crop year at 382 and 428  
20 boxes per acre for the total US and Florida,  
21 respectively. The net pounds per box for  
22 oranges in California is 80, for Florida it's

1 90, Texas 85; grapefruit in California is 80,  
2 Florida it's 85, Texas 80; tangerines,  
3 mandarins in Arizona and California is 80, and  
4 Florida is 95. That is the definition of how  
5 boxes is represented from NASS.

6 The ten-year average yield for  
7 oranges for the total US is 325 boxes per  
8 acre, and 338 boxes per acre for Florida. For  
9 grapefruit, the average yield reached a high  
10 during the 2006-07 crop year for total US at  
11 463 boxes per acre, and Florida reached a high  
12 during the 2003-04 crop year at 497 boxes per  
13 acre. The ten-year average yield for  
14 grapefruit for the total US is 398 boxes per  
15 acre, and 412 boxes per acre for Florida. For  
16 tangelos, the average yield reached a high  
17 during the 2007-08 crop year at 288 boxes per  
18 acre.

19 The ten-year average yield for  
20 tangelos is 211 boxes per acre. For  
21 tangerines and mandarins, the average yield  
22 reached a high during the 2010-11 crop year at

1        322 and 363 boxes per acre for the total US  
2        and Florida, respectively. The ten-year  
3        average yield for tangerines and mandarins for  
4        the total US is 265 boxes per acre and 298  
5        boxes per acre for Florida.

6                    Total utilized production. The  
7        graphs on pages 11 through 14 show the total  
8        utilized production. Utilized production is  
9        defined as amount of crops sold plus the  
10       quantity used at home or held in storage  
11       represents utilized production. For oranges,  
12       the total utilized production reached a high  
13       during the 2003-04 crop year at 295 million  
14       boxes and 242 million boxes for the total US  
15       and Florida, respectively.

16                   Since the 2000-01 crop year, total  
17        utilized production for oranges has decreased  
18        27 percent and 34 percent for the total US and  
19        Florida, respectively. For grapefruit, the  
20        total US utilized production reached a high  
21        during the 2000-01 crop year at 59.8 million  
22        boxes, and Florida reached a high during the

1       2001-02 crop year at 46.7 million boxes.  
2       Since the 2000-01 crop year, total utilized  
3       production for grapefruit has decreased 53  
4       percent and 59 percent for the total US and  
5       Florida, respectively.

6                   For tangelos, the total utilized  
7       production reached a high during the 2002-03  
8       crop year at 2.4 million boxes. Since the  
9       2000-01 crop year, the total utilized  
10      production for tangelos has decreased 45  
11      percent. For tangerines and mandarins, the  
12      total utilized production reached a high  
13      during the 2010-11 crop year at 15.6 million  
14      boxes, and Florida reached a high point during  
15      the 2001-02 crop year at 6.6 million boxes.  
16      Since the 2000-01 crop year, total utilized  
17      production for tangerines and mandarins has  
18      increased 82 percent for total US but has  
19      decreased 23 percent for Florida.

20                   Equivalent packinghouse door  
21      returns. The graphs on pages 15 through 18  
22      show the equivalent packinghouse door returns,

1 also referred to as prices received by  
2 growers. NASS reports the prices in terms of  
3 equivalent packinghouse door returns. The  
4 packinghouse door is generally referred to as  
5 the point of first sale. Packinghouse door  
6 prices are calculated by subtracting cost  
7 incurred through the packinghouse from the  
8 freight onboard price. These costs may  
9 include sorting, grading, packing, cooling, et  
10 cetera.

11 FOB or freight on board prices is  
12 defined as the commercial price term that  
13 signifies a contractual agreement between a  
14 buyer and a seller to have the subject of a  
15 sale delivered to a destination price usually  
16 either --

17 JUDGE CLIFTON: Read that again  
18 please, Mr. McFetridge.

19 THE WITNESS: Sure. You want me  
20 to start from the beginning?

21 JUDGE CLIFTON: How about seller  
22 to have the subject?

1                   THE WITNESS: Signifies a  
2 contractual agreement between a buyer and a  
3 seller to have a subject of a sale delivered  
4 to a destination place, usually either the  
5 place of shipment or the place of destination  
6 without expense to the buyer. This term  
7 indicates delivery will be made on board or  
8 into a carrier by the shipper without charge.

9                   For oranges, the prices received  
10 by growers reached a high during the 2006-07  
11 crop year at \$17.45 per box for fresh oranges  
12 for the total US, and \$15.99 per box for fresh  
13 oranges for Florida. The processed prices  
14 were \$11.48 per box for total US and \$12.80  
15 per box for Florida. The ten-year average  
16 price received by growers for fresh oranges is  
17 \$12.59 per box for the total US and \$9.89 per  
18 box for Florida. The ten-year average price  
19 received by growers for processed oranges is  
20 \$7.48 and \$7.95 for total US and Florida,  
21 respectively.

22                   JUDGE CLIFTON: So, Mr.

1       McFetridge, these last two figures were \$7.48?

2               THE WITNESS: Yes.

3               JUDGE CLIFTON: And \$7.95?

4               THE WITNESS: That's correct.

5               JUDGE CLIFTON: Okay, thanks.

6               THE WITNESS: For grapefruit, the  
7       prices received by growers reached a high  
8       during the 2004-05 crop year at \$21.06 per box  
9       for fresh grapefruit for the total US and  
10       \$21.89 per box for fresh grapefruit for  
11       Florida. And processed prices reached a high  
12       during the 2011-12 crop year for the total US  
13       at \$6.77 per box, and during the 2004-05 crop  
14       year for Florida at \$8.07 per box.

15              The ten-year average price  
16       received by growers for fresh grapefruit is  
17       \$11.91 per box for total US and \$12.11 per box  
18       for Florida. The ten-year average price  
19       received by growers for processed grapefruit  
20       is \$4.11 and \$4.81 for the total US and  
21       Florida, respectively.

22              For tangelos, the prices received

1 by growers reached a high for fresh and  
2 processed tangelos during the 2011-12 crop  
3 year at \$16.45 per box and \$10.00 per box.  
4 The ten-year average price received by growers  
5 for fresh tangelos is \$11.29 per box, and  
6 \$4.62 per box for processed tangelos.

7 For tangerines and mandarins, the  
8 prices received by growers reached a high  
9 during 2011-12 crop year at \$26.68 per box of  
10 fresh tangerines and mandarins for the total  
11 US, and Florida reached a high during the  
12 2006-07 crop year at \$19.50 per box of fresh  
13 tangerines and mandarins. Processed prices  
14 for tangerines and mandarins reached a high  
15 during the 2006-07 crop year at \$6.61 per box  
16 and \$9.89 per box for total US and Florida,  
17 respectively.

18 The ten-year average price  
19 received by growers for fresh tangerines and  
20 mandarins is \$20.70 per box for total US and  
21 \$16.27 per box for Florida. The ten-year  
22 average price received by growers for

1 processed tangerines and mandarins is \$3.34  
2 and \$4.87 for the total US and Florida,  
3 respectively.

4 Total value production. The  
5 graphs on pages 19 through 22 show the total  
6 value production. For oranges, the total  
7 value production reached a high during the  
8 2011-12 crop year for the total US at over  
9 \$2.3 billion. And the total value production  
10 reached a high for Florida during the 2006-07  
11 crop year at almost \$1.6 million.

12 MR. HILL: Can you repeat that  
13 number one more time? 1.6?

14 THE WITNESS: Sure, \$1.6 million.

15 JUDGE CLIFTON: Is it million or  
16 billion?

17 THE WITNESS: Oh, I'm sorry, it's  
18 billion.

19 I'm getting towards the end. My eyes are  
20 getting a little fuzzy.

21 MR. HILL: So, it's \$1.6 billion?

22 THE WITNESS: \$1.6 billion. The

1     ten-year average value production for oranges  
2     for the total US is slightly over \$1.9  
3     billion, and \$1.24 billion for Florida. For  
4     grapefruit, the total value production reached  
5     a high during the 2004-05 crop year for the  
6     total US at over \$383 million, and the total  
7     value production reached a high point for  
8     Florida during the 2003-04 crop year at \$225  
9     million. The ten-year average value  
10    production for grapefruit for the total US is  
11    almost \$296 million, and \$195 million for  
12    Florida.

13                   For tangelos, the total value  
14    production reached a high during the 2011-12  
15    crop year at over \$14.3 million. The ten-year  
16    average value production for tangelos is \$9.9  
17    million.

18                   For tangelos and tangerines, the  
19    total value production --

20                   JUDGE CLIFTON: Wait a minute.  
21    Start that sentence again please.

22                   THE WITNESS: For tangerines and

1        mandarins, the total value production reached  
2        a high during the 2011-12 crop year for the  
3        total US at over \$351 million, and total value  
4        production reached a high for Florida during  
5        the 2001-02 crop year at \$76 million. The  
6        ten-year average value production for  
7        tangerines and mandarins for the total US is  
8        almost \$189 million, and \$63.8 million for  
9        Florida.

10                    BY MR. HILL:

11                    Q        Thank you very much for this. And  
12        just one more comment. I just want to make  
13        clear that you prepared this for anyone to use  
14        at this hearing, and not for a particular  
15        size, is that correct?

16                    A        That is correct. I've also  
17        included in my chart, there is a page, I  
18        believe 23 that has just some definitions for  
19        boxes that I've also covered in my testimony,  
20        so they can be a standalone piece if need be.

21                    JUDGE CLIFTON: I'd like you to  
22        read that into the record. It's very helpful.

1 THE WITNESS: Sure.

2 JUDGE CLIFTON: Do you have it? I  
3 think it is 23 of your chart.

4 THE WITNESS: Sure.

5 JUDGE CLIFTON: And before you do  
6 that, in this last section, when you were  
7 referring to these values of production, if  
8 you didn't say dollars, we know you were  
9 talking about dollars. For example, 189  
10 million was \$189 million?

11 THE WITNESS: That's correct.

12 JUDGE CLIFTON: Okay. All right,  
13 go ahead then with page 23 of your Exhibit 6.

14 THE WITNESS: So, it is entitled  
15 End Notes. The first end note is citrus crop  
16 year, begins with the bloom of the first year  
17 listed and ends with the harvest year with the  
18 year harvest is completed.

19 JUDGE CLIFTON: So, it ends with  
20 the year that harvest is completed, and we  
21 don't know what month because it varies?

22 THE WITNESS: That is correct.

1 JUDGE CLIFTON: Okay. And same  
2 with the bloom, we don't know what month  
3 because it varies?

4 THE WITNESS: That's correct.

5 JUDGE CLIFTON: Okay.

6 THE WITNESS: Second end note,  
7 boxes, net pounds per box for oranges in  
8 California is 80, for Florida it's 90, for  
9 Texas 85; for grapefruit in California it's  
10 80, Florida 85, Texas is 80; for tangerines  
11 and mandarins in Arizona and California it is  
12 80, and in Florida it's 95.

13 Looks like I have a typo, it  
14 should be utilized production, and that's  
15 defined as the difference between total and  
16 utilized production which is marketable fruit  
17 not harvested for economic or natural reasons,  
18 and harvested fruit not sold or utilized is  
19 utilized production.

20 JUDGE CLIFTON: I don't think  
21 that's what you meant.

22 THE WITNESS: Let's see here.

1 Looks like there's another typo in that one,  
2 that's not correct. Is that what you're  
3 referring to, Judge?

4 JUDGE CLIFTON: Well, look at the  
5 whole thing and decide how it should read and  
6 tell us.

7 THE WITNESS: All right. Well,  
8 let me refer back to my testimony now. I  
9 believe my testimony actually should be the  
10 correct one. I believe I made an error and  
11 did not carry over the definition from my  
12 testimony to my graphs and charts. So,  
13 actually --

14 JUDGE CLIFTON: Well, now are you  
15 sure? Because the way you've got it here  
16 looks right to me without changing. In other  
17 words, it looks to me like you're properly  
18 defining unutilized production.

19 THE WITNESS: Oh, that's where,  
20 unutilized production, yes, it actually should  
21 be. That's where the error is. It should  
22 have been utilized production and not

1       unutilized production.

2                   JUDGE CLIFTON: Well, I don't  
3 know. Let me read it just the way you have it  
4 and tell me if this is right.

5                   THE WITNESS: All right.

6                   JUDGE CLIFTON: Unutilized  
7 production. The difference between total and  
8 utilized production which is marketable fruit  
9 not harvested for economic or natural reasons,  
10 and harvested fruit not sold or utilized is  
11 unutilized production.

12                  THE WITNESS: Yes, that would be  
13 the correct definition. But I believe I made  
14 an error and I copied down the definition for  
15 unutilized production instead of putting in  
16 utilized production. That's where my error  
17 was. So, that definition is correct, just  
18 when I was going through and editing my end  
19 notes, I believed I looked at the wrong entry  
20 from NASS as their definitions and put in  
21 unutilized instead of the next or previous  
22 entry which should have been utilized

1 production. Because if we look on page --

2 BY MR. HILL:

3 Q 3? 3 to 4?

4 A So, it would have been for total  
5 utilized production which begins on page 11  
6 through page 14, I was putting in the utilized  
7 production because that's what was titled in  
8 the graph instead of unutilized production.  
9 So, that was my error that I made.

10 JUDGE CLIFTON: Okay. So, the  
11 definition that you show on page 23 is  
12 correct.

13 THE WITNESS: It is a correct  
14 definition.

15 JUDGE CLIFTON: And what you want  
16 to do is you want to add one for us, another  
17 end note that will be the definition of  
18 utilized production.

19 THE WITNESS: Yes.

20 JUDGE CLIFTON: Will you need to  
21 go to a computer to do that where it's  
22 explained in some website?

1                   THE WITNESS: It's in my  
2 testimony, I have utilized production defined,  
3 and so I could just read that in if possible.

4                   JUDGE CLIFTON: Okay, that's  
5 great. Tell us what page of your testimony.

6                   THE WITNESS: So, on page 3,  
7 bottom, last sentence begins, "Utilized  
8 production is defined as the amount of a crop  
9 sold plus the quantities used at home or held  
10 in storage represents utilized production."

11                  JUDGE CLIFTON: Very good.

12                  MR. HILL: So, your Honor, should  
13 we add that as End Note 6? Or just read that  
14 onto the record?

15                  JUDGE CLIFTON: You know, it's up  
16 to you all. For the reviewer of all these  
17 documents, it really would be nice if it is  
18 added as End Note 6. It really would be  
19 helpful. So, let's have Mr. McFetridge, at a  
20 break, retrieve the copy from Kathleen Bright  
21 because that will be the record copy and it  
22 will be from that copy that postings are made

1 to the website. For the rest of us here, we  
2 don't so much need our copies changed. But  
3 that would be great.

4 THE WITNESS: Yes, no problem.

5 JUDGE CLIFTON: Okay, good. All  
6 right, so we interrupted you. So, you were  
7 about to go on to your next end note.

8 THE WITNESS: Yes. End note for  
9 packinghouse door price. Packinghouse door is  
10 generally referred to as a point of first  
11 sale. Packinghouse door prices are calculated  
12 by subtracting costs incurred through the  
13 packinghouse from the freight on board price  
14 or FOB. These costs may include sorting,  
15 grading, packing, cooling, et cetera.

16 And then my fifth end note was the  
17 freight on board price (FOB), that's defined  
18 as a commercial price term that signifies a  
19 contractual agreement between a buyer and a  
20 seller to have a subject of a sale delivered  
21 to a designated place, usually either the  
22 place of shipment or the place of destination

1 without expense to the buyer. This term  
 2 indicates delivery will be made on board or  
 3 into a carrier by the shipper without charge.  
 4 The abbreviation FOB is usually followed by a  
 5 shipping point or destination. Reports from  
 6 fresh fruit sales organizations and from  
 7 citrus packers provide data for an average FOB  
 8 price.

9 MR. HILL: I would like to move  
 10 Exhibit No. 5 which is his written testimony  
 11 into evidence if there is no problem with  
 12 that.

13 JUDGE CLIFTON: Is there any  
 14 objection to the admission into evidence of  
 15 Exhibit 5? There is none. Exhibit 5 is  
 16 admitted.

17 (Whereupon Exhibit No. 5  
 18 was received into  
 19 evidence.)

20 MR. HILL: And -- I'm sorry.

21 JUDGE CLIFTON: And I'd like to  
 22 wait until he has made the correction to 6 and

1       then have him again testify and read that into  
2       the record, and then we'll deal with that one.

3               MR. HILL: That's good. That's  
4       what I was going to ask if you wanted to.

5               JUDGE CLIFTON: Very good. All  
6       right. Do you have any other questions, Mr.  
7       Hill, of this witness at this time?

8               MR. HILL: I'm going to defer to  
9       Melissa if she has any questions.

10              JUDGE CLIFTON: Ms. Schmaedick?

11              MS. SCHMAEDICK: This is Melissa  
12       Schmaedick. Can you hear me?

13              JUDGE CLIFTON: Yes.

14                               EXAMINATION

15                               BY MS. SCHMAEDICK:

16               Q       This is Melissa Schmaedick. Good  
17       morning, Mr. McFetridge.

18               A       Good morning.

19               Q       Thank you for your testimony. I  
20       just have a couple of questions for you. For  
21       charts 1 through 15, you referred to total  
22       bearing acres, total yield, so on and so

1       forth.

2               A       Yes.

3               Q       When you use the term total, does  
4       that total include, for example, bearing acres  
5       of fresh oranges that are used as fresh  
6       product as well as oranges that are used as a  
7       processed product?

8               A       That is correct. It could include  
9       both fresh and processed.

10              Q       Okay, so they're aggregated  
11      together in the tables?

12              A       Yes.

13              Q       And then for tangelos, you  
14      mentioned that NASS only carries data for  
15      Florida. Can you explain why only Florida is  
16      represented in NASS data?

17              A       I can't speak specifically, but I  
18      believe it is for confidentiality purposes.  
19      Other states that produce tangelos, it could  
20      be such a small quantity that if published  
21      then competitors could know what they're doing  
22      and it would be an unfair advantage to them.

1           Q       So, to your knowledge, is there  
2           any other commercial production of tangelos in  
3           the United States?

4           A       I'm not sure.

5                   MS. SCHMAEDICK: Thank you. Those  
6           are my questions.

7                   JUDGE CLIFTON: Thank you, Ms.  
8           Schmaedick. Mr. Hill, do you have any further  
9           questions of Mr. McFetridge at this time?

10                  MR. HILL: I do not, your Honor.

11                  JUDGE CLIFTON: All right. Does  
12           anyone else at USDA have any further questions  
13           of Mr. McFetridge at this time?

14                               (No response.)

15                  JUDGE CLIFTON: All right, then  
16           I'd invite the industry to ask, if any of you  
17           have any questions. So, if you do, just get  
18           my attention and I'll call on you.

19                               (No response.)

20                  JUDGE CLIFTON: Well done, Mr.  
21           McFetridge. You may step down. I'd like to  
22           take a comfort break at this time. Let's take

1       ten minutes and reconvene at three minutes  
2       after 10:00.

3                               (Short recess.)

4               JUDGE CLIFTON: All right. We're  
5       back on record at 10:05. Let's see, where  
6       were we? We were about to start with what,  
7       Mr. Hill?

8               MR. HILL: Well, I think we have  
9       finished. We don't have any more witnesses.

10              JUDGE CLIFTON: All right. No  
11       other witnesses from USDA?

12              MR. HILL: No, your Honor.

13              JUDGE CLIFTON: All right. And  
14       when do you want to recall Mr. McFetridge to  
15       talk about the addition to that exhibit?

16              MR. HILL: Okay, we're just  
17       waiting to print this, so if you can give me  
18       one moment?

19              JUDGE CLIFTON: Oh, you're doing  
20       it very formally. I expected just a  
21       handwritten thing. All right, well, let's  
22       just keep going and we'll come back to that

1 later then.

2 MR. HILL: I guess we will do the  
3 handwritten so we can, yes, we do have a copy  
4 here. She has a handwritten copy.

5 JUDGE CLIFTON: Oh, good. Let's  
6 leave Mr. McFetridge in place where he is.  
7 And Mr. McFetridge, you remain sworn. Looking  
8 at your Exhibit 6, what have you added?

9 THE WITNESS: I have added on page  
10 23 in the End Notes a number 6 footnote for  
11 utilized production which is defined as the  
12 amount of crop sold plus the quantity used at  
13 home or held in storage represents utilized  
14 production.

15 JUDGE CLIFTON: Excellent, thank  
16 you. And Mr. Hill?

17 MR. HILL: And I would like to go  
18 ahead and enter that into the record as  
19 evidence, as an exhibit.

20 JUDGE CLIFTON: Is there any  
21 objection to the admission into evidence of  
22 Exhibit 6? There is none. Exhibit 6 is

1 admitted into evidence. Thank you.

2 All right. Now, who will be the  
3 first person to testify? I'm going to say  
4 from the industry, referring to citrus  
5 industry.

6 Oh, you want me to go by the  
7 written sheet that I already have. Very good.  
8 Then I would call Mr. Chadwell and ask him  
9 please to be seated so that I can swear him in  
10 and then I'll have him identify himself.

11 Would you raise your right hand  
12 please?

13 (Whereupon Exhibit No. 6  
14 was received into  
15 evidence.)

16 Whereupon,

17 ARTHUR B. CHADWELL  
18 was called as a witness and, having been first  
19 duly sworn, was examined and testified as  
20 follows:

21 JUDGE CLIFTON: Please state and  
22 spell your name.

1 THE WITNESS: Arthur Chadwell, A-  
2 r-t-h-u-r C-h-a-d-w-e-l-l.

3 JUDGE CLIFTON: Thank you. You  
4 may proceed.

5 THE WITNESS: Thank you. I have  
6 my testimony in three exhibits that I would  
7 like to enter.

8 JUDGE CLIFTON: All right. First,  
9 how many copies do you have that you want to  
10 give away?

11 THE WITNESS: I have ten if  
12 needed.

13 JUDGE CLIFTON: Excellent. My  
14 priority is, the number one is the one that  
15 Kathleen Bright will keep, just the record  
16 copy. Then I want one to look at, and I want  
17 the court reporter to have one to look at.  
18 And from there, I would think you would get  
19 one to Ms. Schmaedick and one to Mr. Hill.  
20 And how many have I named? About five of  
21 them?

22 THE WITNESS: Five copies.

1 JUDGE CLIFTON: All right. And  
2 then with regard to the other five, I have no  
3 priority and you may proceed as you wish. And  
4 let's go off record while the documents are  
5 distributed.

6 (Off the record.)

7 JUDGE CLIFTON: All right. We're  
8 back on record at 10:11. Mr. Chadwell, you  
9 may proceed.

10 THE WITNESS: Okay. First, I  
11 would like to enter two exhibits, or three  
12 depending. The first exhibit is a Citrus  
13 Industry Glossary. It's terms that are  
14 commonly used in our industry.

15 JUDGE CLIFTON: I think you're  
16 wonderful. This is great to have this. All  
17 right, let's call that Exhibit 7. Exhibit 7  
18 is the Citrus Industry Glossary.

19 And what, describe for us what the  
20 tables are if you will.

21 (Whereupon Exhibit No. 7  
22 was marked for

1 identification and  
2 received into evidence.)

3 THE WITNESS: Okay. The next  
4 exhibit I have produced, four tables. Table  
5 1 is for oranges, early midseason in navels,  
6 Valencia and late type oranges. It's a ten-  
7 year average of bearing acreage, production,  
8 boxes per acre, percent fresh utilization,  
9 percent processed utilization, on tree return  
10 for fresh, on tree for processed, combined on  
11 tree, and a total value per acre. And Table  
12 1 is for oranges.

13 Table 1-A, I broke out navel  
14 oranges on their own and it's the same ten  
15 seasons, bearing acreage, production, boxes  
16 per acre, fresh utilization, processed  
17 utilization, on tree fresh, on tree processed,  
18 combined on tree, total revenue per acre.

19 Table 2, white and red grapefruit,  
20 ten seasons, bearing acreage, production,  
21 boxes per acre, fresh utilization, processed  
22 utilization, on tree return fresh, on tree

1 return processed, combined on tree, total  
2 revenue per acre.

3 Table 3, Temple oranges and  
4 tangelos, Temple oranges ten seasons. It must  
5 be noted that after the '05-'06, we quit as an  
6 industry recording Temples, so that's limited  
7 there but it's the same seasons, bearing  
8 acreage, production, boxes per acre, fresh  
9 utilization, processed utilization, on tree  
10 fresh, on tree processed, combined on tree,  
11 and the total acre. Then tangelos, ten  
12 seasons, bearing acreage, production, boxes  
13 per acre, percent fresh, percent processed  
14 utilization, on tree fresh, on tree processed,  
15 combined on tree, and total revenue per acre.

16 Table 4 is tangerines, early  
17 tangerines which consist of Fallglo and  
18 Sunburst, ten seasons, bearing acreage,  
19 production per season, boxes per acre, fresh  
20 utilization, processed utilization, on tree  
21 fresh, on tree processed, combined on tree,  
22 and the total revenue.

1 Honey tangerines, ten seasons,  
2 bearing acreage, production, boxes per acre,  
3 fresh utilization, fresh processed, fresh on  
4 tree, processed on tree, combined on tree,  
5 total revenue per acre.

6 And then also is Table 5 which is  
7 utilized in the testimony. And what I did on  
8 Table 5, it is specialty citrus. Specialty  
9 citrus are tangelos, Temples and tangerines  
10 combined, and we're going to utilize that as  
11 fresh specialty citrus. And we have for the  
12 1987-88 season, the 1997-98, and the 2011-12  
13 by variety the bearing acreage, production,  
14 boxes, utilization fresh/processed, and total  
15 processed. And this is just to break these  
16 varieties up for information.

17 JUDGE CLIFTON: Now, all of these  
18 tables that you've just identified, were you  
19 wanting to capture information for Florida  
20 production?

21 THE WITNESS: This is all Florida.

22 JUDGE CLIFTON: All Florida.

1 THE WITNESS: Yes, ma'am.

2 JUDGE CLIFTON: Excellent. Who  
3 double checked you getting these numbers off  
4 the NASS statistics? Anyone? Did anyone  
5 double check you to make sure you got the  
6 right numbers here?

7 THE WITNESS: Just my assistant  
8 who works with me, I mean but we work everyday  
9 with NASS numbers. We have a close working  
10 relationship and we utilize NASS numbers in  
11 addition to our numbers that we generate to do  
12 reporting. So, we are in daily contact with  
13 FASS, Florida Agricultural Statistics Service,  
14 and we provide them information mainly from  
15 the fresh because we're fresh oriented, and  
16 they provide us processed. But we work  
17 together with FASS to produce reports for the  
18 State of Florida.

19 JUDGE CLIFTON: Excellent. So,  
20 your office is really a very reliable place to  
21 gather this information?

22 THE WITNESS: Correct. And these,

1 and we'll get into this later, and all these  
2 numbers are certified numbers through the  
3 Inspection Service. And so, we have fresh,  
4 our fresh numbers, we don't post those until  
5 they are certified by the Florida Department  
6 of Agriculture. So, everything here is  
7 certified by the state, and then it's a  
8 combination of FASS reporting and our  
9 reporting.

10 JUDGE CLIFTON: Very, very  
11 helpful. All right, shall I mark these tables  
12 as Exhibit 8? And Mr. Chadwell, is there  
13 anything else you want to tell us about these  
14 tables that I have marked as Exhibit 8 before  
15 I see if there is any objection to this being  
16 admitted as an exhibit?

17 (Whereupon Exhibit No. 8  
18 was marked for  
19 identification.)

20 THE WITNESS: No. And not only in  
21 my testimony but in some of the others, we  
22 will refer at points in times to those tables

1 as identified.

2 JUDGE CLIFTON: Is there any  
3 objection to the admission into evidence of  
4 Exhibit 8? There is none, Exhibit 8 is  
5 admitted into evidence.

6 And shall we mark your testimony  
7 as the next exhibit or this Citrus  
8 Administrative Committee report?

9 (Whereupon Exhibit No. 8  
10 was received into  
11 evidence.)

12 THE WITNESS: In order, the  
13 testimony and then the PowerPoint will be  
14 following that.

15 JUDGE CLIFTON: All right. Then  
16 let's mark the testimony of Arthur B. Chadwell  
17 as Exhibit 9. And let's mark the Citrus  
18 Administrative Committee PowerPoint as Exhibit  
19 10.

20 Mr. Chadwell, you may proceed.

21 (Whereupon Exhibit Nos.  
22 9 and 10 were marked for

identification.)

THE WITNESS: Can I get my water  
please?

JUDGE CLIFTON: Yes, certainly.

DIRECT TESTIMONY

THE WITNESS: General  
Introduction. My name is Arthur B. Chadwell,  
A-r-t-h-u-r B. C-h-a-d-w-e-l-l. I reside at  
723 Success Avenue, Lakeland, Florida. I am  
the manager of the Citrus Administrative  
Committee which administers Federal Marketing  
Order No. 905, Oranges, Grapefruit, Tangerines  
and Tangelos Grown in Florida. Due to the  
number of citrus-related terms that will be  
used in testimony today, I have included a  
glossary of terms. Also included are four  
tables which include by variety for the past  
ten seasons bearing acreage production,  
production per acre, utilization both fresh  
and processed, and on tree returns.

This next sentence I should have  
deleted because I've deleted the charts and

1       graphs.   Okay?

2                   JUDGE CLIFTON:   Now, when you say  
3       you should have deleted, obviously you're not  
4       going to read it as part of your testimony,  
5       but shall we also cross it off on Exhibit 9?  
6       Do you want it crossed out?

7                   THE WITNESS:   Yes.

8                   JUDGE CLIFTON:   Okay.   Then Ms.  
9       Bright?   Ms. Bright, I want you to read into  
10      the record what you're crossing out.

11                  MS. BRIGHT:   Starting at "Also",  
12      correct?

13                  THE WITNESS:   "There are also,"  
14      correct.

15                  MS. BRIGHT:   "There are also  
16      charts for production and fresh shipments for  
17      the past ten seasons, and a pie chart of fresh  
18      shipments by variety for the 2011-12 season."

19                  JUDGE CLIFTON:   Thank you.   And  
20      you may resume, Mr. Chadwell.

21                  THE WITNESS:   The Florida citrus  
22      industry has a long history of cooperation

1 among government entities, industry  
2 organizations, competing growers and handlers.  
3 I will identify the major organizations that  
4 work for the benefit of the Florida citrus  
5 industry and to provide a brief introduction  
6 to their activities.

7 Government entities. Citrus  
8 Administrative Committee, Federal Marketing  
9 Order No. 905. Federal Marketing Order No.  
10 905 order was promulgated in 1939 and was last  
11 amended on September 9th, 2009. The  
12 production area for the marketing order is  
13 that portion of the State of Florida which is  
14 bound by the Suwannee River, the Georgia  
15 Border, the Atlantic Ocean, and the Gulf of  
16 Mexico.

17 The Citrus Administrative  
18 Committee is comprised of 18 members and their  
19 alternates. 9 members and alternates are  
20 grower members, 8 members and alternates are  
21 shipper members, and 1 member and alternate  
22 represent the public. All members serve one-

1 year terms of office that run from August 1st  
2 through July 31st. Members may serve a  
3 maximum of three consecutive terms. Producer  
4 grower members are nominated at grower  
5 nomination meetings; handler shipper members  
6 are nominated at shipper nomination meetings.  
7 The committee nominates a public member and  
8 alternate. All members and alternates are  
9 appointed by the Secretary of Agriculture and  
10 serve at the Secretary's pleasure.

11 Federal Marketing Order No. 905  
12 authorizes grade, size, maturity, quality, and  
13 volume regulations. Additionally, export  
14 regulations including size, capacity, weight,  
15 dimensions, marketing or pack of the container  
16 regulations is authorized.

17 JUDGE CLIFTON: Now, go back to  
18 that. What's typed is marking or pack. How  
19 should that sentence read?

20 THE WITNESS: Marking is, or the  
21 markings on the container.

22 JUDGE CLIFTON: All right. So,

1       it's correct exactly as written in the  
2       exhibit?

3                   THE WITNESS:   Yes, ma'am.

4                   JUDGE CLIFTON:   Thank you.

5                   THE WITNESS:   Okay.   Grade and  
6       size regulations are in effect for citrus  
7       shipped to destinations outside the production  
8       area.   Volume regulations may be placed on red  
9       grapefruit and specific varieties based on  
10      size.   Shipping holidays may be authorized  
11      during Thanksgiving and Christmas holiday  
12      seasons.

13                   The authority to establish  
14      projects including production research,  
15      marketing research and development projects,  
16      and marketing promotion including paid  
17      advertisement designated to assist, improve or  
18      promote the marketing distribution and  
19      consumption was included in the order in July  
20      of 2009.   Under AD, grapefruit imports must be  
21      the same or comparable minimum grade, size,  
22      quality, and maturity requirements as

1 specified under the order. The order only  
2 regulates interstate and export shipments for  
3 the Florida citrus industry.

4 Florida Citrus Commission, Florida  
5 Department of Citrus. The Florida Citrus  
6 Commission and the Florida Department of  
7 Citrus (FDOC) were formed in 1935. The  
8 commission is appointed by the Governor of  
9 Florida to oversee the FDOC. The commission  
10 has 9 members which is made up of 6 growers,  
11 2 growers/processors, and 1 grower/shipper.  
12 Each commissioner serves a three-year term.  
13 The FDOC provides marketing, research, and  
14 regulatory support for Florida citrus  
15 products. Although it is a state agency, the  
16 FDOC operates under a state marketing order  
17 which established a means to raise revenue  
18 through a tax. Growers fund the FDOC through  
19 an excise tax placed on each box of citrus  
20 that moves through processing plants and fresh  
21 fruit packinghouses. The commission sets the  
22 tax rate each year.

1                   During the 2011-12 season, about  
2                   63 percent of the FDOC's operating budgets,  
3                   \$58 million, is allocated to marketing. With  
4                   the onset of HLB, citrus greening disease, in  
5                   Florida, the commission directed 23 percent of  
6                   the FDOC's budget to disease research. The  
7                   research money is channeled through the Citrus  
8                   Research and Development Foundation,  
9                   Incorporated (CRFD) for disbursement to  
10                  researchers in the form of competitive grants.  
11                  There --

12                   JUDGE CLIFTON: Excuse me, the  
13                   initials of that foundation again please?

14                   THE WITNESS: CRFD.

15                   JUDGE CLIFTON: Okay. It looks to  
16                   me like your letters are mixed up. If it's  
17                   Citrus Research and Development Foundation,  
18                   tell me again what the letters are?

19                   THE WITNESS: Okay, I'm sorry.  
20                   Citrus Research and Development Foundation,  
21                   Incorporated, CRDF.

22                   JUDGE CLIFTON: Very good.

1 THE WITNESS: Whew!

2 JUDGE CLIFTON: It's the little  
3 things.

4 THE WITNESS: Okay. There will be  
5 more detailed information presented in later  
6 testimony on the FDOC's regulation of  
7 intrastate fresh citrus shipments.

8 Florida Department of Agriculture  
9 and Consumer Services, Division of Fruit and  
10 Vegetables. The Division of Fruit and  
11 Vegetables Division operates under the Florida  
12 Department of Agriculture and Consumer  
13 Services (FDACS) and, through the Bureau of  
14 Inspection (Bureau) under the citrus section  
15 of the Bureau, inspects and certifies all  
16 fresh shipments of Florida citrus as may be  
17 assigned or supported in connection with  
18 regulations issued under the order and FDOC  
19 regulations and/or rules. In support of that  
20 goal, licenses for all citrus dealers,  
21 registrants and agents of licensed fruit  
22 dealers, citrus packinghouses are collected

1 and maintained annually. The division  
2 maintains testing equipment facilities at  
3 citrus packinghouses and conducts methods for  
4 minimum grade and size regulation as  
5 established by the committee under the order.

6 Section 905.53, Inspection and  
7 Certification, requires a carton of regulated  
8 citrus is inspected, well, it should be  
9 requires each. Let me start over.

10 JUDGE CLIFTON: Yes. And I'm  
11 going to ask Ms. Bright to make the change  
12 that he's saying right on the exhibit if you  
13 will. So, yes, read that sentence again  
14 please.

15 THE WITNESS: Section 905.53,  
16 Inspection and Certification, requires each  
17 carton of regulated citrus is inspected by the  
18 division. And a certified copy of the  
19 manifest is furnished to the committee for the  
20 collection of assessments and statistical  
21 information, and the committee pays a fee of  
22 the manifest information.

1                   Institute of Food and Agricultural  
2       Sciences at the University of Florida (IFAS).  
3       The Institute of Food and Agricultural  
4       Sciences at the University of Florida (UFIFAS)  
5       conducts research, extension, and education  
6       programs on citrus through its main campus in  
7       Gainesville and at three research and  
8       education centers at Lake Alfred, Immokalee  
9       and Fort Pierce. In addition, a network of  
10      multi-county extension faculty is located in  
11      various offices throughout the citrus  
12      production region. UFIFAS is funded by state  
13      appropriation from the Florida legislature  
14      through the USDA formula funding and by grants  
15      and contracts from a wide range of public and  
16      private agencies.

17                The Citrus Research and Education  
18      Center (CREC) in Lake Alfred was established  
19      in 1917 with grower funds and is the oldest  
20      and largest off campus research center in the  
21      UFIFAS organization. CREC is unique among  
22      citrus centers in that it focuses entirely on

1 one commodity, citrus. It is the largest --

2 JUDGE CLIFTON: Would you start  
3 again with that sentence please?

4 THE WITNESS: CREC is unique among  
5 research centers in that it focuses entirely  
6 on one commodity,  
7 citrus. It is the largest citrus research  
8 facility in the world and has the world's  
9 largest citrus library. Today, faculty  
10 members work to provide relevant time and  
11 assistance through the development and  
12 delivery of information, technology,  
13 educational opportunities to numerous and  
14 diverse clients.

15 The University of Florida students  
16 pursuing master's degrees and doctorates in  
17 agricultural fields may enroll in several  
18 courses at CREC or attend via a long distance  
19 video conferencing network. Designated  
20 extension faculty members serve the public by  
21 providing publications and conducting  
22 education programs for growers, processors,

1     packers, related industry groups, and  
2     homeowners. Short courses, field  
3     demonstrations and seminars are also held at  
4     CREC.

5                     Eight disciplinary departments of  
6     the University of Florida are represented at  
7     CREC including horticultural sciences, soil  
8     and water science, plant pathology, entomology  
9     and nematology, microbiology and cell science,  
10    agriculture and biological engineering, food  
11    science and human nutrition, and food and  
12    resource economics. Faculty are organized in  
13    interdisciplinary working groups and address  
14    a wide array of topics. In addition, CREC is  
15    home to the scientific research staff of the  
16    Florida Department of Citrus (FDOC).

17                    Agriculture Research Service,  
18    United States Department of Agriculture. The  
19    United States Department of Agriculture,  
20    Agriculture Research Service (USDA-ARS) has a  
21    facility located in Fort Pierce. The USDA-ARS  
22    unit has been a major player in research

1 related to both citrus canker and citrus  
2 greening. It is formally known as the US  
3 Horticultural Research Laboratory (USHRL) with  
4 national responsibility for control methods  
5 for insect pest of citrus and other  
6 subtropical fruits, vegetables and  
7 ornamentals, for basic physiological,  
8 biochemical, and pathological research on post  
9 harvest problems of horticulture crops, and  
10 for developing new citrus scion and rootstock  
11 varieties that enhance fruit quality and yield  
12 and are resistant to disease. There are 20  
13 PhD research scientists divided into three  
14 units: horticulture and breeding, subtropical  
15 insects and subtropical plant pathology.

16 Florida Agricultural Statistics  
17 Service. The Florida Agricultural Statistics  
18 Service (FASS) is a joint effort of the United  
19 States Department of Agriculture National  
20 Agricultural Statistics Service (USDA-NASS)  
21 and the Florida Department of Agriculture and  
22 Consumer Services (FDACS). It is located in

1 Orlando and collects data on a wide array of  
2 crops and livestock products produced in  
3 Florida including citrus.

4 The citrus summary is published  
5 annually and reports production utilization  
6 and prices for all major citrus varieties  
7 produced in Florida as well as data on citrus  
8 produced in other US states. FASS also  
9 publishes biannually commercial citrus tree  
10 inventory, another valuable report that  
11 provides tree numbers and acreage by age,  
12 variety and county. Most of the statistical  
13 data used in this hearing was taken from the  
14 citrus summary. Also, each box of Florida  
15 citrus fruit is assessed a fee to fund FASS.

16 Section 905.31, Duties of Citrus  
17 Administrative Committee (G), requires an  
18 adequate system for determining the total crop  
19 of each variety. The committee and FASS work  
20 closely during the season to share statistical  
21 data for the Florida citrus industry.

22 Citrus Research and Development

1 Foundation, Incorporated. The Citrus Research  
2 and Development Foundation was created in May  
3 of 2009. The foundation exists as a Florida  
4 not-for-profit corporation, is organized as a  
5 direct support organization (DSO), and is  
6 certified by the University of Florida's board  
7 of trustees. It operates for the benefit of  
8 citrus industry in the State of Florida in a  
9 manner consistent with the goals of the  
10 University of Florida.

11 The foundation plans to serve as  
12 ground zero for Florida's research by  
13 coordinating citrus disease researchers,  
14 managing contracts, assessing research  
15 progress, and addressing intellectual property  
16 and other commercialization and product  
17 development issues. Ten of the foundation's  
18 board members are citrus growers and three  
19 represent the University of Florida.

20 Florida Foundation of Seed  
21 Producers, Incorporated. The Florida  
22 Foundation of Seed Producers, Incorporated

1 (FFSP) is a non-profit corporation acting on  
2 behalf of the Florida Agriculture Experiment  
3 Station for the release of proprietary UF  
4 germplasm.

5 New Varieties Development and  
6 Management Corporation. The New Varieties  
7 Development and Management Corporation (NVDMC)  
8 is a non-profit organization funded by Florida  
9 citrus growers through the Florida Citrus  
10 Commission. Its stated mission is to provide  
11 Florida citrus growers affordable and timely  
12 access to new citrus varieties that will  
13 enhance Florida's competitive position and  
14 enhance the potential of interstate, domestic,  
15 and international breeding programs while  
16 maximizing the crop values of the growers and  
17 packers it serves. About 70 percent of the  
18 NVDMC's budget goes directly to breeding  
19 programs. There will be additional testimony  
20 concerning the NVDMC presented with testimony  
21 on proposal 1 as given.

22 Voluntary Trade Organizations,

1 Florida Citrus Mutual. Founded in 1948,  
2 Florida Citrus Mutual (FCM) serves as a  
3 lobbying voice for Florida citrus growers in  
4 Washington, DC and Tallahassee Florida. The  
5 group which maintains about 8,000 grower  
6 members also provides marketing information,  
7 communications, and grower fairs to its  
8 memberships led by a board of 21 member  
9 elected directors from various growing regions  
10 across the state. FCM's annual budget is  
11 approximately \$3,000,000 and is generated on  
12 a per box assessment.

#### 13 Regional Grower Associations.

14 Formed at various times over the past three  
15 decades, four regional grower associations  
16 each handle local issues for their members  
17 such as water management, community relations  
18 and local planning. Politically active  
19 growers in each of the growing regions  
20 established the associations after rapid urban  
21 development in Florida began conflicting with  
22 citrus farming which created the need for more

1 local representation for the industry. The  
2 regional associations subsist on small budgets  
3 funded by annual membership fees. Often, the  
4 larger citrus organizations use the regional  
5 associations as sounding boards for issues or  
6 ideas circulating around the industry.

7 The grower member alternates of  
8 the CAC that are members of each of the  
9 regional associations are as follows: Gulf  
10 Citrus Growers Association, Highlands County  
11 Citrus Growers Association, Peace River Valley  
12 Citrus Growers Association. And each of these  
13 above grower associations produces mainly  
14 round oranges for processing with some  
15 specialty citrus. Members of each of these  
16 organizations are grower members of the  
17 committee.

18 Indian River Citrus League. The  
19 Indian River Citrus League is comprised mostly  
20 of fresh grapefruit growers and shippers and  
21 is well represented on the committee.

22 Florida Citrus Packers. Chartered

1 in 1960, the Florida Citrus Packers is a non-  
2 profit cooperative association representing  
3 growers whose focus is selling their citrus to  
4 the fresh market rather than to processors.  
5 Fresh growers face unique shipping issues that  
6 processed growers do not often face. The  
7 packers is supported by a per box assessment  
8 on all fresh citrus shipments from committee  
9 member companies. Representing the vast  
10 majority of the volume of all citrus shipments  
11 from Florida each year, the organization  
12 endeavors to solve the shipping --

13 JUDGE CLIFTON: Wait, let me have  
14 you go back. Read that sentence again  
15 beginning with representing.

16 THE WITNESS: Representing the  
17 vast majority of the volume of all fresh  
18 shipments from Florida each year, the  
19 organization endeavors to solve the shipping  
20 problems its members encounter and to secure  
21 cooperation between producers and shippers in  
22 the marketing of fresh citrus. Most of the

1 shipper members and alternates on the CAC are  
2 members of the packers. The packers work  
3 closely with the committee on issues involving  
4 the shipment of fresh citrus fruit and the  
5 majority of the committee's shipper  
6 members/alternates are members of the packers.

7 Grower. The number of citrus  
8 grower farms in Florida was reported to be  
9 6,061 in the 2007 US Census of Agriculture,  
10 the most recent data on FASS website. The  
11 same census report stated there were 654,747  
12 acres of citrus in Florida on those farms.  
13 Given the citrus acreage and number of grower  
14 farms reported in the 2007 census, the average  
15 acreage per grower farm is 172 acres. It  
16 should be noted that in the past season, 2011-  
17 12, more than 90 percent of the citrus  
18 produced in Florida was utilized in the  
19 production of fruit juice while less than 10  
20 percent was utilized for fresh citrus  
21 shipments. Therefore, it is estimated within  
22 the industry that approximately 10 percent of

1 the Florida citrus growers, 500 to 600,  
2 produce fruit for the fresh market.

3 A small grower as defined by the  
4 Small Business Administration (SBA) is one  
5 that grosses less than \$750,000 annually, and  
6 given the on tree returns and boxes produced  
7 per acre as shown on Tables 1, 1-A, 2, 3 and  
8 4 gives support that a small Florida citrus  
9 grower during the 2011-12 season is one that  
10 has approximately 274 acres. Using this as a  
11 base for estimating the number of small  
12 growers, a case can be made that a majority of  
13 Florida's fresh citrus growers would meet the  
14 SBA definition. There are a minimum of two  
15 grower cooperative member alternates on the  
16 committee, and there are an increasing number  
17 of growers that own a packinghouse or have an  
18 exclusive relationship with a shipper to  
19 handle their fruit.

20 Shipper. Over the past ten  
21 seasons, the number of Florida citrus shippers  
22 that shipped regulated citrus fruit has

1 declined from 59 shippers during the 2002-03  
2 season to 44 shippers during the 2011-12  
3 season, a reduction of 25 percent. The Small  
4 Business Administration (SBA) definition of a  
5 small shipper is a shipper which grosses less  
6 than \$7,000,000. Given the average FOB price  
7 for all Florida's fresh citrus shipments  
8 during the 2011-12 season, each shipper  
9 shipments, 21 shippers would meet the SBA  
10 definition of a small shipper. During the  
11 2011-12 season, the ten largest shippers  
12 accounted for more than 51 percent of  
13 Florida's shipments while the top 23 large  
14 shippers (large shippers SBA) accounted for  
15 more than 89 percent of the shipments.

16 Also changing is the number of  
17 shippers with their own in-house packing  
18 sales. 25 years ago, there were only three  
19 major sales agencies that marketed fruit for  
20 multiple independent shippers. During the  
21 2011-12 season, approximately 6 or 25 percent  
22 of the larger handlers had their own in-house

1 sales agencies. Last season, 11 percent of  
2 the fresh shipments were handled by 21 small  
3 growers (small growers SBA).

4 JUDGE CLIFTON: Now, growers and  
5 shippers are different, so tell me how you  
6 want that sentence to read starting with last  
7 season.

8 THE WITNESS: Okay. Last season,  
9 11 percent of the fresh shipments were handled  
10 by 21 small shippers (small shippers SBA  
11 definition). The consolidation of shippers  
12 has been greatest within the marketing  
13 cooperatives and mid-size handlers. There are  
14 a minimum of two cooperative shipper  
15 members/alternates on the committee. Also, of  
16 the 44 shippers of record last season, the  
17 vast majority, approximately 80 percent, owned  
18 and operated groves.

19 Citrus acreage and production.  
20 Citrus is grown in 29 of Florida's 67  
21 counties. The top 15 citrus producing  
22 counties produced 94 percent of the citrus

1 produced during the 2011-12 season as reported  
2 by FASS in the citrus summary 2011-12. There  
3 were 531,493 acres of commercial citrus in  
4 Florida in 2012 as compared to 797,303 acres -  
5 -

6 JUDGE CLIFTON: Now, I think we  
7 should change that on the exhibit. So, Ms.  
8 Bright, are you going to put a comma instead  
9 of a period in Exhibit 9, page 10?

10 MS. BRIGHT: Yes, I will, your  
11 Honor.

12 JUDGE CLIFTON: All right. And  
13 so, read this again from the beginning, that  
14 sentence if you will.

15 THE WITNESS: There were 531,493  
16 acres of commercial citrus in Florida in 2012  
17 as compared to 797,303 acres of commercial  
18 citrus in 2002, a 33 percent reduction.

19 Of the 265,810 acres lost during  
20 this ten-year period, 28 percent was orange  
21 acreage, 46 percent was grapefruit acreage,  
22 and 43 percent was specialty citrus fruit

1 acreage. During the same time frame, Florida  
 2 citrus production decreased 32 percent from  
 3 over 250 million boxes to 171 million boxes.  
 4 It must be noted that Florida's citrus  
 5 production during the past season has been  
 6 greatly impacted by greening. The bearing  
 7 acreage, production, fresh and processed  
 8 utilization and on tree prices farm gate for  
 9 the past ten seasons are listed in Tables 1,  
 10 1-A, 2, 3 and 4. The sources of the  
 11 statistical data and definition used in the  
 12 development, we need to strike "the charts,"  
 13 it needs to be struck now.

14 JUDGE CLIFTON: Okay. Read us  
 15 what words should be stricken.

16 THE WITNESS: "The charts."

17 JUDGE CLIFTON: How about the word  
 18 "and"?

19 THE WITNESS: Yes.

20 JUDGE CLIFTON: Oh, so maybe  
 21 "charts and." Leave "the."

22 THE WITNESS: Yes, "the charts

1       and"   should be --

2                   JUDGE CLIFTON:   How about leave  
3       the "the" in and just strike "charts and"?

4                   THE WITNESS:   "Charts and," okay.

5                   JUDGE CLIFTON:   All right.   So,  
6       Ms. Bright, tell me what you struck in Exhibit  
7       9, page 10.

8                   MS. BRIGHT:   I have struck out  
9       "charts and."

10                  JUDGE CLIFTON:   Very good.   Then  
11       if you'd start again and leave that?

12                  THE WITNESS:   Okay.   The sources  
13       of the statistical data and definition used to  
14       develop the charts are noted --

15                  JUDGE CLIFTON:   How about the  
16       tables?

17                  THE WITNESS:   I'm sorry, the  
18       tables are noted, whoa, let me start again.  
19       The sources of the statistical data and  
20       definition used to develop the tables are  
21       noted, wait a minute.

22                  JUDGE CLIFTON:   It's perfect.

1 THE WITNESS: Okay.

2 JUDGE CLIFTON: You're saying,  
3 you've got right on the tables.

4 THE WITNESS: Yes.

5 JUDGE CLIFTON: The sources.

6 THE WITNESS: Okay, yes. Yes.

7 JUDGE CLIFTON: So, it's a perfect  
8 sentence. Go ahead and read it.

9 THE WITNESS: Okay. The sources  
10 of the statistical data and definition used to  
11 develop the tables are noted on the tables.  
12 The vast majority of citrus produced in  
13 Florida is utilized in the production of  
14 processed juice products. During the last ten  
15 seasons, approximately 90 percent of Florida  
16 citrus produced in Florida was utilized in the  
17 production of processed products while  
18 approximately 10 percent was utilized for  
19 fresh shipments.

20 Fresh citrus shipments. Over the  
21 past ten seasons, our Florida citrus industry  
22 has utilized 3 percent of the orange crop

1 (includes navel oranges), 39 percent of the  
2 grapefruit crop, and 56 percent of the  
3 specialty citrus fruit crop for fresh  
4 shipments. Round oranges, early mid season,  
5 and Valencia oranges accounted for 17 percent  
6 of the fresh shipments. Navel oranges  
7 averaged 37 percent of the orange shipments,  
8 and over 10 percent of the total fresh citrus  
9 shipments each season. Grapefruit accounted  
10 for 53 percent. And specialty citrus, Temple  
11 oranges, tangelos, Fallglo tangerines,  
12 Sunburst tangerines, and honey tangerines  
13 accounted for 20 percent of fresh shipments.

14 The amount of Florida citrus  
15 utilized in fresh channels of trade decreased  
16 40 percent from approximately 24.7 million  
17 boxes shipped in the 2002-03 season to 14.7  
18 million boxes shipped in the 2011-12 season.  
19 Given these statistics, it is apparent that  
20 the fresh segment of the industry is not the  
21 dominant player within the Florida citrus  
22 industry. Last season, 2011-12, round oranges

1 made up 19 percent, navel oranges 11,  
2 specialty citrus 20 percent, and grapefruit 50  
3 percent of all domestic, which account for all  
4 domestic --

5 JUDGE CLIFTON: No, the sentence  
6 is good.

7 THE WITNESS: Okay, of which  
8 domestic accounted for 38 percent of the  
9 grapefruit shipments while 62 percent were  
10 exported.

11 JUDGE CLIFTON: Okay. So, after  
12 the grapefruit 50 percent, if there's a comma  
13 there, then all of us goes -- no, these  
14 statistics are only grapefruit, okay. I'm  
15 with you.

16 THE WITNESS: Okay.

17 JUDGE CLIFTON: So, go ahead and  
18 read it again at that tail end.

19 THE WITNESS: Okay. Last season,  
20 2011-12, round oranges made up 19 percent,  
21 navel oranges 11 percent, specialty shipments  
22 20 percent, and grapefruit 50 percent, of

1       which domestic accounted for 38 percent of the  
2       grapefruit shipments while 62 percent were  
3       exported.

4               Each export grapefruit shipments  
5       accounted for 30 percent of fresh shipments  
6       last season. Last season was chosen as it, in  
7       my opinion, represents the current status of  
8       the fresh segment of our industry. The  
9       shipment of fresh Florida citrus begins in mid  
10      to late September when Fallglo tangerines and  
11      navel oranges are shipped, followed by  
12      grapefruit shipments in October. By the first  
13      of November, all fresh fruit packinghouses are  
14      up and shipping fruit.

15             Fresh fruit shipments peak the  
16      second week of December. By mid January,  
17      early tangerines, Fallglo and Sunburst, navel  
18      oranges and tangelo shipments are ending up.  
19      Offshore export of grapefruit is heaviest from  
20      mid January to the end of March. Honey  
21      tangerines and Valencia orange shipments begin  
22      in mid February. The fresh fruit season is 95

1 percent complete by the end of April with  
2 Valencia oranges shipped through June.

3 Most of the citrus designated for  
4 fresh utilization is harvested and packed  
5 within two days and is shipped within four to  
6 six days. However, in the late spring, there  
7 are some Valencia oranges placed in cold  
8 storage to be marketed during the summer  
9 months. Therefore, Florida citrus is in the  
10 fresh channel of trade approximately nine to  
11 ten months each year.

12 The market for fresh Florida  
13 citrus extends beyond the borders of the  
14 United States. Last season, 67 percent of  
15 Florida's fresh shipments went to the United  
16 States, 17 percent to the Pacific Rim  
17 countries, 10 percent to Europe, and the  
18 remaining 6 percent to Canada. It must be  
19 noted that on October 14th, 2010, the USDA-  
20 APHIS published the fresh fruit shipment  
21 procedures for the shipment of all fresh  
22 citrus from Florida. This rule has since been

1 revised as needed to combat pest and disease  
2 that are affecting the shipment of fresh  
3 Florida shipment.

4 MR. HILL: Can I stop him for one  
5 second? Just to correct the word "reaming" as  
6 far as last season.

7 THE WITNESS: Oh.

8 JUDGE CLIFTON: I'd like Ms.  
9 Bright to make that change on page 11 of  
10 Exhibit 9, the word "reaming" will be changed  
11 to "remaining" 6 percent. I think spell check  
12 did that.

13 THE WITNESS: Yes.

14 JUDGE CLIFTON: And there's one  
15 other change I think we should make. It's the  
16 line above where it talks about the market  
17 extending beyond the "boarders" of the United  
18 States. Let's just take out the a in the word  
19 boarders. And do you agree with those  
20 changes, Mr. Chadwell?

21 THE WITNESS: Yes.

22 JUDGE CLIFTON: All right. You

1 may resume.

2 THE WITNESS: Okay. Cost of  
3 production and grower returns. In September  
4 of 2012, Ron Muraro, Professor of the  
5 Extension Farm Management Economics,  
6 University of Florida, IFAS CREC, published  
7 information on production costs for producing  
8 oranges and grapefruit in the production  
9 areas.

10 JUDGE CLIFTON: Let's go off  
11 record just a minute.

12 (Off the record.)

13 JUDGE CLIFTON: All right. We're  
14 back on record. It's 10:57. First, I'm going  
15 to ask, Mr. Chadwell, that you instruct  
16 Kathleen Bright, on the bottom of page 11 of  
17 Exhibit 9, what word needs to be added?

18 THE WITNESS: Of Florida.  
19 Production areas of, just Florida needs to be  
20 added.

21 JUDGE CLIFTON: Okay. And now  
22 would you read that sentence again please?

1                   THE WITNESS: In September of  
2                   2012, Ron Muraro, Professor of the Extension  
3                   Farm Management Economics, University of  
4                   Florida, IFAS CREC, published information on  
5                   production costs for producing oranges and  
6                   grapefruit in the production areas of Florida.

7                   JUDGE CLIFTON: Oh, I see. Then  
8                   that sentence is repeated on the next page.  
9                   So, no problem. Go ahead and just read it  
10                  again, we'll leave it in there. It's not a  
11                  problem.

12                 THE WITNESS: Word process. In  
13                 September of 2012, Ron Muraro, Professor of  
14                 the Extension Farm Management Economics,  
15                 University of Florida, IFAS CREC, published  
16                 information on production costs for producing  
17                 oranges and grapefruit in the production areas  
18                 of Florida. He reported that eight seasons  
19                 ago the average cost of citrus production in  
20                 Florida averaged \$771 per acre. For the 2011-  
21                 12 season, Mr. Muraro reported the cost of  
22                 producing oranges for processed market, 98

1       percent of oranges used for processing was  
2       \$2,370. This cost could be as much as 20  
3       percent more for oranges produced for the  
4       fresh market.

5                   It should be assumed the cost of  
6       producing specialty citrus for the fresh  
7       market would be similar to the cost to produce  
8       grapefruit for the fresh market. The cost to  
9       produce grapefruit for the fresh market was  
10      \$2,935 per acre, and these costs have  
11      increased greatly due to canker, greening,  
12      increased energy cost which affects not only  
13      production cost but also harvesting and  
14      packing of citrus for the fresh market.

15                   JUDGE CLIFTON: Thank you. Let me  
16      stop you there. Ms. Bright, on page 12 of  
17      Exhibit 9, would you insert the word "market"?  
18      And that's how the witness read it, so that  
19      word market goes just before the phrase "was  
20      \$2,935 per acre."

21                   MS. BRIGHT: Got you.

22                   JUDGE CLIFTON: All right, thank

1       you. You may resume, Mr. Chadwell.

2                   THE WITNESS: Whew, okay.

3                   JUDGE CLIFTON: With the cost of  
4       producing citrus in Florida.

5                   THE WITNESS: The cost of  
6       producing citrus in Florida continues to  
7       increase as the cost to combat the spread of  
8       citrus canker and greening. These two  
9       diseases will be discussed later in my  
10      testimony. Also, the loss of trees and very  
11      limited supply of replacement trees available  
12      for growers to reset their groves is adding to  
13      the cost of each box of citrus produced. As  
14      more trees are lost to these diseases, it is  
15      becoming very difficult for Florida growers to  
16      cover the cost of production.

17                  Grower returns over the past ten  
18      seasons have gone from below the cost of  
19      production for some varieties to some of the  
20      highest returns on record. Some of the  
21      highest returns were during the three previous  
22      seasons when demand was greater than supply,

1 and during the 2004-2005 and the 2005-2006  
2 seasons caused by the hurricanes in 2004 and  
3 2005, coupled with the reduced supply of navel  
4 oranges from California. However, given the  
5 projected decrease in citrus production from  
6 Florida for the next five seasons or more and  
7 the rising cost of production, it will become  
8 much more difficult for growers to cover their  
9 costs in the upcoming seasons. For growers,  
10 producing navel oranges, grapefruit, tangelos,  
11 early tangerines, and honey tangerines for the  
12 fresh market is their only viable option as  
13 the on tree prices they receive for the  
14 portion of their crop that is utilized for  
15 processing will not cover their cost of  
16 production.

17 I have a PowerPoint presentation  
18 that will go in more detail. There are two  
19 major diseases, canker and greening, that are  
20 having a devastating effect on Florida citrus  
21 crops. Citrus canker is a bacterial disease  
22 that affects fruits, leaves and stems.

1 Unsightly lesions caused by this disease  
2 result in fruit not sellable in fresh markets.

3 Greening, sometimes called HLB, is  
4 considered by many to be the most devastating  
5 citrus disease. This disease causes a serious  
6 and rapid decline in citrus trees that is  
7 impossible to contain once it has become  
8 established in a planting. Tree health and  
9 crop quality are profoundly affected.

10 Both of these diseases are adding  
11 additional costs to production, harvesting and  
12 packing of Florida citrus products for the  
13 fresh market. These two diseases are the  
14 greatest threat to the viability of Florida  
15 citrus industry, and finding a cure for these  
16 diseases must be put on the fast track or  
17 there may not be a citrus industry in Florida  
18 within five seasons. Florida has supplied  
19 fresh citrus to consumers for over a hundred  
20 years, and I believe there will be a citrus  
21 industry in Florida, research and market  
22 development will play an important role in the

1 survival of our industry.

2 JUDGE CLIFTON: Thank you, Mr.  
3 Chadwell. I think this would be a good time  
4 for a ten-minute break. And then we'll go on  
5 to what you have for us next. So, please be  
6 back and ready to go at 11:15. 11:15, thank  
7 you.

8 (Short recess.)

9 JUDGE CLIFTON: All right. We're  
10 back on record at 11:22. Mr. Chadwell?

11 THE WITNESS: I'd like to present  
12 a short PowerPoint on some --

13 MS. BRIGHT: Excuse me, your  
14 Honor. Can I interject?

15 JUDGE CLIFTON: Oh, yes. I'm  
16 sorry.

17 MS. BRIGHT: That's okay.

18 JUDGE CLIFTON: You wanted to  
19 clarify something?

20 MS. BRIGHT: I wanted a  
21 clarification on Mr. Chadwell from his  
22 testimony, and I'm going to refer you back to

1 page 8 of your testimony.

2 JUDGE CLIFTON: All right, this is  
3 Exhibit 9.

4 MS. BRIGHT: On page 8 of your  
5 testimony, the third sentence from the bottom,  
6 when you read it into the record, you said  
7 "while less than 10 percent was utilized for  
8 fresh citrus shipments," did you mean "while  
9 less than 9 percent"?

10 THE WITNESS: Yes, it should have  
11 been less than --

12 MS. BRIGHT: 9 percent.

13 THE WITNESS: It was 9 percent,  
14 yes, and --

15 MS. BRIGHT: And 10 percent for  
16 the next one?

17 THE WITNESS: Yes.

18 MS. BRIGHT: Correct, I just want  
19 to make sure that's on properly. Thank you.

20 JUDGE CLIFTON: Thank you, Ms.  
21 Bright. So, the exhibit is fine and the  
22 testimony is now clarified.

1 All right, Mr. Chadwell, the  
2 PowerPoint. So, you've provided the slides.  
3 They've been marked as Exhibit 10. And you  
4 have equipment here, laptop, projector.  
5 Everyone who would like to reposition so you  
6 can see better, please do.

7 All right. And do you have a  
8 helper? Oh, you can do control it from the  
9 witness stand?

10 THE WITNESS: Electronically. I  
11 hope, that's the plan.

12 JUDGE CLIFTON: Excellent. And if  
13 you need to move, feel free to as long as  
14 you're near a microphone.

15 THE WITNESS: Okay.

16 JUDGE CLIFTON: All right. You  
17 may proceed.

18 THE WITNESS: Public Hearing  
19 Marketing Order 905. Florida citrus  
20 varieties, just to reiterate, round oranges,  
21 early mid season and Valencia oranges, red and  
22 white grapefruit, specialty citrus includes

1 Fallglo tangerines, Sunburst, tangelos and  
2 honey Ts.

3 I wanted to put this picture in as  
4 this is what we were discussing, the 2002-2003  
5 season. This is what we as an industry  
6 envision a citrus grove to look like.

7 Production and shipment from the  
8 previous picture for the 2002-2003. Total  
9 citrus production was 250,850,000 boxes.  
10 Fresh utilization was 24.7 million boxes, 10  
11 percent; processed utilization, 226.15 million  
12 boxes, 90 percent. Round oranges made up 79  
13 percent of the total crop, 2 percent for fresh  
14 utilization, and accounted for 13 percent of  
15 fresh shipments. Navel oranges, red and white  
16 grapefruit, specialty citrus were 21 percent  
17 of the crop but made up 87 percent of the  
18 fresh shipments.

19 This is, unfortunately, kind of  
20 what we see in groves today. We have trees  
21 that have been completely removed, reset,  
22 trees of one to two years old inter-dispersed

1       between mature trees.

2                       We move forward. For production  
3       and shipments for last season, total  
4       production was 170.9 million boxes. Fresh  
5       utilization was 14.7 million boxes or 9  
6       percent of the production. Processed  
7       utilization, 156.2 million boxes or 91 percent  
8       of the production. Round oranges were 81  
9       percent of the crop, 2 percent fresh  
10      utilization and 19 percent of fresh shipments.  
11      Navel oranges, red and white grapefruit,  
12      specialty citrus, 13 percent of our crop, 81  
13      percent of our fresh shipments.

14                    A quick comparison to the 2002-  
15      2003 season compared to last season, the 2011-  
16      12 citrus crop. Total Florida citrus crop  
17      down 32 percent; fresh shipments down 40  
18      percent; round orange production down 27  
19      percent; navels, red and white grapefruit and  
20      specialty citrus production down 50 percent.

21                    And there again is just another  
22      view of what we have today. And that's what's

1 producing the crop we are currently in, the  
2 production and shipments for the 2012-13  
3 season. The October 2012 estimate was 179.9  
4 million boxes which was up 5 percent from the  
5 2011-12 season's production. In April 2013,  
6 the estimate was 159.5 million boxes, 11  
7 percent below the October estimate, and 7  
8 percent below the 2011-12 season's harvest.  
9 And the estimated shipments for this season  
10 are estimated to be 13.2 million boxes, 10  
11 percent below the 2011-12 season.

12 As a point, how our fresh industry  
13 has reacted, in the 1987-88 season, specialty  
14 acreage was 26,300 acres. In the 1997-98  
15 season, specialty citrus acreage was 45,900  
16 acres, a 74 percent increase in ten seasons  
17 with new varieties, Fallglo and Sunburst  
18 tangerines. Move to last season, the 2011-12  
19 season, specialty, 16,200 acres, disease and  
20 outdated varieties, and were down 35 percent.

21 Moving forward, putting the tools  
22 in the Florida citrus growers' toolbox, that's

1 a term that we utilize here in our industry a  
2 lot, is the tool things that can help our  
3 growers to grow, market, harvest their fruit,  
4 adapting organizations to fresh fruit grower  
5 needs. As part of what this whole marketing  
6 order and amendments we are proceeding is  
7 adapting our order more toward the fresh needs  
8 of Florida fresh fruit growers; continued  
9 research to solve disease problems is going to  
10 be paramount; development of new varieties and  
11 hybrids; and to promote the Florida fresh  
12 citrus industry. These are how we are going  
13 to move forward from where we are now where it  
14 looks pretty bleak. These are the tools and  
15 what is happening within our industry for us  
16 to help ourselves and move forward so that we  
17 can get back to having groves that look like  
18 the one represented here.

19 And I'll entertain any questions.

20 JUDGE CLIFTON: Mr. Hill, would  
21 you like to begin?

22 MR. HILL: I'm going to let Ms.

1 Schmaedick go first.

2 JUDGE CLIFTON: All right. Ms.  
3 Schmaedick?

4 EXAMINATION

5 BY MS. SCHMAEDICK:

6 Q Thank you, Mr. Chadwell, for your  
7 testimony and your presentation. This is  
8 Melissa Schmaedick from USDA.

9 I'd like to begin with just asking  
10 for a clarification on your PowerPoint  
11 presentation.

12 A Okay.

13 Q If you could go to the slide that  
14 is titled Production and Shipments, 2012-13  
15 Season? Yes, that's the one.

16 A Okay.

17 Q So, could you explain what caused  
18 the slightly higher increase of an estimate?  
19 You said the estimate was up.

20 A Yes. The NASS, Florida  
21 Agricultural Statistics Service in cooperation  
22 with the USD NASS, in October, around the 10th

1 of October each year, projects the Florida  
2 citrus crop using the data on tree numbers,  
3 tree sizes, and past history. And in October,  
4 when the estimate was presented, it was for  
5 179.9 million boxes which was up 5 percent  
6 from where we were the previous season.  
7 Subsequent to that, and they update their  
8 estimate every month during the season, and so  
9 the most current estimate was on or about the  
10 10th of April. And that estimate had gone  
11 from 179.9 million boxes to 159.5 million  
12 boxes which is an 11 percent decrease.

13 Numerous reasons, but the effects  
14 of greening have been paramount this season,  
15 even though we've had greening for a number of  
16 years. It seems that this season it  
17 manifested itself the most with premature  
18 fruit drop. So, the fruit was on the trees  
19 when they measured in July and August and  
20 September for the crop estimate, but  
21 subsequent to that with the effects of  
22 greening, dry weather or climatic conditions,

1 and it started in December and each months  
2 subsequently there leading up to April, there  
3 was a reduction in the crop because of the  
4 effects of greening. And that was really  
5 pronounced in the droppage of fruit, fruit  
6 dropping off the trees, and therefore, not  
7 harvestable.

8 So, the fruit was in place in  
9 October but has dropped off the trees until  
10 now. And so, that's an 11 percent. And we  
11 have an estimate coming up again in May and in  
12 June, and there is anticipation that it could  
13 be further reduced.

14 Q Thank you. And when a tree is  
15 impacted by this disease and it drops fruit,  
16 does that also impact the future yield of  
17 fruit from that particular tree or is it just  
18 for the specific crop?

19 A That would be for the specific  
20 crop. And so, what the industry's concern is  
21 that this is the first year with greening that  
22 we have noticed pronounced drop of fruit. But

1       that is symptomatic of the disease, but it is  
2       just massing itself such that we are starting  
3       to see the effects in greater percentages of  
4       fruit drop.

5               Q       Thank you. I'd like to turn to  
6       your written testimony, that would be Exhibit  
7       No. 9. And I'll just sort of start from the  
8       beginning and go through on the points that  
9       I've made some notes to myself.

10              A       Okay.

11              Q       So, on page 2 of your testimony,  
12       you state at the end of the first paragraph,  
13       and I'll read the sentence, it says, "The  
14       order only regulates interstate and export  
15       shipments for the Florida citrus industry."  
16       Could you clarify which organization currently  
17       regulates intrastate?

18              A       Yes. Currently, the Florida  
19       Department of Citrus, under Chapter 20 of  
20       Florida Department of Citrus rules, is the  
21       authorizing body that regulates intrastate  
22       shipments.

1           Q     Is there a close working  
2 relationship between the order and that  
3 organization?

4           A     Yes, there is. In fact, we've got  
5 commissioners that serve on the, Florida  
6 Citrus commissioners are members of the  
7 committee and vice versa, yes, but there is a  
8 close working relationship.

9           Q     Thank you. On page 3 of your  
10 testimony and then further on throughout the  
11 document, when you refer to specific sections,  
12 so the example on page 3 would be about two-  
13 thirds the way through, that last paragraph,  
14 you say Section 905.53, is that section from  
15 the marketing order?

16          A     Yes, it is.

17          Q     And referring to that last  
18 sentence of that paragraph that begins with  
19 Section 905.53, could you clarify whether or  
20 not the collection of assessments occurs at  
21 the handler level or the grower level?

22          A     Yes. Inspection is required under

1       905.53 in the order. The inspection is  
2       delegated to the Florida Department of  
3       Agriculture Consumer Services in cooperation  
4       with the USDA. And so, they inspect each lot  
5       for the regulated citrus per the order,  
6       regulated interstate and export shipments.  
7       And that data, and so when it's inspected,  
8       then they certify it on a manifest and then  
9       those numbers are what we derive as, and it's  
10      on the manifest, it specifies what is  
11      interstate shipment, what is export, and  
12      certifies the number of cartons that are put  
13      in to that channel of trade.

14                   And then that is how shippers  
15      derive, that is what we use, of certified  
16      regulated shipments, to assess the shippers  
17      the assessment that they pay but the growers,  
18      it's taken from their growers' returns but  
19      paid by the handler. And we provide them with  
20      that number of, a certified number each month.

21           Q       Thank you. On page 5 of your  
22      testimony, in the first paragraph, you refer

1 to something called ornamentals. Could you  
2 explain what ornamentals are? It's in the  
3 middle of that first paragraph.

4 A Oh, okay. Within Florida, some of  
5 our major crops, in addition to citrus fruit  
6 crops and other crops such as avocados and  
7 then vegetables, peppers, tomatoes and  
8 ornamentals or ornamental horticultural  
9 fruits. I meant shrubs, trees, landscaping  
10 material. And so, that's an integral part of  
11 Florida's agricultural base are ornamentals  
12 and we've referred to those but those are  
13 basically landscape plants and trees.

14 Q Okay, thank you. On page 6, the  
15 paragraph under the heading New Varieties  
16 Development and Management Corporation, about  
17 halfway down through that paragraph, you state  
18 that the mission statement of the NVDMC is to  
19 provide Florida growers affordable and timely  
20 access to new citrus varieties that will  
21 enhance Florida's competitive position. My  
22 question for you is when you state competitive

1 position, is that through control of the  
2 disease that you spoke of and increasing  
3 production? Or could you explain what it  
4 means?

5 A This is, when we talk about  
6 competitive, is developing new varieties and  
7 hybrids that are consumer friendly, easy to  
8 peel, seedless, and those varieties as was  
9 presented in the testimony previously, how  
10 Florida's tangerine production has shifted.  
11 Some varieties are no longer in commercial  
12 production, and the ones that are have been  
13 waning, whereas California has developed some  
14 new varieties that are easy peel, seedless.  
15 And so, we in Florida, with a different type  
16 of climate, are trying to develop varieties  
17 that the Florida grower can produce and the  
18 shipper to compete with like varieties that  
19 are being produced in California and other  
20 places in the world.

21 Q Would the control of disease  
22 through development help the competitive

1 position though in any way? Or do you see  
2 them as being separate?

3 A Well, we've got to solve our  
4 disease problem, greening, before we can move  
5 forward on any of the varieties because as we  
6 sit now, greening is affecting all of our  
7 varieties. And so, even with new varieties,  
8 and hopefully it will be addressed later,  
9 there may be greening resistance brought into  
10 those varieties, but we've got to solve our  
11 disease problems so that we can move forward  
12 with new varieties and hybrids.

13 Q Thank you. On page 7 of your  
14 testimony under Regional Grower Associations,  
15 were the proposals being presented today  
16 discussed with these regional grower  
17 association groups?

18 A Yes. As I stated, each of these  
19 regional growers, there are members on the  
20 committee that are on the board of directors  
21 actively involved in each of these grower  
22 associations. And testimony will be presented

1 and we have supporting documents/positions  
2 from some of these, as I mentioned, the Indian  
3 River Citrus League is a predominantly fresh-  
4 oriented region where they produce fresh  
5 grapefruit, and Florida Citrus Mutual  
6 represents all citrus growers. And we have  
7 letters of support from those, and the Florida  
8 Citrus Packers, that will be presented later.

9 Q Thank you. Would you, in your  
10 opinion, were these proposals then widely  
11 discussed as well as supported by the industry  
12 at large?

13 A Yes. This has been an ongoing  
14 process which began back in 2010. So, we've  
15 had almost two years of discussing these, and  
16 so, yes, the industry has been very well  
17 informed of what we're doing and the process  
18 we're going through.

19 Q And during that process, have you  
20 also examined other alternatives?

21 A Yes, we did other alternatives.  
22 Yes.

1           Q       Thank you. On page 8 of your  
2       testimony under the heading Florida Citrus  
3       Packers, you state that fresh growers face  
4       unique shipping issues that processed growers  
5       do not often face. Could you give me some  
6       examples of what those are?

7           A       Yes. Fresh growers, for an  
8       example, there are certain diseases that  
9       affect the exterior of the fruit that for  
10      processing would not be as much of a concern.  
11      But blemishes on fresh fruit would lower the  
12      grade or, to some cases, they would not even  
13      meet grade so they could not be shipped. So,  
14      there are diseases that affect the Florida  
15      grower and shipper that the processed grower  
16      does not face in producing for the processed  
17      orange market.

18          Q       Thank you. On page 9 of your  
19      testimony, you identify, I believe it's 274  
20      acres as sort of, my question is, is that a  
21      benchmark that you're using to identify small  
22      producers?

1           A       Yes, according to the \$750,000.  
2       And then we looked, you can go back through  
3       many but I just used last year's on tree fresh  
4       returns to come up with how many acres it  
5       would take to meet that threshold. So, it was  
6       a purely statistical-driven number.

7           Q       Okay, thank you. And you  
8       mentioned two cooperative grower members. Are  
9       there cooperatives in the Florida citrus  
10      industry?

11          A       Yes, there are grower-owned  
12      cooperatives in the Florida citrus industry.  
13      And now there currently, there are two major  
14      ones, and they each have membership of other  
15      cooperatives as our industry, our fresh  
16      industry has changed and shrunk, for lack of  
17      a better term. It became where the  
18      cooperatives that owned their own  
19      packinghouse, it just got inefficient, so they  
20      closed their packinghouses and became members  
21      of other cooperatives. So, each of our two  
22      major cooperatives have a number of other

1 cooperatives as membership in their  
2 cooperatives.

3 Q Do you have an idea for what  
4 percentage of the industry is represented by  
5 cooperatives?

6 A I would suggest that right now it  
7 would be probably 15 to 20 percent of the  
8 fresh shipments. It's changing so rapidly, I  
9 would have said three or four years ago it  
10 would have been 20 plus percent. If you look  
11 at currently, it may be down in the 10 to 15  
12 percent range.

13 Q Thank you. At several points in  
14 your testimony, you refer separately to  
15 oranges and then navel oranges. Can you  
16 explain to me --

17 A What I was trying to do is, our  
18 industry is, in layman's term, is a processed  
19 industry. Over 90 percent of the fruit  
20 produced is for processed, and the greatest  
21 percentage of that, round oranges. And when  
22 I talk about round oranges, I tried to

1 differentiate them, round oranges are the  
2 early mid season and the Valencia varieties  
3 where approximately 98 percent of their  
4 production is used for processed product and  
5 only 2 percent of their production is for  
6 fresh. In that fresh, it's only about, it  
7 ranges from 13 to maybe 18 percent of total  
8 fresh shipments.

9                   So, what we've tried to do as a  
10 fresh industry is kind of removed them from  
11 the discussion because it taints statistics  
12 because they're such a big brother in the  
13 room. And navel oranges which get grouped  
14 with round oranges, navel oranges have the  
15 vast majority, I'm going to say over 80  
16 percent of their production is for fresh  
17 shipments, less than 20 percent for processed.  
18 So, we've termed them as a fresh variety  
19 because a grower could not stay in business  
20 producing navel oranges if their only outlet  
21 was processed, because many times that's a  
22 negative return to the grower on tree.

1                   And then the grapefruit, red and  
2                   white grapefruit as well as your tangerines,  
3                   early tangerines and honey tangerines, those  
4                   varieties in numerous seasons have, especially  
5                   for tangerines, negative returns for processed  
6                   to the on tree, grapefruit are different, but  
7                   those are predominantly fresh oriented. The  
8                   producers of those varieties, navel oranges,  
9                   red and white grapefruit, and your tangerine  
10                  varieties are dependent on the fresh shipment  
11                  of those, the fresh market to return them a  
12                  positive return. They could not stay in  
13                  business just on processed returns for those  
14                  varieties.

15                Q       Thank you. Is it typical for a  
16                  grower to grow a mix of, let's say navel  
17                  oranges and grapefruits and tangerines? Or do  
18                  they just specialize in one type of fruit?

19                A       There are, the largest percentage  
20                  of growers in Florida produce round oranges,  
21                  early mid season, Valencia oranges for the  
22                  processed market and have no fresh fruit at

1 all. And that's the vast majority of growers.  
2 Those growers that produce naval oranges, red  
3 and white grapefruit, and specialty are for  
4 fresh. However, most of those would also  
5 produce some round oranges.

6 Q So, to clarify, a grower who  
7 produces mainly for the fresh market would  
8 have in his production oranges, grapefruits,  
9 tangerines?

10 A Yes.

11 Q And not just grapefruit, for  
12 example, they wouldn't just specialize in  
13 grapefruit?

14 A Except for the Indian River  
15 district. We have a district that is the  
16 predominant production of grapefruit, the  
17 Indian River citrus district. And they, over  
18 there it's not uncommon for a grower to only  
19 be a grapefruit grower. But it's also not  
20 uncommon for them to have some other specialty  
21 fruit or some round oranges.

22 Q Okay, thank you. On page 12 of

1 your testimony, you state that the supply of  
2 replacement trees is limited. Can you explain  
3 why the supply is limited?

4 A Yes. With the onset of diseases,  
5 historically, reset trees were grown outside.  
6 In other words, they were grown in field  
7 conditions. In the last few years, all  
8 replacement trees have to be grown inside, and  
9 so that has just limited the number of  
10 nurseries, limited the number of trees. And  
11 so, the supply chain has somewhat been shrunk  
12 down because of the requirements on how they  
13 must produce trees.

14 Q And when you say reset trees, what  
15 does that mean?

16 A A reset is what we term, in our  
17 industry is a small tree that has been budded  
18 to whatever variety and then is transplanted  
19 into the grove. And so, it's like in the  
20 pictures that I've shown, you'll have where  
21 trees are removed, we call it a reset, we  
22 bring a new tree and put it in the ground to

1 replace the trees that were taken out.

2 Q Thank you for that clarification.

3 MS. SCHMAEDICK: I believe that  
4 concludes my questions. Thank you.

5 THE WITNESS: Okay.

6 JUDGE CLIFTON: Does anyone else  
7 from USDA have questions for this witness?

8 MR. HILL: Yes, I do have a  
9 couple.

10 JUDGE CLIFTON: Mr. Hill?

11 EXAMINATION

12 BY MR. HILL:

13 Q In your Exhibit 10 which is the  
14 PowerPoint that you gave us, there's a page  
15 that says "How our fresh industry has  
16 reacted." Question, you mentioned something  
17 about outdated varieties. Could you kind of  
18 give me a rundown on what you mean by that?

19 A Yes. What I was trying to present  
20 in pretty graphic terms so to speak is that  
21 we've had a number, if you go back 30-40  
22 years, we had a very prominent, two prominent

1 varieties that would be called fresh fruit, it  
2 would be Temple oranges and Dancy tangerines  
3 which at this point we do not even regulate  
4 Dancy's because they're not commercial viable.  
5 Temples are shortly going to be not  
6 commercially viable, they are down. And so,  
7 we've had varieties that were very prominent  
8 that are no longer being produced. When that  
9 trend started, our industry has been  
10 successful with the Fallglo and Sunburst  
11 tangerines, and they came in and filled the  
12 void. Subsequently, in that ten-year period,  
13 we saw such an increase in those acreage.

14 Subsequent to that, between  
15 diseases and those varieties which maybe not  
16 as easily peeled and have a number of seeds,  
17 with the onset of easy-peel seedless variety,  
18 they have fallen out of favor, for lack of a  
19 better term, with the consumer. And so, what  
20 was I was trying to show is that's what's  
21 happened. We've had this, it's showing that  
22 our industry, when we have a promising new

1 variety, how we are quick to react to that  
2 variety and move forward. And I just tried to  
3 show that we were at a point where we needed  
4 some new varieties, Fallglo and Sunburst came  
5 in, production and shipments went up, through  
6 diseases and then them falling out, you know,  
7 we've lost our production.

8 Q So, and on Exhibit 9, page 9, you  
9 mention shippers, Florida citrus shippers  
10 diminishing from 59 to 44 over a period of  
11 time.

12 A Yes.

13 Q Would this be one of the reasons  
14 why?

15 A Yes. You're correct. I think it  
16 was, we used a ten-year period and these are  
17 shippers of regulated varieties, there were 59  
18 in 2002-2003, in the last year 44. And that  
19 reduction has been a reduction of acreage, the  
20 dropping out of some varieties, and then of  
21 course disease. And so, we're at a, I  
22 wouldn't say a low but we are at a lower ebb

1       where we don't have, we're in need of some new  
2       varieties to gain consumer acceptance.

3               Q       And so, to your knowledge, have  
4       other areas that produce this type of citrus  
5       outside of Florida have had the same problems  
6       with the greening and so forth?

7               A       Greening is prevalent in Florida.  
8       It has, if I'm not mistaken, they have found  
9       greening in Texas. I don't know if they found  
10      it in California --

11              MR. HAMNER: They're found in  
12      California.

13              THE WITNESS: California, too.

14              JUDGE CLIFTON: Let me just, for  
15      the record, have the clarification identified.  
16      Tell me who you are and what you just said.

17              MR. HAMNER: I was only prompting  
18      the witness.

19              JUDGE CLIFTON: I know. Prompting  
20      counts here.

21              MR. HAMNER: My name is George F.  
22      Hamner, Jr. I'm a grower/shipper in Florida.

1 In Texas, they found a small amount. In  
2 California they found one tree so far of  
3 greening. So, greening in the United States  
4 is predominantly in Florida now, but all  
5 citrus producing areas are worried about it.

6 JUDGE CLIFTON: Thank you.

7 BY MR. HILL:

8 Q And I guess my question is it  
9 hasn't really hit those other areas like it's  
10 hitting Florida, would that be a fair  
11 statement?

12 A That's a fair statement.

13 MR. HILL: I don't have any more  
14 questions at this time.

15 JUDGE CLIFTON: Ms. Schmaedick?

16 EXAMINATION

17 BY MS. SCHMAEDICK:

18 Q This is Melissa Schmaedick. Mr.  
19 Chadwell, you used the term commercially  
20 viable. Could you expand on that concept a  
21 little bit? What makes a variety commercial  
22 viable? Is there a threshold?

1           A       There is not. I'm talking about  
2       the Citrus Administrative Committee, when we  
3       deregulated, took out of the order those  
4       varieties, we did not have a defined number  
5       per se. It just got that their volume had  
6       decreased to, I think in most cases under  
7       50,000 cartons. And so, it had come from at  
8       one point over a million cartons, but it just  
9       got to where they became such a small  
10      percentage and they were being phased out.  
11      And so, production had dropped and shipments  
12      were dropping, and so we just deregulated  
13      those because of what we termed that they were  
14      probably going to be used more locally  
15      intrastate because of their just lack of  
16      production.

17           Q       Looking at sort of a reverse  
18      trend, at what point would you decide that a  
19      variety, perhaps a new variety, has become  
20      commercially viable? And then, and what would  
21      you do if a variety reached that point?

22           A       I think at this point, I'm

1 assuming, we're hoping that we get some new  
2 varieties. And I think it is a pretty  
3 common thinking within our industry that where  
4 we had varieties that may be extended to the  
5 three months in a harvesting situation, that  
6 we may have multiple new varieties with a  
7 shorter production time frame. And we may be  
8 moving, transitioning from an industry of  
9 fresh shipments where we had millions of  
10 cartons to where we very likely could have  
11 some multiple new varieties in smaller  
12 quantities that may end up being a 200,000 to  
13 400,000 carton variety in a short window of  
14 time.

15 So, that is something that we have  
16 not addressed yet but as these new varieties  
17 come into production and we start seeing their  
18 shipping pattern, we as an industry will have  
19 to consider where they're being shipped, the  
20 volumes and the time frame. But I think it's  
21 pretty much a given that we think that there  
22 are going to be multiple varieties but smaller

1 production in a smaller window of shipment.  
 2 So, what we considered maybe when we had 70  
 3 million cartons being shipped and 50,000  
 4 cartons for a variety not being commercial  
 5 viable where we're an industry with 25 to 26  
 6 million cartons, you know, those numbers are  
 7 going to be, maybe we'll take a closer look  
 8 at. But I think going forward, those are some  
 9 issues that the committee will have to  
 10 address, but we know that that's going to be  
 11 some questions asked.

12 MS. SCHMAEDICK: Thank you.  
 13 That's it for me.

14 JUDGE CLIFTON: Yes, Mr.  
 15 McFetridge?

16 EXAMINATION

17 BY MR. MCFETRIDGE:

18 Q Marc McFetridge, USDA. I just  
 19 have a couple of quick questions. I know  
 20 you've stated that the Florida citrus industry  
 21 as a whole has seen decline in the last five  
 22 years, and you've specified, you know, disease

1 and then some of the varieties losing favor  
2 with consumers. Has there been any  
3 international competitors that have come on  
4 the scene in the last ten years that have kind  
5 of taken some of the market share away from  
6 Florida?

7 A Yes, there has been an increase in  
8 offshore imports of specialty varieties or  
9 clementines from Spain, South Africa, I guess  
10 Israel. You know, so we have seen a great  
11 increase in those which has prompted  
12 California which has more like growing  
13 conditions to start producing those varieties.  
14 And if you look at California, it was Valencia  
15 and navel orange industry with very limited  
16 specialty fruit or tangerine varieties. And  
17 this is off the top of my head, their  
18 expansion in the last ten years has been  
19 pronounced in the amount of specialty fruit  
20 that they are producing to fill not only the  
21 lack of our fruit in the market but also to  
22 counteract the imports that are coming in.

1           Q       On another topic, talking about  
2       the diseases, the canker and the greening,  
3       when that's observed in the groves, what type  
4       of measures do you see the growers doing?  
5       Would they have to completely remove a tree  
6       when this is spotted that they completely  
7       quarantine it? What type of measures are, and  
8       feel free if you'd like me to hold my  
9       questions and defer to another person.

10               JUDGE CLIFTON: He needs his coach  
11       again.

12               MR. HAMNER: This is George  
13       Hamner, Florida citrus grower. We do have  
14       processes that's usually seen on the outside  
15       of the grove. Initially, we were removing  
16       trees. Now we are not, we're simply treating  
17       the area to try and reduce the population of  
18       the psyllid which is the bug that spreads the  
19       disease throughout the groves. There are also  
20       some serious plans or plans in the works now  
21       for nutritionals to help beef up the strength  
22       of the tree, maybe masking the symptoms but

1 overcoming the symptom itself. So, we've made  
2 a huge amount of progress on it but we're not  
3 removing trees, no.

4 JUDGE CLIFTON: What's the word  
5 you used that is the bug?

6 MR. HAMNER: It's called a  
7 psyllid, it's p-y-s-i-l-l-i-d. P-s-y, sorry,  
8 p-s-y-l-l-i-d, psyllid.

9 JUDGE CLIFTON: P-s-y, what comes  
10 next? P-s-y?

11 MR. HAMNER: Yes, p-s-y-l-l-i-d,  
12 psyllid.

13 JUDGE CLIFTON: Psyllid.

14 MR. HAMNER: It's a nasty little  
15 booger.

16 JUDGE CLIFTON: And how are you  
17 spelling booger?

18 MR. McFETRIDGE: And so, is this  
19 insect, is this native or is this something  
20 that's been brought over from another country?

21 MR. HAMNER: We're not, we first  
22 found the psyllid, it was about ten years ago

1 in Palm Beach, the Palm Beach area, and we  
2 believe, and we're not sure exactly where it  
3 came from, Dr. Gmitter probably knows better  
4 than I do.

5 DR. GMITTER: I'm Fred Gmitter,  
6 University of Florida. The Asian citrus  
7 psyllid is the full name of this creature. It  
8 was found in Florida in 1998. It was  
9 introduced, it is not a native insect.

10 MR. MCFETRIDGE: Thank you.  
11 Another quick question. So, before when you  
12 were removing trees and you had replacements,  
13 how many years would it usually take once  
14 you've replanted a tree before it would  
15 become, you know, fully, meet its full  
16 production capabilities?

17 MR. HILL: Your Honor, would it be  
18 helpful to swear --

19 JUDGE CLIFTON: You know, it  
20 would. That's an excellent idea. I like the  
21 way this is going, this is very good, but  
22 those of you who are seated here at the, I'll

1 call it the board table, I'll swear you in and  
2 then I'll ask you if what you've told me so  
3 far is the truth. So, would each of the three  
4 of you please raise your right hand?

5 Does each of you solemnly swear or  
6 affirm under penalty of perjury that the  
7 evidence you will present will be the truth?  
8 And when you say I do, I want your name.

9 (Witnesses sworn.)

10 GEORGE HAMNER,

11 FRED SMITTER,

12 FRANK M. HUNT III,

13 called as a witness herein, having been first  
14 duly sworn, testified as follows:

15 MR. HAMNER: I do, George Hamner.

16 DR. GMITTER: I do, Fred Gmitter.

17 MR. HUNT: I do, Frank M. Hunt

18 III.

19 JUDGE CLIFTON: Thank you. And  
20 for the gentlemen who have already helped us  
21 with some of these difficult questions, is  
22 what you have presented so far the truth? And

1       again, I need your name with your answer.

2                   MR. HAMNER: This is George  
3       Hamner, Jr., and yes, what I have presented  
4       was the truth.

5                   DR. GMITTER: Fred Gmitter, yes,  
6       what I have presented is the truth.

7                   JUDGE CLIFTON: Thank you, Mr.  
8       Hill. Mr. McFetridge, your next question?

9                   MR. MCFETRIDGE: Yes. When you're  
10      replacing trees, about how many years would  
11      you say it takes for a tree, once it's been  
12      replaced, to reach full production capacity or  
13      capabilities?

14                  MR. HAMNER: The rule of thumb in  
15      history is we all count on about five years.  
16      We have new production technics that are  
17      coming in with new plantings and densities  
18      that may change that fairly dramatically in  
19      the future, at least we hope they do. But  
20      let's say rule of thumb for today is five  
21      years.

22                  MR. MCFETRIDGE: Before greening

1 and canker were observed or became prevalent  
2 in your industry, how long would you say a  
3 grove could last without having to replace any  
4 trees? Would they last 30, 40, 50 years? Or  
5 was it a shorter time frame than that?

6 MR. HAMNER: Frank, you can chime  
7 in. This is George Hamner. The rule of  
8 thumb, we would all talk about 25 years but  
9 there are groves around the state that are  
10 well into their 40's, some 50's. So, the age  
11 of trees was, I won't say indefinite, it was  
12 fairly significantly long.

13 MR. McFETRIDGE: My last question  
14 is you discussed development of new varieties,  
15 you know, easier peel, fewer seeds. I guess  
16 what would be a rough estimate would you say  
17 to develop something like this before it can  
18 actually be put in to the mainstream market?  
19 How long would you say that, if it has  
20 happened yet, would you say --

21 MR. HAMNER: We would like to know  
22 the answer to that. I don't know.

1 DR. GMITTER: I'm Fred Gmitter,  
2 and you see, you caught some interest here in  
3 the industry. Citrus breeding, the  
4 development of new varieties historically has  
5 taken as long as 25 to 30 years from the time  
6 the cross was made until the variety was  
7 released. We have shortened that  
8 substantially by some new technology and new  
9 approaches, but most significantly by the  
10 approach that we're taking toward  
11 commercialization.

12 Historically, our industry  
13 expected that we would have 15 to 20 years  
14 worth of data, performance of a variety in  
15 different locations on different rootstocks  
16 and so on. Given the sense of urgency that  
17 you hear in our industry here, we have, we the  
18 University of Florida at least has developed  
19 a new model in conjunction with the industry  
20 that we're calling a fast track option. It's  
21 a tiered system, three tiers of involvement.

22 The first tier is something where

1 we're trying to encourage the growers to plant  
2 a limited number of trees so in fact they can  
3 have the experience of testing them on  
4 different rootstocks in different locations.  
5 Tier two comes when a decision is made to  
6 commercialize, and that is going beyond a  
7 certain predetermined limited number of trees,  
8 we're going to plant more trees and there's  
9 royalties and so on associated with that. And  
10 then the third tier is for people who did not  
11 engage in tier one to come in.

12 So, we're trying to hasten all of  
13 this now. And currently, we have in this past  
14 year released nine new varieties that are  
15 about to become available to our industry  
16 through this fast track option.

17 MR. McFETRIDGE: So, this fast  
18 track option, how many years was that about?

19 DR. GMITTER: The plan as it is  
20 for tier one is to allow two years for  
21 increase in trees, production of trees in  
22 citrus nurseries, and then five years of

1 evaluation in growers' orchards, in groves.  
2 That being said, we did not exclude the option  
3 of some entities, some grower or group of  
4 growers immediately leaping into the so-called  
5 tier two and making a decision that they have  
6 enough faith in what they see in the product  
7 and their marketing instincts that they want  
8 to run with it. So, potentially,  
9 theoretically, one or several of these nine  
10 that have currently been put on the block if  
11 you will could go commercial immediately.

12 Still, there is a two-year time  
13 lag to produce the numbers of trees needed,  
14 and a few years in the grove for the trees to  
15 grow and produce a crop sufficient to be  
16 marketed.

17 MR. McFETRIDGE: Thank you. How  
18 many years in development before the trees are  
19 available?

20 DR. GMITTER: The development, you  
21 mean the breeding process itself?

22 MR. McFETRIDGE: Yes. Yes,

1 exactly.

2 DR. GMITTER: Depending on the  
3 kind of citrus that you're working with, when  
4 one makes a cross and you harvest seeds at the  
5 end of the year and you grow them out, you  
6 have a family of individuals from which you're  
7 selecting the superior individuals, that can  
8 take anywhere from three to seven years before  
9 those trees first flower and fruit. You want  
10 to observe fruit for two or three years  
11 because as the trees mature, the quality  
12 attributes of the fruit change somewhat, just  
13 like humans. You're mature at age 14 but  
14 you're not as mature as you are when you're  
15 25. And so, there are these changes that take  
16 place.

17 So, you're looking at another two  
18 or three years of evaluation. And then, as I  
19 mentioned, historically we would like to  
20 propagate from that selection, that individual  
21 tree that's been selected, propagate trees and  
22 test them under different conditions. This

1 fast track option is where we're interfering  
2 with that process. We are actually allowing  
3 growers in some cases on the basis of the  
4 performance of one individual tree to take the  
5 gamble and get into the fast track option and  
6 to see whether or not there is something there  
7 of interest.

8 MR. McFETRIDGE: Thank you very  
9 much.

10 DR. GMITTER: You're welcome.

11 MR. McFETRIDGE: My last question  
12 with the diseases, canker and greening, have  
13 you noticed any specific, like do they attack  
14 oranges or grapefruits, do you see it as non-  
15 specific or is it one section of the industry  
16 being hit harder than the others?

17 MR. HUNT: Okay, I'm Frank Hunt  
18 III. Some clarification with canker and  
19 citrus greening, you're actually talking about  
20 two different diseases. With the citrus  
21 canker, it's a bacteria that is spread by wind  
22 and rain and impacts pretty much all

1 varieties, some to a greater extent than  
2 others. It's been particularly hard on  
3 grapefruit, particularly hard on navel  
4 oranges, and is really a fresh fruit issue.  
5 We have learned, initially we were roguing  
6 trees on the canker, we were pushing out large  
7 areas. We've learned that we can suppress the  
8 canker and maybe live with it.

9 Citrus greening is a whole other  
10 animal spread by the Asian citrus psyllid that  
11 is devastating the industry and is pretty much  
12 affecting all varieties, again some perhaps a  
13 little more than others. But a lot of it  
14 depends on how the grower responds to it.  
15 These diseases tend to have a latency period  
16 before they manifest themselves, and in some  
17 cases the growers have let the disease get out  
18 of hand before they've responded. Well,  
19 growers that aren't managing the disease are  
20 suffering to a greater extent.

21 With the citrus greening, we are  
22 trying to suppress the psyllid, we're pushing

1       nutritionals to enhance the tree because the  
2       greening impacts that tree's ability to take  
3       up nutrients and to sustain itself. And so,  
4       we're trying to support it by nutritional  
5       sprays, both foliar and fertilizers to the  
6       root system. So, it's one of these diseases  
7       that over time we're not sure what the outcome  
8       is going to be because right now we're simply  
9       maintaining and we really need a solution to  
10      those diseases.

11                   In the meantime, this industry  
12      also is challenged in the varieties that we  
13      have and what we're producing to deliver to  
14      the market. And so, that's why for the new  
15      varieties that are coming on, we've really  
16      been challenging our breeders to get these out  
17      and deliver them to us so we can determine  
18      whether they're going to be commercially  
19      viable and something we'll have going forward,  
20      trying to shorten up that time period.

21                   MR. MCFETRIDGE: Thank you very  
22      much. I don't have any further questions.

1 JUDGE CLIFTON: Who else from USDA  
2 has any questions either of the witness in the  
3 stand or of the others?

4 MS. VARELA: I do. I have one  
5 question for you.

6 JUDGE CLIFTON: And you're Ms.  
7 Varela? If you would identify yourself?

8 MS. VARELA: Jennie Varela, USDA.

9 EXAMINATION

10 BY MS. VARELA:

11 Q Going back to page 2 of your  
12 testimony, I know earlier you clarified for us  
13 that usually when you mentioned a section  
14 number you were talking about the order. But  
15 when you're talking about grapefruit imports  
16 and you mentioned 8-E, I just wanted to  
17 clarify that you're not talking about a  
18 section of the order, you were referring to a  
19 section of the Agricultural Marketing  
20 Agreement Act, right?

21 A Correct. It is not, 8-E is not in  
22 Marketing Order No. 905.

1 MS. VARELA: Okay, thank you.

2 JUDGE CLIFTON: Good job. Are  
3 there other questions from USDA? All right.  
4 Are there other questions from anyone for this  
5 witness? Well, either the witness who is on  
6 the stand or the others who have assisted in  
7 the areas of interest that we've covered so  
8 far?

9 Is there anything, Mr. Chadwell,  
10 that you'd like to add based on what others  
11 have said during your testimony time?

12 THE WITNESS: No, ma'am.

13 JUDGE CLIFTON: Is there any  
14 objection to the admission into evidence of  
15 Exhibit 9 which is Mr. Chadwell's testimony?  
16 There is none. Exhibit 9 is admitted into  
17 evidence.

18 Is there any objection to the  
19 admission into evidence of Exhibit 10 which is  
20 the PowerPoint that Mr. Chadwell presented?  
21 There is none. Exhibit 10 is admitted into  
22 evidence.

1 All right. Now, any witness can  
2 be recalled at any time. So, if you step down  
3 and you think of something later that you want  
4 to present, you're welcome back. Just let us  
5 know. You may step down, Mr. Chadwell, thank  
6 you.

7 All right. It's 12:19. I show  
8 that Mr. Hamner would be the next witness.  
9 Would you like to proceed now?

10 (Whereupon Exhibit Nos.  
11 9 and 10 were received  
12 into evidence.)

13 MR. HAMNER: I can present now.  
14 My testimony is basically a summary, brief  
15 summary of all the proposals, and the people  
16 that follow me will give the most detail. So,  
17 I can either go quickly or go through my  
18 proposal now, or we can go to lunch and come  
19 back and I'll do it afterwards, whichever  
20 feels most coherent to the group.

21 JUDGE CLIFTON: All right. I  
22 don't want to encourage anyone to go quickly.

1 I mean I don't want anyone to --

2 MR. HAMNER: I'm sorry, I'm  
3 redheaded, ADD and challenged. I was more  
4 worried about happy hour.

5 JUDGE CLIFTON: You are funny.  
6 I'd like to just have a show of hands, and the  
7 vote is whether to break for lunch now or hear  
8 some testimony first and break for lunch  
9 later. So, the choices are now and later.  
10 How many of you would like to break for lunch  
11 now? Zero. How many would like to break  
12 later? Also zero.

13 MR. HAMNER: Either way.

14 JUDGE CLIFTON: What would you  
15 choose?

16 MR. HAMNER: I'm good to go and  
17 then we could, you know, it's 12:30, if  
18 they're going to eat lunch we probably ought  
19 to break now and then we could come back at  
20 1:00 maybe, do it quickly.

21 JUDGE CLIFTON: Okay, you just  
22 answered both ways.

1                   MR. HAMNER: I am ready to go now  
2 but I think if you really want to have lunch  
3 and you're going to have an afternoon session,  
4 it probably would be better to break now and  
5 then come back hopefully by 1:00 o'clock or 45  
6 minutes, quickly.

7                   JUDGE CLIFTON: Okay. Now, when  
8 you say by 1:00 o'clock, that's 40 minutes.  
9 Is that doable? I'm getting yeses. 1:15? I  
10 think that's more reasonable. That's 55  
11 minutes.

12                  MR. HAMNER: Okay. All right.

13                  JUDGE CLIFTON: All right, we'll  
14 break now. Please be back and ready to go at  
15 1:15.

16                         (Lunch recess at 12:22 p.m.)

17                  JUDGE CLIFTON: Back on record at  
18 1:25. I fell in love with Winter Haven during  
19 the break, it's gorgeous out there. Will we  
20 have Mr. Hamner be the next witness?

21                  MR. HILL: Yes, ma'am. I'm going  
22 to sit over here if that's all right with you

1 all.

2 JUDGE CLIFTON: It is. Let us  
3 mark your exhibits with numbers. The first  
4 one will be 11.

5 MR. HILL: Okay.

6 JUDGE CLIFTON: Which one will  
7 that be, the testimony?

8 MR. HILL: That would be the  
9 testimony is first. There are five exhibits.  
10 The testimony is first, No. 11.

11 JUDGE CLIFTON: Okay, let's mark  
12 the testimony then as Exhibit 11.

13 (Whereupon Exhibit No.  
14 11 was marked for  
15 identification.)

16 MR. HILL: The PowerPoint which is  
17 the summary of the proposed amendments would  
18 be next.

19 JUDGE CLIFTON: All right, the  
20 PowerPoint then will be Exhibit 12.

21 (Whereupon Exhibit No.  
22 12 was marked for

1 identification.)

2 MR. HILL: And there are three  
3 letters from individuals, some of the regional  
4 and the statewide grower organizations which  
5 we had alluded to earlier, and the first one  
6 is Florida Citrus Packers.

7 JUDGE CLIFTON: Let's see now. I  
8 want to make sure I've got them in the same  
9 order as you. So, Florida Citrus Packers?

10 MR. HILL: If you want to wait  
11 until after, I can't remember, the PowerPoint  
12 presentation has get them. If you want to  
13 wait until --

14 JUDGE CLIFTON: Okay, we'll wait  
15 to mark those until you get to that.

16 MR. HILL: Okay, wait. He says  
17 it's Florida Citrus Mutual is first.

18 JUDGE CLIFTON: Okay, so that will  
19 be, Florida Citrus Mutual will be Exhibit 13.  
20 All right?

21 (Whereupon Exhibit No.  
22 13 was marked for

1 identification.)

2 MR. HILL: And Florida Citrus  
3 Packers.

4 JUDGE CLIFTON: That will be  
5 Exhibit 14.

6 (Whereupon Exhibit No.  
7 14 was marked for  
8 identification.)

9 MR. HILL: And then Indian River  
10 Citrus League.

11 JUDGE CLIFTON: That will be  
12 Exhibit 15, 1-5.

13 (Whereupon Exhibit No.  
14 15 was marked for  
15 identification.)

16 MR. HILL: Okay.

17 JUDGE CLIFTON: All right. Mr.  
18 Hamner, you remain sworn. I'd like you now to  
19 state and spell your full name.

20 MR. HILL: My name is George F.  
21 Hamner, Jr., G-e-o-r-g-e, middle initial F,  
22 last name is H-a-m-n-e-r, Jr.

1 JUDGE CLIFTON: Thank you, you may  
2 proceed.

3 TESTIMONY BY MR. GEORGE HAMNER

4 THE WITNESS: The purpose of my  
5 testimony is to give you all a brief summary  
6 of the proposals that will follow with the  
7 individuals behind me. My name is George F.  
8 Hamner, Jr. I reside at 995 Sandfly Lane,  
9 Vero Beach, Florida. I am the current  
10 Chairman of the Citrus Administrative  
11 Committee which we call the committee, and was  
12 the Chairman of the Rules Study Subcommittee,  
13 the Rules Subcommittee during the 2010-11  
14 season when these proposed amendments were  
15 developed and presented to the committee.

16 I have been a shipper member or an  
17 alternate of the CAC for over 25 years. I am  
18 President of Vero Producers, Inc. which  
19 produces citrus in the Indian River production  
20 area, and President of Indian River Exchange  
21 Packers, Inc., a shipper of Florida citrus to  
22 both domestic and export markets. These are

1 family-owned companies and would be considered  
2 by the SBA as a large grower shipper.

3 During my tenure in the Florida  
4 citrus industry, I have served as President of  
5 the Florida Citrus Packers, Florida Citrus  
6 Mutual, Indian River Citrus League, as well as  
7 having been a member of the 601 Study  
8 Committee of the Florida Department of Citrus.

9 The last time Marketing Order 905,  
10 which we will refer to as the order, was  
11 amended was in July 2009. And in the past  
12 four seasons, there have been numerous new  
13 developments within the citrus industry as  
14 evidenced in the opening remarks by Mr.  
15 Chadwell. Due to the many changes in the  
16 industry, Chairman Marty McKenna of the  
17 Florida Citrus Commission, we'll refer to as  
18 the commission later, appointed a group of  
19 industry leaders to the 601 Committee to  
20 review and make recommendations to the  
21 commission on Chapter 601 of the Florida  
22 statutes, we'll refer to as Chapter 601.

1                   Since Chapter 601 is the basis for  
2                   the industry's governing legislation, a number  
3                   of public meetings were held with input being  
4                   given from all the various Florida citrus  
5                   organizations. The 601 committee's  
6                   recommendations were approved by the Florida  
7                   Citrus Commission and, subsequently, the  
8                   Florida legislature. Part of the 601  
9                   committee's recommendations supported moving  
10                  a number of the regulations along with the  
11                  authority to make or change the rules  
12                  governing fresh fruit out of Chapter 601 and  
13                  into Florida Department of Citrus Rules  
14                  regulated under Florida Statutes Chapter 20,  
15                  which I'll call Chapter 20, which governs  
16                  fresh fruit.

17                  The purpose of moving these rules  
18                  and regulations out of Chapter 601 to Chapter  
19                  20 was to grant rulemaking authority to the  
20                  Florida Citrus Commission rather than leaving  
21                  the sole authority in the hands of the Florida  
22                  legislature, thus, simplifying the process for

1 growers and shippers to make alterations as  
2 needed. Currently, the order does not  
3 regulate intrastate shipments as they are now  
4 regulated only under Chapter 20. The Florida  
5 Citrus Packers sent a letter requesting the  
6 committee to consider formal rulemaking in  
7 order to amend the order to include the  
8 regulation of intrastate shipments.

9                   It was in response to this request  
10 that the CAC Chairman Paul Genke appointed me  
11 to the Chair of the Rules Subcommittee which  
12 was to review and consider their request as  
13 well as to identify any other rule changes,  
14 both formal and informal, that would benefit  
15 the fresh industry in administering the order.  
16 A list of possible rule changes to the order  
17 was developed for the subcommittee's review  
18 and consideration after discussions with the  
19 United States Department of Agriculture  
20 (USDA), Marketing Order Administration Branch  
21 (MOAB), and the Committee Chairman Genke and  
22 Manager Chadwell.

1                   The Rules Subcommittee was made up  
2                   of committee members, alternate members, and  
3                   subcommittee members who were also members of  
4                   Florida Citrus Mutual, Florida Citrus Packers,  
5                   Indian River Citrus League, Gulf Citrus  
6                   Growers, and Peace River Citrus Growers.  
7                   Meetings were held throughout the 2011-12  
8                   season to develop language for amendments to  
9                   the order. In addition to the subcommittee  
10                  meetings, there were meetings with the legal  
11                  team from MOAB, representatives of the USDA  
12                  Marketing Field Office in Winter Haven, and  
13                  with Peter Chaires, Executive Director of the  
14                  New Varieties Development and Management  
15                  Corporation (NVDMC).

16                  The Rules Subcommittee met again  
17                  on June 12th, 2012 and, after due  
18                  consideration, recommended nine amendments to  
19                  the order which will allow the inclusion of  
20                  new varieties and hybrids to the order, and  
21                  changes that will aid in the administration of  
22                  the order. These recommendations were

1 reviewed, considered and approved by the  
2 committee on July 17th, 2012. The CAC  
3 requested that the Secretary of Agriculture  
4 set a public hearing date on the proposed  
5 rulemaking, and it was noticed in the Federal  
6 Register on March 28th, 2013.

7 Ladies and gentlemen, that's why  
8 we're here.

9 JUDGE CLIFTON: Thank you. Before  
10 you go on, I would like someone from the USDA  
11 side to clarify what used to be called MOAB  
12 with a B and the current designation. Who  
13 would like to explain that for the record?

14 THE WITNESS: Are we confused over  
15 here again?

16 JUDGE CLIFTON: They all know and  
17 they're fighting over who does this. Ms.  
18 Schmaedick?

19 MS. SCHMAEDICK: Melissa  
20 Schmaedick, USDA. In 2012, what was formerly  
21 known as the Marketing Order Administrative  
22 Branch was redesignated as the Marketing Order

1       Administrative Division.

2                   THE WITNESS: Oh, you're a D now.

3                   MS. SCHMAEDICK: And Agreement  
4       Division. There you go, Marketing Order and  
5       Agreement Division.

6                   THE WITNESS: Marketing Order --

7                   MS. SCHMAEDICK: And Agreement  
8       Division.

9                   THE WITNESS: And Agreement  
10      Division.

11                  MS. SCHMAEDICK: Correct.

12                  JUDGE CLIFTON: Now, are all  
13      marketing agreements regulations?

14                  MS. SCHMAEDICK: I'm sorry?

15                  JUDGE CLIFTON: The ones that your  
16      office would administer?

17                  MS. SCHMAEDICK: Agreements or  
18      orders?

19                  JUDGE CLIFTON: Okay, let me start  
20      with orders. Are all marketing orders  
21      regulations?

22                  MS. SCHMAEDICK: Yes.

1 JUDGE CLIFTON: Are all marketing  
2 agreements regulations?

3 MS. SCHMAEDICK: Yes.

4 JUDGE CLIFTON: What's the  
5 difference?

6 MS. SCHMAEDICK: Are you asking me  
7 to testify?

8 JUDGE CLIFTON: If you want to  
9 answer. If you don't want to answer, you can  
10 make it clear to me as we go on.

11 MR. NISSEN: Orders are mandatory,  
12 agreements are not.

13 MS. SCHMAEDICK: Orders are  
14 established under certain authorities under  
15 the AMAA. And, excuse me, agreements are  
16 components that are typically party to  
17 marketing orders and they are of voluntary  
18 recognition by handlers and industry to comply  
19 with the order.

20 JUDGE CLIFTON: All right. And  
21 for the record, I'd like to have  
22 identification of your helper, your coach.

1 Mr. Nissen, would you approach the microphone  
2 so that you can say who you are?

3 MR. NISSEN: Christian Nissen with  
4 SEMFO. Do you want me to say what I said  
5 before?

6 JUDGE CLIFTON: First, I want you  
7 to say who you are.

8 MR. NISSEN: I am Christian Nissen  
9 with the Southeast Marketing Field Office.

10 JUDGE CLIFTON: And then I want  
11 you to say what you said before.

12 MR. NISSEN: The primary  
13 difference between orders and agreements is  
14 that orders are mandatory. If they're put in  
15 place by the industry, all industry are held  
16 accountable to the order. Whereas agreement,  
17 you can choose to sign and be a part of the  
18 agreement or you don't have to.

19 JUDGE CLIFTON: Thank you.

20 MR. NISSEN: And you know, most  
21 agreements are included as part of an order  
22 but you can have a freestanding stand-alone

1 agreement which I don't believe we have  
2 currently.

3 JUDGE CLIFTON: All right. And is  
4 it your understanding that even if the item is  
5 an agreement, that it would still be found  
6 somewhere in the federal regulations?

7 MR. NISSEN: Yes.

8 JUDGE CLIFTON: Okay. All right,  
9 that's all very helpful. Thank you, Mr.  
10 Nissen. And thank you, Ms. Schmaedick. Does  
11 anyone want to add to that?

12 THE WITNESS: Your Honor, would  
13 you like my testimony amended to the --

14 JUDGE CLIFTON: No, your testimony  
15 is perfect.

16 THE WITNESS: Okay.

17 JUDGE CLIFTON: It's just that I  
18 was surprised by the change, and now I know  
19 even more about it which I appreciate. Okay,  
20 good. Mr. Hamner, you may proceed.

21 THE WITNESS: Okay. The next  
22 order from my standpoint is to go through a

1 summary of the proposals as they stand. I  
2 have them on a PowerPoint over here. And if  
3 you have questions, I'm going to, I'll read  
4 the proposal but I also may ad-lib or  
5 whatever. If you have questions, you can stop  
6 me on each proposal. And if there's anything  
7 in detail requested, then I'll pass it on to  
8 the people for the more detail later if that's  
9 all right.

10 So, okay. Proposed Amendment No.  
11 1 is Section 905.4 "Fruit" and 905.5  
12 "Variety." This amendment provides for the  
13 inclusion of new varieties and hybrids under  
14 the order. Currently, the New Varieties  
15 Development and Management Corporation whose  
16 board is composed of citrus growers and  
17 handlers and funded by citrus growers is  
18 actively working to identify, acquire, and  
19 sublease promising citrus varieties and  
20 hybrids for Florida --

21 JUDGE CLIFTON: Let me stop you.  
22 You said sublease, but your slide says sub-

1 license.

2 THE WITNESS: Did I say sublease?

3 JUDGE CLIFTON: Yes.

4 THE WITNESS: Damn, I thought I'd  
5 get through this without, I only majored in  
6 graduation. So, it's identify, acquire and  
7 sub-license promising citrus varieties and  
8 hybrids for the Florida citrus grower.

9 In order to regulate these new  
10 varieties and hybrids, new language must be  
11 adopted that would allow them to be included  
12 under the order. You're going to see and hear  
13 later that we're not sure the blends, the  
14 mixes and what's coming. What we tried to do  
15 is, as you will see, is simplify in the order,  
16 grapefruit, tangerine, mandarin, round  
17 oranges, et cetera, rather than identifying  
18 all of the citrus reticulata, et cetera; all  
19 of the blends that we used to do in the past.  
20 Which leaves us open to call a new variety  
21 what we feel like it should be. And that's  
22 what this is all about.

1                    Proposed Amendment No. 2, Section  
2                    905.9, handle or ship. This amendment  
3                    provides the authority to regulate intrastate  
4                    shipments. Given the increasing segmentation  
5                    of the Florida citrus industry, the fresh  
6                    segment of the industry, through the Citrus  
7                    Administrative Committee, has determined that  
8                    it may be beneficial to incorporate all fresh  
9                    citrus regulation under the order to provide  
10                  an orderly transition if, and if is key here,  
11                  the Florida Department of Citrus discontinues  
12                  or modifies its regulation of the fresh  
13                  segment.

14                  This started in 2009, when we  
15                  added the taxation base to the CAC, and we  
16                  added some other regulations. This is going  
17                  full circle now, as an industry, and the CAC,  
18                  in particular. We felt like the CAC should b  
19                  e in a position to regulate fresh shipments in  
20                  all facets should they ever need to. There's  
21                  never been, and never will be, an intention to  
22                  override the Department of Citrus or the

1 Florida Department of Agriculture, or  
2 anything.

3 But, should this arise and either  
4 dissolves or changes long-term, that's the  
5 purpose that starts. And you're going to see  
6 several of these proposals tied to this. This  
7 gives us kind of control of our own destiny.

8 Proposed Amendment No. 3, Section  
9 905.14, redistricting. The amendment would  
10 grant flexibility to the CAC in redefining  
11 grower districts within the production area  
12 when the criteria and relevant factors within  
13 the production area warrant redistricting.  
14 Disease and natural disasters over the past  
15 decade have significantly affected bearing  
16 trees.

17 The amendment would allow the CAC,  
18 at any time, to base their determination of  
19 grower districts on bearing trees, volume of  
20 fresh fruit, total number of acres of citrus,  
21 and other relevant factors when conditions  
22 warrant. It is imperative, if we're going to

1 control our destiny and eventually taxation,  
2 rules and regulations, that potentially down  
3 the road we may have to redistrict ourselves  
4 where the fruit is.

5 Which, rather than looking at a  
6 five-year order or some determined lineal time  
7 frame, we may end up just wanting to change  
8 ourselves around based on what we know about  
9 the industry. And the committee would do that  
10 on its own now with this. And that just lets  
11 us, it gives us a flexibility to regroup if  
12 necessary. We're down to three districts, I  
13 think, now, and you know that may change  
14 again.

15 JUDGE CLIFTON: Now, I just want  
16 to point of clarification. The committee that  
17 you're referring to is the one that operates  
18 this marketing order that we're here about.  
19 Is that correct?

20 THE WITNESS: Yes, ma'am.

21 JUDGE CLIFTON: Okay. And so,  
22 when you say they could do it on their own,

1       you mean on their own with the oversight of  
2       the Secretary of Agriculture.

3                   THE WITNESS:  Yes, ma'am.  No  
4       question.

5                   JUDGE CLIFTON:  Okay.

6                   THE WITNESS:  I would not ever,  
7       couldn't oversee, we're overseen by the  
8       Secretary, yes, ma'am.

9                   JUDGE CLIFTON:  Okay.  Thank you.

10                  THE WITNESS:  We would recommend  
11       the change would be probably what would  
12       happen.  You sure I'm not married to you?  
13       This is like my wife.  I only get a  
14       recommendation.  That's the best I can get out  
15       of this.

16                  Proposed Amendment No. 4, Section  
17       905.2, term of office.  This amendment would  
18       extend the term of office to two years, and  
19       limits a member to two consecutive two-year  
20       terms.  Two-year terms would allow for  
21       biennial nomination meetings, which would aid  
22       in the administrative efficiencies and

1 stability. The current one-year term of  
2 office is administratively inefficient and  
3 requires additional committee resources.

4 We think that what we'd like to do  
5 is just simply extend ourselves out. Do two-  
6 year terms, and move off of the three one-year  
7 terms. And I think that will broaden our base  
8 of participation, as well. And save us some  
9 money, we hope.

10 Proposed Amendment No. 5,  
11 nominations. Nomination meetings require  
12 time, travel and administrative costs and,  
13 consequently, have low participation. This  
14 amendment would allow the CAC to conduct the  
15 nomination and/or election of members and  
16 alternates by mail or other means, according  
17 to rules and regulations recommended by the  
18 CAC and approved by the Secretary of  
19 Agriculture.

20 Currently, the CAC holds grower  
21 nomination meetings in each of the three  
22 grower districts, and one shipper nomination

1 meeting annually. Conducting nomination  
2 meetings by mail or other means would be cost  
3 effective, and allow for direct communication,  
4 and could increase participation and  
5 diversity. One of the informal changes has  
6 been we hold conference calls now. And we  
7 feel it's only practical, for a nomination,  
8 that we be allowed to do in writing of some  
9 form, whether it's e-mail or mailing. That we  
10 broaden our perspective of how we nominate  
11 members.

12 Proposed Amendment No. 6, Section  
13 901.42, handlers accounts. This amendment  
14 would allow the CAC to increase their reserves  
15 up to two fiscal periods' expenses.  
16 Currently, reserves are capped at  
17 approximately one-half year's fiscal expense,  
18 which limits flexibility to develop and  
19 implements projects requiring advertising,  
20 promotion or research, without raising the  
21 assessment rate during the season.

22 The amendment would also provide

1 greater flexibility to the administration of  
2 the marketing order programs, and promote  
3 assessment stability. Currently, we've burned  
4 down our reserves to almost zero. We're going  
5 to have to build back up. This is, we have  
6 got a history in the Florida CAC of not doing  
7 something if we don't think it's necessary.  
8 With the changes we have made five years ago,  
9 or four years ago with the taxation, et  
10 cetera, if something did happen, and if the  
11 CAC was in charge of its own destiny on fresh  
12 fruit, we would have to have a bigger reserve  
13 because we'd have more money coming in.

14 And this is the one way to do  
15 that. And we don't, this is not mandatory.  
16 This would be by a vote of the board, or the  
17 committee. It's not something that's written  
18 in stone, but we wanted the flexibility to  
19 broaden, to be able to allow it to go up.

20 Proposed Amendment No. 7, Section  
21 905.52, issuance of regulations. The  
22 amendment provides for regulating containers

1 and for having different standards, grade and  
2 size regulations within the production area.  
3 Currently, the DOC governs containers and  
4 standards for Florida citrus sold within the  
5 production area, which is intrastate. This  
6 is, basically, intrastate.

7 As proposed, Amendment No. 2,  
8 regulation of intrastate shipments, at this  
9 time, there is not a plan to utilize this  
10 authority, but to put it under the order so it  
11 will be in place if the DOC discontinues  
12 regulating the fresh segment of the Florida  
13 citrus industry. Same thing. For us, this is  
14 almost housekeeping. If you're going to run  
15 your own show, or be in the position to run  
16 it, you have to do this.

17 Proposed Amendment No. 8, Section  
18 905.28, acceptance of membership. The  
19 amendment would eliminate acceptance  
20 statements. The nominees currently complete  
21 both a background and acceptance statement  
22 when they are nominated. The elimination of

1 the acceptance statement would reduce  
2 paperwork and save administrative costs.

3 As you can see, we're good at  
4 killing trees around here. We actually all  
5 have to fill out a background statement, sign  
6 on the bottom that we agree to serve. After  
7 we've been nominated and elected, we get  
8 another statement from the government that  
9 says okay, you did accept, correct? This, to  
10 us, is redundant, and we'd like to eliminate  
11 it. We would put it in the sequester, but it  
12 didn't work.

13 Proposed Amendment No. 9, Section  
14 905.7, handler. This amendment provides for  
15 the registration of handlers. Currently, the  
16 Florida Department of Agriculture and Consumer  
17 Services Division of Fruit and Vegetable, has  
18 a registration program for handlers of Florida  
19 citrus. However, the CAC determined  
20 registering handlers would be beneficial, as  
21 it would enhance the compliance provisions of  
22 the order.

1                   Unseen to you all, in formal rule  
2                   making, we want our handlers to list our  
3                   growers, in some form or fashion, as one items  
4                   listed under this in a different way. But, so  
5                   that we're contacting growers for votes  
6                   without doing a blank mailing of the whole  
7                   state. The second part is, if we are taxing or  
8                   we have authorities, et cetera, this is just  
9                   one list, a pressure to keep everybody  
10                  compliant. That's what the registration's  
11                  for.

12                 Okay, any questions? We do have,  
13                 we did run this, I know that, Melissa, you  
14                 asked about this before. We did run this  
15                 through, for a long time, with the industry.  
16                 This was not something haphazardly done.  
17                 Because of the fact that starting for years  
18                 ago and five years ago, with the taxation and  
19                 the potential for being under our own  
20                 guidance, we wanted the industry to know  
21                 that's what we were looking at.

22                 We ran this by Florida Citrus

1 Mutual, Florida Citrus Packers, the Indian  
2 River Citrus League. We had committee members  
3 from Peace River, the other regional growing  
4 areas. And we have letters to prove it from  
5 these three people, which we've put out as  
6 Exhibits 13, 14, and 15. Any questions? What  
7 did I miss, Melissa?

8 EXAMINATION

9 BY MS. SCHMAEDICK:

10 Q Thank you, Mr. Hamner, for your  
11 testimony. This is Melissa Schmaedick with  
12 USDA. I have two questions for you. One is  
13 a clarifying question. You've mentioned a  
14 couple of times taxation or taxing. Can you  
15 explain what you mean by that?

16 A The tax, that's probably in this  
17 hearing, is not necessary. We already have  
18 taxation. We had broadened our taxation rights  
19 in the previous order in 2009, so that we can  
20 expand into advertising and research. And we  
21 have a litany of items that we could do that  
22 we couldn't do before.

1 Q And --

2 A And interstate shipments.

3 Q By using the term taxation, are  
4 you referring to the assessments that are  
5 collected?

6 A Yes.

7 Q Thank you.

8 A We interchange words in our  
9 industry. That's the assessment, sorry.

10 Q Thank you. You also mentioned,  
11 when you described Proposals No. 2 and No. 7,  
12 which would, as you stated, allow the  
13 marketing order to have some parallel  
14 authorities that currently exist under DOC.  
15 Based on your experience in the development of  
16 these proposals, what have the conversations  
17 with DOC been like over these?

18 A It's been fine. Everything thing,  
19 we've acknowledged in a lot of the rule  
20 making, in fact, I believe, technically,  
21 written in, and you may hear this later,  
22 there's a part that we acknowledge, even in

1       our rule, that we won't usurp their authority.  
2       But we had long conversations with them.  
3       We've got, actually, two commission members  
4       here in the audience. And the fact is it just  
5       came through the 601 rules committee, as well.  
6       It came up in that when we were moving these  
7       rule making out of Tallahassee into the  
8       Bradenton with the DOC.

9               Q       So, based on your knowledge, DOC  
10       is aware of and supports these proposals?

11              A       Yes, yes.

12              Q       Thank you.

13                   JUDGE CLIFTON: Mr. Chadwell,  
14       would you like to add to that?

15                   MR. CHADWELL: Yes.

16                   JUDGE CLIFTON: You may.

17                   MR. CHADWELL: Arthur Chadwell.  
18       Last Wednesday, a week ago today, I was with  
19       Chairman Marty McKenna, chairman of the  
20       Florida Citrus Commission, and we took some  
21       time, and he had gotten the notice of this  
22       amendment hearing. And I just wanted to

1       reassure with him that there was, from his  
2       perspective, that there was no conflict of  
3       interest in what we were doing. And he  
4       assured me that they were fine with what was  
5       being proposed, and to have the authority  
6       within the marketing order, knowing that we  
7       weren't, weren't in a movement to use it, much  
8       like five years ago when we put the  
9       advertising promotion.

10               So, I took the opportunity of  
11       seeing him last week, and just reassuring  
12       that, have him reassure that there was not any  
13       conflict from the Florida Citrus Commission on  
14       this issue.

15               JUDGE CLIFTON: That's helpful.  
16       For the record, I would like someone to spell  
17       Marty McKenna.

18               THE WITNESS: Marty McKenna is M-  
19       a-r-t-y, M-c-K-e-n-n-a.

20               JUDGE CLIFTON: Thank you. Other  
21       questions from USDA? Ms. Schmaedick?

22               MS. SCHMAEDICK: I have no further

1        questions. Thank you.

2                    JUDGE CLIFTON: Who else has  
3        questions?

4                    THE WITNESS: Okay, thank you all.

5                    JUDGE CLIFTON: Whoa, you're not  
6        done yet.

7                    THE WITNESS: English class.

8                    JUDGE CLIFTON: One question that  
9        occurs to me, in some industries, handlers  
10       don't identify their growers when asked  
11       because it's proprietary or it's sensitive or  
12       the growers wouldn't like that, or something.  
13       Is citrus different?

14                   THE WITNESS: No, not at all.  
15       This is an offshoot of that, why you handle  
16       through the committee, informally. And we are  
17       proposing to the industry a very strict  
18       guideline on how to do this so that it doesn't  
19       put everybody in jeopardy. But it will save  
20       us quite a bit of money on mailing. We'll get  
21       a much higher participation in mailing.  
22       Because now we blanket the whole industry, and

1       you saw how many oranges there were that go to  
2       process. And we're not sure who's a fresh  
3       grower at times and who's not.

4                   JUDGE CLIFTON: Well, is it  
5       guarded information that's not publicly  
6       available if you gather it for a limited  
7       purpose? Is that what you envision?

8                   THE WITNESS: Excuse me. I'll let  
9       Duke answer.

10                  JUDGE CLIFTON: All right, then,  
11       Mr. Chadwell, you'll respond to that.

12                  MR. CHADWELL: Arthur Chadwell.  
13       Yes. We are currently in, we have an informal  
14       rule that is in the comment period until May  
15       6th. And in that rule, it's allowing the  
16       committee, the marketing order, it requires  
17       each handler to submit a list of their growers  
18       for the current season with their contact  
19       information. It will be handled, because  
20       there were quite a few questions, as you may  
21       expect. When you see data that we put out,  
22       the marketing order, if anything, we do not

1 put any shipment, regulated shipment data per  
2 shipper out.

3 And we notify, on reports I will  
4 state that this is the Division of Fruit and  
5 Vegetables information, because it would have  
6 intrastate shipments. So we are bound,  
7 through the order, for confidentiality on each  
8 shipper's regulated shipments. In developing  
9 this informal rule, that was a concern of the  
10 industry.

11 And so, we are proposing that we  
12 will get the, garner the information from each  
13 shipper. We will maintain it by alphabetical  
14 of grower, with no identification as to what  
15 packing house they are associated with. So,  
16 for the Freedom of Information Act, we will  
17 have, if required, a list. But it will be  
18 only a list of growers by alphabetical order.  
19 No relationship of which shipper submitted  
20 their names. So we have addressed that,  
21 hopefully, in this informal rule making.  
22 Which, hopefully, will come out in the next 60

1 days.

2 THE WITNESS: I think one other  
3 thing was is we would --

4 JUDGE CLIFTON: If you'd say who  
5 you are.

6 THE WITNESS: I'm George Hamner  
7 again. I think the other thing that we were  
8 working through is we were going to identify  
9 the grower with no contact information for  
10 public record keeping.

11 JUDGE CLIFTON: So a person would  
12 have only the alphabetical listing of names of  
13 growers?

14 THE WITNESS: Right.

15 JUDGE CLIFTON: Without knowing  
16 anything more about them?

17 THE WITNESS: Right, correct.

18 JUDGE CLIFTON: Which is not very  
19 useful, is it?

20 THE WITNESS: Well, it can and it  
21 can't be. Most people probably know most of  
22 the growers in Florida. I mean, there's a lot

1 of crossover. But, the reality is that's, we  
2 were trying to keep it more confidential that  
3 way, and keep the contact information out.  
4 Making it easy, you know, if nothing else.  
5 You gotta work at it.

6 JUDGE CLIFTON: All right. Other  
7 questions, first by USDA? Ms. Schmaedick?

8 MS. SCHMAEDICK: No further  
9 questions, thank you.

10 JUDGE CLIFTON: All right. And  
11 now, questions from anyone else in the room.  
12 There are none. Mr. Hamner, do you think of  
13 anything else you'd like to add at this time?

14 THE WITNESS: No ma'am, thank you  
15 very much.

16 JUDGE CLIFTON: Thank you. Are  
17 there any objections to the admission into  
18 evidence of Exhibit 11, which is the testimony  
19 of Mr. Hamner, Exhibit 12, which is his  
20 PowerPoint, and Exhibit 13, 14, and 15, which  
21 are letters from individuals who are not  
22 expected to be here. Is that correct, Mr.

1 Hamner? They're not here to be cross  
2 examined?

3 THE WITNESS: Yes, ma'am.

4 JUDGE CLIFTON: Yes, it's true  
5 that they will not be here?

6 THE WITNESS: They will not be  
7 here, no ma'am.

8 JUDGE CLIFTON: All right. So,  
9 let me start just with 11 and 12 because the  
10 author of those is here. Is there any  
11 objection to the admission into evidence of  
12 Exhibit 11?

13 (No response.)

14 JUDGE CLIFTON: There is none.  
15 Exhibit 11 is admitted into evidence. Is  
16 there any objection to the admission into  
17 evidence of Exhibit 12?

18 (Whereupon Exhibit No.  
19 11 was received into  
20 evidence.)

21 (No response.)

22 JUDGE CLIFTON: There is none.

1 Exhibit 12 is admitted into evidence. Is  
2 there any objection to the admission into  
3 evidence of Exhibits 13, 14, and 15, whose  
4 authors are not present for cross examination?  
5 Ms. Schmaedick.

6 (Whereupon Exhibit No.  
7 12 was received into  
8 evidence.)

9 BY MS. SCHMAEDICK:

10 Q Point of clarification. The  
11 letter from Florida Citrus Packers. I believe  
12 that Peter Chaires is here. Is he not here?  
13 Oh, he was here this morning, okay. Excuse  
14 me.

15 A The president, the executive  
16 director of Florida Citrus Packers was here.  
17 He was going to testify shortly on new  
18 varieties, but he has taken ill and has left,  
19 and we're just going to read in his letter, if  
20 that's okay with people, later.

21 Q Okay, thank you. No further  
22 questions.

1 JUDGE CLIFTON: Now, when you say,  
2 Mr. Hamner, that you're just going to read in  
3 his letter --

4 THE WITNESS: That's later. But  
5 just --

6 JUDGE CLIFTON: Oh, his testimony.  
7 So that's in addition to Exhibit 14?

8 THE WITNESS: Yes, that's  
9 something when we cross the line.

10 JUDGE CLIFTON: All right, so  
11 we'll address that when we get to it. All  
12 right, are there any other questions, or any  
13 other comments? And are there any objections  
14 to the admission into evidence of any of these  
15 letters, 13, 14, and 15?

16 (No response.)

17 JUDGE CLIFTON: There are none.  
18 Those are admitted into evidence. All right,  
19 and Mr. Chadwell and Mr. Hamner, who will be  
20 the next witness?

21 (Whereupon Exhibit Nos.  
22 13, 14, and 15 were

1 received into evidence.)

2 THE WITNESS: We have some people  
3 that need to be here and be gone, so we'd like  
4 to move, change the schedule that we had set,  
5 had provided earlier. I refer to these as  
6 housekeeping, which is a dangerous word. But  
7 these have more to do with the shipping and  
8 then we, and we'll move into the new varieties  
9 after we go through them, if that's all right.  
10 So, we'd like to have Paul Genke come forth  
11 first to talk about Proposal 4, 5, and 8.

12 JUDGE CLIFTON: All right, and  
13 that's 4 and 5 and 8.

14 THE WITNESS: We grouped them  
15 where we thought they would make more sense  
16 being together.

17 JUDGE CLIFTON: Very fine. If  
18 you'd come forward, Mr. Genke, and have a seat  
19 in the witness stand, and I'll swear you in  
20 from a seated position.

21 MR. GENKE: Do you want me to hand  
22 out my testimony, first?

1 JUDGE CLIFTON: Oh, that would be  
2 excellent. Let's go off record while you  
3 distribute those copies.

4 (Off the record.)

5 JUDGE CLIFTON: All right, we're  
6 back on record at 2:03. Would you raise your  
7 right hand, please?

8 Whereupon,

9 PAUL GENKE,  
10 called as a witness herein, having been first  
11 duly sworn, was examined and testified as  
12 follows:

13 JUDGE CLIFTON: Please state and  
14 spell your name.

15 THE WITNESS: My name is Paul  
16 Genke, P-a-u-l, G-e-n-k-e. And, Your Honor,  
17 I do have some exhibits that we need to enter.

18 JUDGE CLIFTON: All right. Let's  
19 number these.

20 THE WITNESS: Okay.

21 JUDGE CLIFTON: Now, the next  
22 number we'll use will be No. 16.

1 THE WITNESS: Number 16.

2 JUDGE CLIFTON: What should that  
3 be for?

4 THE WITNESS: That will be for the  
5 grower sample ballot, which is included in  
6 your packet there.

7 JUDGE CLIFTON: Okay, grower  
8 sample ballot will be, now okay, so that will  
9 be --

10 THE WITNESS: 16.

11 JUDGE CLIFTON: EX, for Exhibit,  
12 16. All right, and what's next?

13 THE WITNESS: The next one will be  
14 the shipper's sample ballot.

15 JUDGE CLIFTON: All right, the  
16 shipper's sample ballot was be Exhibit 17.

17 THE WITNESS: The third one is a  
18 confidential background statement for Citrus  
19 Administrative Committee Marketing Order 905.  
20 That's a two-pager, two pages.

21 JUDGE CLIFTON: Now, let me make  
22 sure, now the ballot was only a one page.

1 THE WITNESS: Yes, the first two  
2 ballots only one page.

3 JUDGE CLIFTON: Okay, now what I'm  
4 looking at --

5 MR. HILL: I think the two pages  
6 are backwards, Your Honor, for 18.

7 JUDGE CLIFTON: Okay, hold up for  
8 us the first page --

9 THE WITNESS: Oh, yeah, you're  
10 right.

11 MR. HAMNER: Confidential  
12 background.

13 JUDGE CLIFTON: Okay, I don't have  
14 that in mine.

15 THE WITNESS: Yeah, it's a two-  
16 pager, yeah, there's two pages on that one.

17 JUDGE CLIFTON: Okay, let's make  
18 sure the court reporter and I both have that  
19 one page.

20 THE WITNESS: It's the  
21 confidential background statement.

22 JUDGE CLIFTON: Okay, now I do

1 have that.

2 THE WITNESS: That's the second  
3 page of it.

4 JUDGE CLIFTON: But I don't have  
5 page one. Are we on record right now? Let's  
6 go off.

7 (Off the record.)

8 JUDGE CLIFTON: All right, we're  
9 back on record at 2:07. I'm going to mark a  
10 document that has a form number down at the  
11 bottom left called FV163, and so is page two.  
12 They both say FV163. So the first page of it  
13 says, up at the top left, reproduced locally.  
14 That's page one. So those two pages together  
15 are Exhibit 18.

16 THE WITNESS: 18.

17 JUDGE CLIFTON: All right, what's  
18 next?

19 THE WITNESS: And the final  
20 exhibit will be the, let's see, Citrus  
21 Administrative Committee Marketing Order No.  
22 905, up in the upper right-hand, OMB No. 0581-

1 0189.

2 JUDGE CLIFTON: All right, that  
3 will be Exhibit 19.

4 THE WITNESS: Okay.

5 JUDGE CLIFTON: And then, your  
6 testimony, I'm going to give a number, as  
7 well.

8 THE WITNESS: Oh, okay.

9 JUDGE CLIFTON: And that will be  
10 Exhibit 20.

11 THE WITNESS: 20, okay.

12 (Whereupon Exhibit Nos.  
13 16, 17, 18, 19 and 20  
14 were marked for  
15 identification.)

16 JUDGE CLIFTON: Okay, tell me  
17 again your full name and how to spell it,  
18 please.

19 TESTIMONY BY PAUL GENKE

20 THE WITNESS: Okay. My name is  
21 Paul Genke, P-a-u-l, last name G-e-n-k-e. And  
22 I'm going to go over proposals 4, 5 and 8. I

1       reside at 5877 Pine Ridge Circle in Vero  
2       Beach, Florida. I am director of sales and  
3       marketing for the Packers of Indian River,  
4       Ltd., family-owned grower, shipper of fresh  
5       Florida citrus.

6                       Packers of Indian River is mainly  
7       a producer and shipper of grapefruit. Last  
8       season 93 percent of our packing house  
9       shipments were grapefruit, 60 percent in the  
10      export market, 40 percent domestic. We'd be  
11      considered the Small Business Administration's  
12      definition of a large grower and shipper.

13                     I was chairman of the Citrus  
14      Administrative Committee when we began the  
15      process amending Market Order 905, and  
16      currently serve on the committee as an  
17      alternate shipper member. I'm also a member  
18      of the executive committee and past president  
19      of Florida Citrus Packers, and a committee  
20      member of the Indian River Citrus League.

21                     We've grouped these three  
22      proposals covering the term of office,

1 nominations and acceptance of membership for  
2 my presentation, as they pertain to the  
3 nomination process of members and alternates  
4 to the order. All right, the first of these  
5 proposals is a proposed Amendment No. 4,  
6 Section 905.20, term of office. The term of  
7 office of members and alternate members shall  
8 begin on the first day of August of even  
9 numbered years, and continue for two years,  
10 and until their successors are selected and  
11 have been qualified.

12 Consecutive term of office of a  
13 member shall be limited to two terms. The  
14 term of office of alternate members shall not  
15 so be limited. Members, their alternates, and  
16 their respective successors shall be nominated  
17 and selected by the secretary as approved in  
18 Section 905.22 and 905.23. This proposal will  
19 change the term of office for committee  
20 members from one to two years, and the tenure  
21 requirement for committee members from three  
22 to four.

1                   The current term for members and  
2                   alternates servicing on a committee is a one-  
3                   year term, with a limit of three consecutive  
4                   one-year terms. The committee feels that  
5                   there are some administrative efficiencies and  
6                   stability to be gained by extending terms to  
7                   two years for a member, being able to serve  
8                   two consecutive two-year terms. Increasing  
9                   terms to two-year terms, with a maximum limit  
10                  of two consecutive terms would incorporate  
11                  consistency, saving administrative time and  
12                  resources.

13                  The fresh segment of our industry  
14                  is in a rapid transition. In the last 10  
15                  seasons, the fresh industry has experienced  
16                  fresh citrus production declines of 50  
17                  percent, fresh shipment declines of 40  
18                  percent. Given the transition phase our  
19                  industry is experiencing, the committee  
20                  determined this change will support continuity  
21                  of leadership and representation on the  
22                  committee.

1                   The next proposal is Amendment No.  
2           5, Section 905.22, nominations. A) Grower  
3           member, Section 1, committee shall give public  
4           notice of a meeting of producers in each  
5           district to be held no later than June 10 of  
6           even numbered years for the purpose of making  
7           nominations for grower members and alternate  
8           grower members. The committee, with approval  
9           of secretary, shall prescribe uniform rules to  
10          govern such meetings and the balloting  
11          thereat.

12                   The chairman of each meeting shall  
13          publicly announce at such meetings the names  
14          of the persons nominated. And the chairman  
15          and secretary of such meetings shall transmit  
16          to the secretary their certification as to the  
17          number of votes cast, names of the persons  
18          nominated, and such other information as the  
19          secretary may request. All nominations shall  
20          be submitted to the secretary on or before the  
21          20th day of June.

22                   Section 2, each nominee shall be a

1 producer in the district from which he or she  
2 is nominated. In voting for nominees, each  
3 producer shall be entitled to cast one vote  
4 for each nominee in each of the districts in  
5 which he or she is a producer. At least two  
6 of the nominees and alternates so nominated  
7 shall be affiliated with a bona fide  
8 cooperative marketing organization.

9 Section B, shipper members.

10 Section 1, the committee shall give public  
11 notice of a meeting for bona fide cooperative  
12 marketing organizations which are handlers,  
13 and a meeting for those handlers which are not  
14 so affiliated, to be held no later than June  
15 10th of even numbered years for the purpose of  
16 making nominations for shipper members and  
17 their alternates. The committee, with approval  
18 of secretary, shall prescribe uniform rules to  
19 govern each such meetings and the balloting  
20 thereat.

21 The chairman of each such meeting  
22 shall publicly announce at meeting the names

1 of the persons nominated. And the chairman  
2 and secretary of each such meeting shall  
3 transmit to the secretary their certification  
4 as to the number of votes cast, the weight by  
5 volume of those shipments voted, and such  
6 other information as the secretary may  
7 request. All nominations shall be submitted  
8 to the secretary on or before the 20th day of  
9 June.

10 Section 2, nomination of at least  
11 two members and their alternates should be  
12 made by bona fide cooperative marketing  
13 organizations which are handlers. Nominations  
14 for not more than six members and their  
15 alternates shall be made by handlers who are  
16 not so affiliated. In voting for nominees,  
17 each handler or his or her authorized  
18 representative shall be entitled to cast one  
19 vote, which shall be weighted by the volume of  
20 fruit by such handler during that current  
21 fiscal period.

22 Section C, notwithstanding the

1 provisions of Paragraph A and B of this  
2 section, nomination and/or election of members  
3 and alternate members of the committee may be  
4 conducted by mail or other means according to  
5 the rules and regulations recommended by the  
6 committee and approved by the secretary.

7               This proposal would authorize mail  
8 balloting procedures for committee membership  
9 nominations. The proposal of changing terms  
10 and term limits, as well as this proposal  
11 allowing the committee to conduct nominations  
12 by mail or other means, would aid in the  
13 administration of the order by direct  
14 communication with both growers and handlers  
15 in the nomination process. Allowing voting by  
16 mail for the nomination or election of members  
17 and alternates should increase participation  
18 as the committee would directly contact each  
19 grower and handler for record by mail or other  
20 means, according to the rules and  
21 recommendations recommended by the committee  
22 and approved by the secretary.

1                   This personal contact should help  
2                   increase participation and diversity in the  
3                   nomination process. These proposals mainly  
4                   deal with the administration of the order, and  
5                   would have no measurable impact, other than to  
6                   facilitate the operation of the order for the  
7                   fresh fruit growers and shippers of Florida  
8                   citrus.

9                   The committee currently conducts  
10                  grower nomination meetings every year at set  
11                  locations within the three grower districts.  
12                  Currently, each grower district nominating  
13                  meeting requires a grower to vote in person in  
14                  their respective district. The current  
15                  process can limit participation due to time  
16                  and travel requirements to attend the  
17                  nominating meeting, since some of the grower  
18                  districts cover a large geographical area.

19                  Shipper nominations are currently  
20                  held at the Florida Department of Citrus  
21                  headquarters, as it is central location for  
22                  shippers. Shippers may vote by proxy, and

1 each shipper's vote is a volume vote of their  
2 regulated shipments for a specific time frame.  
3 By allowing voting by mail or other means,  
4 participation should increase and may increase  
5 diversity among the members involved in the  
6 nomination process.

7 The committee believes that there  
8 will be cost savings to conduct the  
9 nominations of members and alternate members  
10 by mail or other means. As presented earlier,  
11 this measure is coupled with the proposal to  
12 extend the term of office from a one-year term  
13 to a two-year term, which would decrease  
14 administrative and travel costs related to  
15 nomination meetings.

16 However, if there is any cost  
17 increase, it would be outweighed by the  
18 benefit of increased participation and  
19 involvement. Also, in anticipation of these  
20 changes, the committee has proposed informal  
21 rule making to minimize costs by requiring  
22 handlers to provide the committee with a list

1 of the growers whose fruit they handle during  
2 the season.

3 Thus, the committee will have an  
4 accurate list of the Florida citrus growers  
5 engaged in citrus production for the fresh  
6 market. Also, the number of fresh citrus  
7 growers that are members of a bona fide  
8 cooperative marketing organization should  
9 offset some of the cost, as their cooperatives  
10 would be voting for their membership, thus  
11 reducing costs to the committee.

12 The committee will be able to communicate  
13 directly with the growers of Florida citrus  
14 that market their fruit in the fresh market.

15 It is the committee's anticipation  
16 that this change will, in addition to keeping  
17 the growers better informed of the committee's  
18 activities, but also foster increased  
19 participation in our programs. Attached is a  
20 sample ballot, sample of the grower ballot for  
21 District 1 for voting by mail. The grower  
22 ballot is designed to include both independent

1 and cooperative members. The two major  
2 cooperatives are located in District 1. The  
3 sample ballot for independent shippers is  
4 attached. And there would be a like form for,  
5 there would be a like ballot required for  
6 cooperative shippers.

7 Proposal 8 would eliminate the  
8 requirements to send out a separate acceptance  
9 statement with the background statement for  
10 nominees, combining both forms. Section  
11 905.28, qualifications and acceptance. Any  
12 persons selected by the secretary as a member  
13 or alternate member of the committee shall,  
14 prior to selection by USDA, qualify by filing  
15 a written qualifications and acceptance  
16 statements indicating such person's  
17 qualifications and willingness to serve in the  
18 position for which nominated.

19 This will eliminate separate  
20 acceptance statements that would reduce  
21 paperwork associated with the nomination  
22 process. Under this proposal, the nominees

1 agree to serve, and must only complete the  
2 required background statement, which includes  
3 a statement of acceptance. Examples of the  
4 confidential background statement for Florida  
5 Citrus Administrative Committee Marketing  
6 Order 905, and the Citrus Administrative  
7 Committee Marketing Order No. 905 acceptance  
8 letters are included in this testimony.

9           The order currently requires each  
10 member and alternate to complete an acceptance  
11 letter in addition to the background statement  
12 when nominated to serve on the committee.  
13 Eliminating the acceptance letter would reduce  
14 paperwork and save the time required to  
15 complete the letter.

16           All three of these proposals have  
17 industry support, and they're designed to aid  
18 in the nomination process, and encourage  
19 greater participation in the administration of  
20 the order for the fresh segment of the Florida  
21 citrus industry. And that concludes my  
22 testimony, Your Honor.

1 JUDGE CLIFTON: Thank you. You  
2 notice how we didn't interrupt you at all?

3 MR. GENKE: You were waiting for  
4 the end, right?

5 JUDGE CLIFTON: Who would like to  
6 ask questions of Mr. Genke? Start with USDA.

7 EXAMINATION

8 BY MS. SCHMAEDICK:

9 Q This is Melissa Schmaedick, USDA.  
10 Thank you, is it Mr. Genke or Genke?

11 A Genke.

12 Q Genke. Thank you.

13 A I answer to both.

14 Q Thank you for your testimony. On  
15 Page 2 of your testimony about the middle of  
16 the first full paragraph, you indicate that  
17 the committee feels that there would be  
18 administrative efficiencies and stability to  
19 be gained by extending terms. Could you  
20 describe to me what type of increases in  
21 stability you'd like to see, and if you have  
22 any examples of things that need to be

1 corrected?

2 A Currently, it's a one-year term.  
3 So, each year you have to go through the  
4 nominating process again which, you know,  
5 takes time and resources to do it. By going  
6 to two-year term, and then having two  
7 consecutive terms, you're basically going from  
8 three to four. It keep continuity in there  
9 for, you know, for going through items like  
10 this on changing marketing orders. You have  
11 the same group in there that are working  
12 through it, and can carry the process through,  
13 which is a perfect example.

14 Like this year, we spent a lot of  
15 time. I was a the chairman when we started  
16 this review committee, and then luckily George  
17 is on the committee, too, and carried it  
18 through. But, continuity and leadership, it  
19 would definitely help.

20 Q And, in your experience, is there  
21 a concern with turnover or folks not renewing  
22 their participation?

1           A       No. Generally, the participation,  
2 members on the committee have pretty much  
3 filled out their three one-year terms. I  
4 don't know of really anybody that's bailed out  
5 before that.

6           Q       What about concerns over finding  
7 new folks to participate?

8           A       As our industry shrinks, that is a  
9 little bit of a problem. So, part of it is if  
10 we get that grower list, right now, as Mr.  
11 Chadwell mentioned earlier, we're sending out  
12 letters to thousands of growers. Some of them  
13 are maybe just process growers. You don't  
14 know that. By narrowing it down to get just  
15 the fresh fruit growers and keeping them  
16 informed of our processes all the time, we  
17 hope to create some new membership. But, yes,  
18 as the numbers do dwindle, Melissa, it's  
19 getting tougher.

20                       One example, Florida grapefruit.  
21 You go back eight years ago, we produced 40  
22 million boxes. This year it's 17.

1 JUDGE CLIFTON: That would be 17  
2 million, I hope.

3 MR. GENKE: Million boxes, 17  
4 million boxes. Another example of the  
5 industry getting smaller.

6 MR. HAMNER: Your Honor, could I  
7 add something to that?

8 JUDGE CLIFTON: Yes, please.

9 MR. HAMNER: Briefly, Melissa, the  
10 other part. We were on three one-year terms,  
11 which is actually a six-year term. And if you  
12 look at the history of the CAC as we got new  
13 people, rarely did anybody, you served out  
14 your term three times in a row. And then you  
15 would either become an alternate, or we would  
16 find someone else. This actually shortens the  
17 term to four years from six, with the hope  
18 that, even though we're shrinking, we will  
19 find more people, and we can actually turnover  
20 more often, if you think about it.

21 JUDGE CLIFTON: Mr. Hamner, you  
22 lost me. I multiplied one year times three

1 times and I got three. How did you get six?

2 MR. HAMNER: You're allowed to be  
3 a member for three one-year terms, and then  
4 you were also allowed to become an alternate  
5 for three one-year terms. So that would be  
6 your, if you rolled over as an alternate from  
7 the membership, that would be six. In this  
8 case, you'd have a two-year, the two two-year  
9 terms, and then you would be off.

10 JUDGE CLIFTON: So you don't  
11 rollover to be an alternate?

12 MR. HAMNER: You could be, you  
13 could rollover, I guess. I'm sorry, I had it,  
14 I was thinking two and two.

15 JUDGE CLIFTON: But it really is  
16 six and eight, right?

17 MR. HAMNER: You're right.

18 JUDGE CLIFTON: Possibly.

19 MR. HAMNER: My apologies.

20 JUDGE CLIFTON: Possible.

21 BY MS. SCHMAEDICK:

22 Q Would a person who served a full

1 term as a member, and then served as an  
2 alternate, would they be allowed to, then,  
3 serve as a member after their service as an  
4 alternate?

5 A Yes.

6 Q So they would, essentially, be  
7 able to serve as long they wanted to, as long  
8 as they were alternating, or serving in both  
9 capacities?

10 A As long as they were nominated.

11 Q Correct, thank you. But is that a  
12 fair statement?

13 A Yes.

14 Q And you mentioned the possibility  
15 for increasing diversity on your board or your  
16 committee. What type of changes in diversity  
17 would be possible?

18 A We're, yeah, we've been very  
19 active in increasing our, or attempt to  
20 diversify the committee beyond just male  
21 citrus growers. There are some females  
22 involved that are members of the family.

1       There's some minorities involved. So that's  
2       what we're trying to increase. And we do have  
3       some members, and Duke's been very active in  
4       pursuing diversifying the committee.

5               Q       Thank you. I believe I have no  
6       further questions, thank you.

7               A       Thank you.

8                       JUDGE CLIFTON: Who else from  
9       USDA? Mr. Hill?

10                      BY MR. HILL:

11               Q       Okay. You talked well about 4, 5,  
12       and 8. I'm just going to ask you some  
13       questions about the other ones just briefly.  
14       Have you looked at the other proposals, 1, 2,  
15       3, 6, 7?

16               A       Me, personally, yes.

17               Q       So, I'm just going to go ahead and  
18       ask you. The first proposal, amending the  
19       definitions of fruit and variety. Are you for  
20       or against that?

21               A       I'm for it.

22               Q       The second one, amending the

1 definition of handle or ship. Are you in  
2 support of that?

3 A Support, yes.

4 Q The third proposal is to amend to  
5 revise the process for redistricting the  
6 production area. Are you for or against that?

7 A Support.

8 Q The sixth one, and sorry to keep  
9 badgering you here, is to amend to authorize  
10 the committee to increase the capacity of its  
11 financial reserve funds. Are you in support  
12 of that?

13 A Support.

14 Q And could you tell me why for that  
15 one? Is there something about that one?

16 A There's, in my view, there's two  
17 reasons. One is, you know, our shipments have  
18 been going down each year. We're working into  
19 our reserve. Our reserve right now, we have  
20 enough reserve to get us just past the mid  
21 point of this coming season. And with the  
22 disease, and not knowing where we're going to

1 go in total shipments, that could continue to  
2 drop somewhat. So it would be prudent for us  
3 to start, if we can, build up our reserves.

4 And then, also, the second reason  
5 would be if we do see where we want to look at  
6 some scientific research or marketing research  
7 or advertising programs, we would have a  
8 reserve to go ahead and implement those  
9 programs.

10 Q The seventh proposal is to amend,  
11 to authorize pack and container requirements  
12 for domestic shipments and authorize different  
13 regulations for different markets. Are you in  
14 support or not?

15 A Support.

16 Q Now, I do have a question about  
17 that. Why is that necessary, different  
18 regulations for different markets? Why would  
19 you think that to be necessary?

20 A In Florida you have, the CAC is  
21 the fresh fruit side of the industry. The  
22 Florida Department of Citrus is the fresh and

1 the processing side. So, if anything changes,  
 2 as mentioned earlier, at the Department of  
 3 Citrus, which I don't think we really  
 4 anticipate right now, the length of time it  
 5 takes to get these amendments through and  
 6 authorize and everything, it takes years.

7 So we decided that, since we're  
 8 going to go ahead and amend it anyway, let's  
 9 bring in everything that we would possibly  
 10 need so we could govern the whole fresh fruit  
 11 side of the industry, whether we need it right  
 12 now or not.

13 Q Okay, and finally, the last  
 14 amendment proposal is to amend 905.7 to  
 15 require handler to register with the  
 16 committee. Are you in support of that?

17 A Support, yes.

18 Q All right, that's all I have.  
 19 Thanks.

20 JUDGE CLIFTON: Who else has  
 21 questions for Mr. Genke? Let's start, again,  
 22 with USDA people. Mr. McFetridge.

EXAMINATION

BY MR. MCFETRIDGE:

Q Marc McFetridge, USDA. I just had one quick question for the three proposals that you discussed, No. 4, 5, and No. 8. Can you foresee any possible way that these proposals could cause any type of undue burden on any small agricultural growers or shippers?

A No, not at all. I think, on the contrary, it's going to be a benefit, especially on the nominating where, now, the grower is required to vote in person. You know, time constraints or travel constraints might, you know, put a burden on them to have to vote in person. Thus, we don't get the participation we would like to see. So no, not at all.

Q Thank you. That's all.

JUDGE CLIFTON: Mr. Chadwell?

MR. CHADWELL: Arthur Chadwell.

I'd just like to add a comment. Excuse me. We have eight shipper members, and each with

1 an alternate, so 16. And we have the largest  
2 shipper member to the smaller shipper, one of  
3 the smallest shipper regulated shipments. So  
4 we have a great diversity amongst our shippers  
5 from the very largest to almost on of the  
6 smallest. So we have encompassed shippers of  
7 all sizes are members of the committee.

8 JUDGE CLIFTON: Who else has  
9 questions for Mr. Genke? Ms. Schmaedick, do  
10 you?

11 MS. SCHMAEDICK: Yes, thank you,  
12 Your Honor.

13 EXAMINATION

14 BY MS. SCHMAEDICK:

15 Q Melissa Schmaedick, USDA. Mr.  
16 Genke, according to your statement, you're the  
17 director of sales and marketing for the  
18 shipper packers of Indian River. Is that  
19 correct?

20 A That's correct.

21 Q I'd like to, if you would, expand  
22 on your position on Proposal No. 9, which is

1 handler registration. You did state that you  
2 were in favor of that proposal.

3 A I'm probably the wrong one to ask  
4 that, Melissa, because we grow and pack one  
5 hundred percent of our fruit. We don't have  
6 outside shippers, outside growers.

7 Q Okay. All right, thank you for  
8 that clarification.

9 A Okay, thank you.

10 Q No further questions.

11 JUDGE CLIFTON: Ms. Varela.

12 EXAMINATION

13 BY MS. VARELA:

14 Q Jennie Varela, USDA. Mr. Genke, I  
15 have kind of a different question for you. A  
16 few years ago, the committee moved toward, and  
17 you spoke about this a little, toward having  
18 meetings via conference calls and kind of  
19 changing the way you did business that way.  
20 Do you, first of all, did you see more  
21 participation in meetings when you made that  
22 change?

1           A       Yes. I would say our  
2 participation the last couple years on  
3 conference calls has been real good. When you  
4 have to, I mean, we're from Vero Beach all the  
5 way up to the northern part of the state. And  
6 you want to have a meeting over in Lake Wales,  
7 it's hard for a lot of people to do that,  
8 especially during our shipping season which  
9 is, you know basically, from October through  
10 April, into May as our shipping season.  
11 Trying to get out of the office and drive 120  
12 miles and back in a day, it makes it very  
13 difficult. So, yes, it has increased a lot.

14  
15           Q       And having been through that, do  
16 you anticipate that making some of these  
17 changes to the nomination process will have a  
18 similar effect? That you'll see that big a  
19 difference in participation?

20           A       I think it will. Plus, also, the  
21 fresh grower mailing list. I think that's  
22 very important, because right now we don't

1 know that it's all getting out to them. Some  
2 may be receiving it, some may not. A lot of  
3 processors may be receiving the information.  
4 So, if we can target it down to just fresh  
5 fruit growers, tailor make all our programs,  
6 or tailor make our message to them so they get  
7 it, yes, I think you'll see greater  
8 participation.

9 Q Thank you.

10 JUDGE CLIFTON: Who else at USDA  
11 has questions for Mr. Genke? All right,  
12 anyone else in the room, do you have questions  
13 for Mr. Genke? Stay where you are, and we'll  
14 deal with the exhibits.

15 THE WITNESS: I'm not picking up  
16 my stuff yet.

17 JUDGE CLIFTON: Exhibit 16 and  
18 Exhibit 17 are sample ballots. Let's start  
19 with those.

20 THE WITNESS: Okay.

21 JUDGE CLIFTON: Is there any  
22 objection to the admission into evidence of

1       either Exhibit 16 or 17?

2                               (No response.)

3                       JUDGE CLIFTON: There is none.

4       Exhibit 16 is admitted into evidence. Exhibit  
5       17 is admitted into evidence. Exhibit 18 is  
6       the form required by USDA, and I guess I need  
7       a clarification here, if you will, Mr. Genke.  
8       Exhibit 18 is what is filled out when a person  
9       agrees to be nominated. Is that correct?

10                               (Whereupon Exhibit Nos.  
11                               16 and 17 were received  
12                               into evidence.)

13                       THE WITNESS: After they're  
14       nominated, they would be filling this out to,  
15       well, I guess it would be after they're  
16       nominated, correct, Duke?

17                       JUDGE CLIFTON: Let's get some  
18       help. Mr. Chadwell, what do you know about  
19       this form?

20                       MR. CHADWELL: Arthur Chadwell.  
21       We have our nomination process. And then,  
22       once the nominees are, we have them nominated,

1       then we give, this form is submitted to the  
2       secretary. And it's to aid the secretary so  
3       he has some background information on our  
4       nominees, and to make sure that they are  
5       qualified. And just some background  
6       information of who he is approving to be on  
7       the committee.

8                       So it's an informational form  
9       that, after they are nominated by growers  
10      nominating growers, shippers nominating  
11      shippers. We complete our nominating process.  
12      I send out a copy of the background statement.  
13      It is completed by those that have been  
14      nominated. Then it is submitted to the  
15      Secretary of Agriculture, because it is the  
16      Secretary of Agriculture that selects the  
17      order.

18                      We present the order to the  
19      secretary. This is an informational package  
20      saying that they agree to serve. And then  
21      it's the secretary that appoints them or  
22      selects them to the committee.

1 JUDGE CLIFTON: All right, so Mr.  
2 Genke, I'll ask you first. The intent would  
3 be to keep using Exhibit 18.

4 THE WITNESS: Oh yes, yes.

5 JUDGE CLIFTON: All right, and you  
6 agree with that, Mr. Chadwell?

7 MR. CHADWELL: Yes.

8 JUDGE CLIFTON: And then, what is  
9 it that will not happen under your proposal?

10 THE WITNESS: Number 19 will not.  
11 After the nominee fills out No. 18 and it's  
12 submitted to the Secretary of Agriculture, and  
13 then the secretary approve them as a member or  
14 alternate, No. 19 was mailed to you after  
15 that, saying will you agree to serve.

16 But, on the second page of No. 18,  
17 when you sign the certification statement, I  
18 certify that the information is above is  
19 correct and I am willing to serve on the  
20 committee. So 19 comes back to you, again and  
21 says are you sure? It's like they're given  
22 time to back out, but so 19 is kind of

1       redundant. And that's why we're saying do  
2       away with that. We've already stated on No.  
3       18, the confidential statement, that we are  
4       willing to serve.

5               JUDGE CLIFTON: Okay, so the only  
6       thing that Exhibit 19 adds, besides the fact  
7       that it's after the person actually is  
8       nominated --

9               THE WITNESS: Or is seated, or I  
10      mean approved.

11              JUDGE CLIFTON: Yes. Voted in, I  
12      guess.

13              THE WITNESS: Yes.

14              JUDGE CLIFTON: Is this other  
15      statement that I agree to carry out assigned  
16      duties in administering the terms and  
17      provisions of the marketing order to the best  
18      of my ability. So that would be missing if  
19      you eliminated Exhibit 19. Is that correct?

20              THE WITNESS: Yeah, yeah, 19 would  
21      be eliminated. That's correct.

22              JUDGE CLIFTON: Okay, so those

1 words, if they're essential, I don't know  
2 what's essential. But those words could be  
3 added to this FV-163, I guess, if those are  
4 essential words. I don't know if those are  
5 essential words. Yes, please, Mr. Nissen.  
6 Again, identify yourself, Mr. Nissen.

7 MR. NISSEN: Christian Nissen,  
8 Southeast marketing field office. The forms  
9 in your hand, those are largely prepared by  
10 USDA. So yes, we could make an adjustment to  
11 the initial background form to include that  
12 other language. These are just the two  
13 existing forms as they are, so they read like  
14 that. But we definitely could make it an  
15 adjustment to encapsulate both of them into  
16 one form. Actually, it would be beneficial  
17 for them and for us, as well.

18 JUDGE CLIFTON: Oh, this is good.  
19 Thank you. All right, first of all, is there  
20 any question for this witness about Exhibits  
21 18 and 19 before I ask if there's any  
22 objection to their being admitted into

1 evidence? Ms. Schmaedick?

2 EXAMINATION

3 BY MS. SCHMAEDICK:

4 Q Melissa Schmaedick. Mr. Genke,  
5 are you aware of any other marketing orders  
6 that have gone through the process of  
7 combining their nomination and acceptance?

8 A I am not, no.

9 Q Thank you.

10 JUDGE CLIFTON: All right, are  
11 there any other questions on these two forms?  
12 Is there any objection to the admission into  
13 evidence of Exhibits 18 and 19?

14 (No Response.)

15 JUDGE CLIFTON: There is none.  
16 Exhibits 18 and 19 are admitted into evidence.  
17 Is there any objection to the admission into  
18 evidence of Exhibit 20, which is Mr. Genke's  
19 testimony?

20 (No Response.)

21 JUDGE CLIFTON: There is none.  
22 Exhibit 20 is admitted into evidence. Mr.

1 Genke, do you have anything to add before you  
2 step down?

3 (Whereupon Exhibit Nos.  
4 18, 19 and 20 were  
5 admitted into evidence.)

6 THE WITNESS: No I do not. Thank  
7 you.

8 JUDGE CLIFTON: All right, thank  
9 you so much. You may step down. And, do we  
10 need short break, or are we ready for the next  
11 witness? Ready for the next witness. Who  
12 would that be? Mr. Chadwell?

13 MR. CHADWELL: Mr. Raley, Mr.  
14 Lindsay Raley, Proposal No. 6.

15 JUDGE CLIFTON: And let's go off  
16 record while documents are distributed.

17 (Off the record.)

18 JUDGE CLIFTON: All right, we're  
19 back on record at 2:42. I'm going to swear  
20 you in in a seated position. Would you raise  
21 your right hand?

22 Whereupon,

1 LINDSAY RALEY,  
2 called as a witness herein, having been first  
3 duly sworn, was examined and testified as  
4 follows:

5 JUDGE CLIFTON: Thank you Please  
6 state and spell your name.

7 THE WITNESS: My name is Lindsay  
8 Raley, L-i-n-d-s-a-y, R-a-l-e-y.

9 JUDGE CLIFTON: Thank you. I have  
10 marked the document that has your name and  
11 says testimony Proposal No. 6 as Exhibit 21.  
12 You may proceed.

13 (Whereupon Exhibit No.  
14 21 was marked for  
15 identification.)

16 TESTIMONY BY LINDSAY RALEY

17 THE WITNESS: Thank you, Your  
18 Honor. My name is Lindsay Raley. I reside at  
19 208 Palmola Street, Lakeland, Florida. I am  
20 the treasurer of the Citrus Administrative  
21 Committee, otherwise known as the committee,  
22 and was a member of the amendment study

1 subcommittee which recommended the nine  
2 proposed amendments to the committee last  
3 July.

4 I am also a small grower and  
5 president and chairman of the Dundee Citrus  
6 Growers Association. Dundee Citrus Growers  
7 Association was founded in 1924 as a grower-  
8 owned agricultural cooperative with 113 grower  
9 members, and two packing houses located in  
10 Dundee and Lake Hamilton. Also, members of  
11 Dundee Citrus Growers Association are Lake  
12 Regional Packing Association, Winter Haven  
13 Citrus Growers Association, and Lake Wales  
14 Citrus Growers Association.

15 These cooperatives, in the past,  
16 operated their own packing houses, but with  
17 the reduction of production and fresh  
18 shipments, they joined our cooperative to gain  
19 efficiencies for all grower members. The  
20 majority of grower members of Dundee Citrus  
21 Growers Association would meet SBA definition  
22 of a small grower, and our packing house would

1 meet SBA definition of a large shipper.

2 My testimony will be for Proposal  
3 No. 6, which would increase the amount of  
4 reserves the committee could carry over each  
5 fiscal year. We are proposed to amend Section  
6 905.42, handlers accounts to read as follows:

7 A) If at the end of a fiscal period, the  
8 assessments collected are in excess of  
9 expenses incurred, the committee, with the  
10 approval of the secretary, may carry over such  
11 excesses into subsequent fiscal periods as a  
12 reserve provided that funds already in reserve  
13 do not exceed approximately two fiscal  
14 periods' expenses.

15 Such reserves may be used 1) to  
16 cover any expenses authorized by this part,  
17 and 2) to cover necessary expenses of  
18 liquidation in the event of termination of  
19 this part. If any such excess is not retained  
20 in reserves, each handler entitled to a  
21 proportionate refund shall be credited with  
22 such refund against the operations of the

1 following fiscal period, unless he demands  
2 payment of the sum due him, in which case,  
3 such sum shall be paid to him.

4           Upon termination of this part, any  
5 funds not required to defray the necessary  
6 expenses of liquidation shall be disposed of  
7 in such a manner as the secretary may  
8 determine to be appropriate provided that, to  
9 the extent practical, such funds shall be  
10 returned, pro rata, to the persons from which  
11 such funds were collected.

12           B) The committee may, with the  
13 approval of the secretary, maintain in its own  
14 name or in the name of its members a suit  
15 against any handler for the collection of such  
16 handler's pro rata share of the said expense.

17           This amendment will allow the  
18 committee flexibility to increase their  
19 reserves up to two fiscal periods' expenses.  
20 Currently reserves are capped at approximately  
21 one-half years' fiscal expense, which is  
22 limiting the committee's flexibility to

1 operate under increased fluctuations in  
2 regulated shipments each season.

3 Also, without the authority to  
4 increase reserves in the future, the order  
5 would be impeded from being a tool used by the  
6 fresh segment of the Florida citrus industry  
7 to develop and implement projects requiring  
8 advertising, promotion or research for the new  
9 varieties being developed that will be the  
10 future of the fresh citrus industry in  
11 Florida.

12 As described above, the new  
13 language is for up to two fiscal years'  
14 expenses. The fiscal year of the committee  
15 begins on August 1st and ends the following  
16 July 31st. The fresh citrus season normally  
17 begins, in Florida, in late September, with  
18 the majority of the fresh shipments occurring  
19 by the end of March, with Valencia orange  
20 shipments continuing until late May or early  
21 June.

22 The Florida fresh shipping season

1 currently lasts about eight months, with  
2 approximately 87 percent of our volume being  
3 shipped in six months. In addition, the  
4 volume of regulated shipments of fresh citrus  
5 from Florida has declined 17 percent in the  
6 last five seasons, and 41 percent in the last  
7 decade. This season, fresh shipments from  
8 Florida are projected to be down another 10  
9 percent from just last season.

10 This season's projected 13.2  
11 million boxes shipped fresh would be the  
12 lowest amount of fresh citrus shipped from  
13 Florida since the 1919-1920 season, when  
14 Florida's entire citrus crop was utilized in  
15 the fresh market. As you can tell from the  
16 decline in fresh citrus volume, it is getting  
17 more difficult to carry over the amount of  
18 reserves needed to fully fund the committee if  
19 only one-half of one years' fiscal expenses  
20 may be carried as reserves.

21 The committee has tried to avoid  
22 assessment increases each year, and would

1       rather set an assessment rate that would fully  
2       fund the committee's operations and build  
3       reserves to handle the fluctuations in fresh  
4       shipments. Without raising the authority to  
5       increase reserves, it will become more  
6       difficulty for the committee to avoid  
7       assessment rate increases annually, or even  
8       during a season.

9               By raising the assessment rate to  
10       a level that will properly fund the operations  
11       of the committee and build ample reserves to  
12       handle the increased fluctuations in fresh  
13       shipments can only be arrived by increasing  
14       the amount of reserves the committee is  
15       allowed to carry over from fiscal year to the  
16       next fiscal year.

17              The committee did consider going  
18       up to one full fiscal year's reserve, but felt  
19       there is too much variation in regulated  
20       shipments for only increasing reserves to one  
21       fiscal year's expenses. Also, it has been the  
22       practice of the committee to hold excess

1 assessments during the past few fiscal years  
2 to ensure there would be ample reserves to  
3 fully fund their operations.

4 During the past year, when we  
5 reviewed and considered this change to Section  
6 905.42, there was complete support within the  
7 fresh segment of the Florida citrus industry.  
8 As I have previously stated, there has not  
9 been any opposition to this proposal and, in  
10 fact, is a cornerstone of the committee's  
11 financial stability moving forward until the  
12 above-mentioned problems are solved and there  
13 is a reassurance of new plantings of varieties  
14 with the characteristics desired by consumers  
15 of Florida fresh citrus.

16 The order will be the tool for our  
17 fresh industry to fully utilize, to move  
18 forward as we overcome as many obstacles as  
19 our industry currently is working to overcome.  
20 The Florida citrus industry has been a  
21 cornerstone of Florida agriculture for many  
22 decades, and we believe the future is bright

1 as we retool for the future.

2 The increased reserve ceiling  
3 would be in effective immediately.  
4 Particularly, it would be implemented with the  
5 executive committee recommends its annual  
6 budget to the full committee early each fall.  
7 Thank you, and that's my testimony.

8 JUDGE CLIFTON: Thank you, Mr.  
9 Raley. Who would like to ask questions of Mr.  
10 Raley, beginning please with USDA employees.  
11 Ms. Schmaedick.

12 EXAMINATION

13 BY MS. SCHMAEDICK:

14 Q Thank you for your testimony.  
15 This is Melissa Schmaedick with USDA. Mr.  
16 Raley, earlier in the day I believe there was  
17 a comment that indicated that reserves had  
18 been drawn down over the last year. Is that  
19 correct?

20 A That is correct.

21 Q And then, in your testimony on  
22 Page 3, you indicate that the committee has

1        tried to avoid assessment increases. I'm  
2        wondering if you could explain how, without  
3        assessment increases, you might be able to  
4        continue to build reserves, if they're in the  
5        process of being depleted?

6                A        Well currently, I mean I believe,  
7        up until last year our assessments have been  
8        very level and, Duke remind me, prior to this  
9        past year, it's at 8.8.

10                MR. CHADWELL:    \$7.2 million.

11                THE WITNESS:    \$7.2 million. You  
12        know, well, we had increased volume. Our  
13        expenses at the committee have been, for the  
14        past 10 seasons, have averaged about \$230,000,  
15        and have been that level through that whole  
16        time. So the ability to build reserves has  
17        been, really, based on volume of shipments in  
18        any one year. And with the last few years,  
19        they've been declining, declining, declining.  
20        So, without raising, we've been eating into  
21        reserves each year. And without raising the  
22        assessment rate, there's really no way to

1 maintain any reserves. I hope that answers  
2 your question.

3 BY MS. SCHMAEDICK:

4 Q So would you potentially foresee,  
5 at some point in the future, increasing  
6 assessments in order to build reserves?

7 A I would, yes. No, absolutely,  
8 absolutely, I would see. And this only gives  
9 the committee the ability to take the reserves  
10 up to two year. It doesn't, necessarily, mean  
11 that we would take it up to two years.

12 Q If I understand your statement  
13 correctly, are you indicating that this  
14 ability to have a larger reserve might assist  
15 the industry in sort of riding through this  
16 bumpy next five years that you foresee?

17 A Yes I do. And also, especially if  
18 the committee chooses, in the future, we have  
19 the ability to do marketing, advertising and  
20 research. Those are types of programs that  
21 really need a consistency in funding. And I  
22 wouldn't think the committee would want to

1       commit itself to those types of programs,  
2       unless they had a built-in reserve program  
3       that could continue those programs.

4                       If we had, you know, it doesn't  
5       have to be disease related. It could be a  
6       freeze or a weather event that takes our  
7       assessments down for even just one year. To  
8       have those reserves built in would be, I  
9       think, just a prudent business decision.

10               Q       Thank you. And in you current  
11       role as president and chairman of the Citrus  
12       Grower Association, which I believe you state  
13       is a cooperative, are you speaking on behalf  
14       of your small grower members?

15               A       I'm speaking as chairman of the  
16       committee of the Citrus Administrative  
17       Committee. That's my role here.

18               Q       And would it be fair to say that  
19       you've discussed this issue with your members?

20               A       Yes, yes, and there's widespread  
21       support.

22               Q       Thank you. Have the other

1 proposals been widely discussed with your  
2 members?

3 A Not directly through  
4 communications from Dundee Citrus Growers  
5 Association, but certainly through the  
6 industry at large. I believe all growers got  
7 notification of this meeting and, you know, a  
8 lot of us serve on multitudes of different  
9 industry committees that, you know, this has  
10 been well discussed within the industry for  
11 the past couple years.

12 Q You also stated that you,  
13 yourself, are a small grower by SBA  
14 definition.

15 A I would be classified as a large  
16 grower for the SBA.

17 Q Oh, is that --

18 A I would just say that the majority  
19 of Dundee's members are probably small  
20 growers. We have a lot of small, and some  
21 large growers, also. But, I would say the  
22 majority of our members are small grower

1 classification.

2 Q In your testimony on Page 1, it's  
3 the second sentence, it says I am also a small  
4 grower. Does that need to be corrected?

5 A Well, I didn't, is that under, is  
6 a small grower in the definition of SBA or,  
7 okay, then I would think. What was the cap on  
8 that?

9 JUDGE CLIFTON: Let's go off  
10 record just a minute.

11 (Off the record.)

12 JUDGE CLIFTON: All right, we're  
13 back on record at 2:57. Mr. Raley, you may  
14 respond to Ms. Schmaedick's question.

15 THE WITNESS: This is a bit of an  
16 oversight on my part. I would be classified  
17 as a large grower under those terms.

18 MS. SCHMAEDICK: Thank you.

19 JUDGE CLIFTON: And let's correct  
20 that on Exhibit 21, Ms. Bright. The fourth  
21 sentence, or the fourth line. How do you want  
22 it to read, Mr. Raley?

1 THE WITNESS: I'm also a large  
2 grower.

3 JUDGE CLIFTON: Okay.

4 THE WITNESS: I mean, I think that  
5 would meet the, or maybe I should be defined  
6 as that I'm just a grower and not put me in a  
7 box.

8 BY MS. SCHMAEDICK:

9 Q And one last question for you.  
10 Does your packing, I guess you have two  
11 packing houses? Could you clarify for me?

12 A Dundee Citrus Growers Association  
13 operates two packing houses, yes ma'am.

14 Q Correct. And do you ship outside  
15 of the state of Florida?

16 A Yes we do.

17 Q What is your position on Proposal  
18 9, handler registration?

19 A I'm very much in support of it.

20 Q Could you tell me why?

21 A I think our organization would  
22 probably be just a good example. We have,

1 we're what's called a federated cooperative.  
2 We have cooperatives that are members of our  
3 cooperative. Those cooperatives, the other  
4 three listed here, have their own individual  
5 grower members. Some of those grower members  
6 are also members of Dundee Citrus Growers  
7 Association. There's a lot of duplication in  
8 the industry with, especially, the fresh side  
9 of the industry.

10 I think by having the, you know,  
11 this kind of "master grower list," we'll  
12 eliminate that duplication. And you would  
13 have duplication just out of our own  
14 organization because we have members that are  
15 members of more than one cooperative.

16 Q Thank you. Are you familiar with  
17 the other potential impacts of Proposal 9,  
18 handler registration?

19 A Familiar with other impacts or any  
20 other --

21 Q Would there be any other potential  
22 impacts?

1           A       I do not see any.

2           Q       Thank you.

3                   JUDGE CLIFTON: Are there other  
4 questions for Mr. Raley from USDA employees?

5                   EXAMINATION

6                   BY MR. HILL:

7           Q       Brian Hill. I'm going to give you  
8 the shortened version.

9           A       Okay.

10          Q       So, I'll just ask you have you had  
11 a chance to look at all of the proposals  
12 sometime in the past?

13          A       Not directly from the Federal  
14 Register, no.

15          Q       Right, but just having discussed  
16 them.

17          A       Yes.

18          Q       Talked to other people.

19          A       Yes.

20          Q       And what is your opinion on just,  
21 generally, on the proposals?

22          A       I support all of them.

1           Q       You do support all of them.

2           A       I do.

3           Q       All right, that's all I wanted to  
4 know. Thank you.

5                   JUDGE CLIFTON: Who else has  
6 questions for Mr. Raley? Mr. McFetridge.

7                   EXAMINATION

8                   BY MR. MCFETRIDGE:

9           Q       Marc McFetridge, USDA. Mr. Raley,  
10 I just have a few questions. Now, Proposal 6  
11 is talking about increasing the fiscal  
12 reserves, and there is this number of two  
13 years being in the proposal. Is it possible  
14 that if the committee decides they could  
15 increase it to three to four, or is this two  
16 year going to be written in as a hard number  
17 that would have to go through an amendment  
18 process? Or could it be changed through,  
19 informally?

20           A       As far as I know, it cannot be  
21 changed informally. Once it's set at two  
22 years, it would be at two years.

1           Q     All right, thank you. And you  
2     stated that you're also the treasurer of the  
3     committee?

4           A     Currently, yes.

5           Q     Could you explain to the USDA the  
6     process to use committee funds? What is like  
7     the checks and balances that the committee  
8     uses so that one person can't just write,  
9     basically, a check to purchase a boat or  
10    things of that nature?

11          A     Well, we have very strict  
12    procedures and policy that are in place.  
13    We've been audited by the USDA under, I don't  
14    know which group came in and audited the  
15    committee, but I believe it was someone from  
16    MOAD. Currently, our check signing requires  
17    more than one signature, so one individual  
18    couldn't go buy their boat.

19                   We're audited by an outside  
20    independent CPA firm. The committee has a  
21    finance committee that recommends the budget  
22    to the full committee each year. Duke, do you

1 want to add anything to that? I mean, I think  
2 that's really about all I can answer to that.

3 JUDGE CLIFTON: Did he say Duke?

4 THE WITNESS: I'm sorry, Mr.  
5 Chadwell.

6 JUDGE CLIFTON: Arthur, who's also  
7 known as Art is also Duke?

8 MR. CHADWELL: Duke. Nobody knows  
9 me as Arthur.

10 JUDGE CLIFTON: Just Duke.

11 THE WITNESS: Just Duke.

12 JUDGE CLIFTON: All right, would  
13 you like to add anything to that, Mr.  
14 Chadwell?

15 MR. CHADWELL: Arthur Chadwell, we  
16 do have an internal control policy that is  
17 reviewed and updated annually by the  
18 committee, as well as a compliance claim, and  
19 in the internal policy, as Mr. Raley  
20 indicated, dual signatures is a safeguard.  
21 Requiring an audit each year. And then, we  
22 just went through a federal audit last

1 November sometime. So, we are audited  
2 annually. We have internal control policies  
3 in place, the dual signatures on both checks  
4 and deposits. So we're pretty locked down as  
5 far as our internal controls for managing  
6 funds.

7 MR. MCFETRIDGE: Thank you.

8 BY MR. MCFETRIDGE:

9 Q Quick question, so if this  
10 proposal goes through, and it's approved by  
11 the secretary, what would the calculation be  
12 to determine what the average two years could  
13 be for the fund? Would it be the last three  
14 years, the last five years, or --

15 JUDGE CLIFTON: Mr. Raley, do you  
16 want to take a crack at that?

17 THE WITNESS: Well, I mean, it  
18 would be the past two years.

19 BY MR. MCFETRIDGE:

20 Q The past two years.

21 A I would imagine. And, like I  
22 said, our expenses have been extremely level

1       for the last 10 years. So it'd be pretty easy  
2       to determine.

3               Q       Okay.

4               JUDGE CLIFTON: And, Mr. Chadwell,  
5       did you want to add to that?

6               MR. CHADWELL: Yes, it would be  
7       the previous two years, as Mr. Raley said.

8               BY MR. MCFETRIDGE:

9               Q       Would this specific proposal  
10       warrant an increase in the assessment rate, or  
11       is that just a possibility that could happen  
12       in the future?

13              A       I don't believe this proposal,  
14       specifically, will warrant an increase. I  
15       think just the declining volume in the  
16       industry will warrant an increase of  
17       assessments. I don't think this, this would,  
18       you know, this proposal itself, necessarily,  
19       wouldn't cause an increase.

20              Q       Thank you. My final question.  
21       Proposal 6, can you foresee any possible way  
22       that this would cause any type of undue burden

1 onto any small growers or shippers?

2 A I do not.

3 Q Thank you.

4 JUDGE CLIFTON: Who else at USDA  
5 has questions for Mr. Raley? Who else in the  
6 room has questions for Mr. Raley? Mr. Raley,  
7 was there anything you wanted to add?

8 THE WITNESS: No ma'am, not at  
9 this time.

10 JUDGE CLIFTON: Is there any  
11 objection to the admission into evidence of  
12 Exhibit 21?

13 (No response.)

14 JUDGE CLIFTON: There is none.  
15 Exhibit 21 is admitted into evidence. Thank  
16 you, Mr. Raley.

17 (Whereupon Exhibit No.  
18 21 was received into  
19 evidence.)

20 THE WITNESS: Thank you. My  
21 pleasure.

22 JUDGE CLIFTON: Let's take a

1       10-minute stretch break, nine minute. Please  
2       be back and ready to go at 3:15.

3                               (Off the record.)

4                       JUDGE CLIFTON: We're back on  
5       record at 3:16. I want everyone to be aware  
6       that there are a couple of contacts we need to  
7       make before long. One is there is a gentleman  
8       who is willing to stay if we need to work a  
9       little longer in order to finish. We can stay  
10      as late as 6:00. And my understanding is that  
11      if we stay after 5:30, he's doing extra work  
12      for us, and he's willing to do it. So, fairly  
13      soon, we should try to communicate to him  
14      whether we expect him to stay until 6:00.

15                      The other is the company that will  
16      be picking up our amplification equipment and  
17      taking it back to Orlando would kind of like  
18      to know whether we're going to be using it  
19      tomorrow. And so, we're welcome to, but  
20      they'd like to know. So, as we get a little  
21      longer in the afternoon, help me try to  
22      calculate whether we're going to be back here

1 tomorrow. And now's the time to get this  
2 done. If we need tomorrow, that's fine with  
3 me. But we just need to touch base with these  
4 folks who would be helping us. So, I'll ask  
5 you in about an hour where do you think we  
6 are.

7 All right, I'm going to swear in  
8 you seated. Would you raise your right hand,  
9 please?

10 Whereupon,

11 EMERY SMITH, II,  
12 called as a witness herein, having been first  
13 duly sworn, was examined and testified as  
14 follows:

15 JUDGE CLIFTON: Thank you Please  
16 state and spell your name.

17 THE WITNESS: My name is Emery  
18 Smith, II, E-m-e-r-y, S-m-i-t-h.

19 JUDGE CLIFTON: Thank you, and I  
20 have marked the document that says Emery Smith  
21 testimony, Proposal No. 3, redistricting, as  
22 Exhibit 22. You may proceed.

(Whereupon Exhibit No.  
22 was marked for  
identification.)

TESTIMONY BY EMERY SMITH, II

THE WITNESS: Thank you. Again,  
my name is Emery Smith. I reside at 2851 S.  
Lake Leta Drive in Avon Park, Florida. I  
serve on the executive committee of the  
Florida Citrus Packers and the board of  
directors of the Highlands County Citrus  
Growers Association. I am not on the Citrus  
Administrative Committee, but our company  
works closely with the committee and utilizes  
their statistical information.

I am the vice president of Citrus  
Marketing and Industry Relationship for Ben  
Hill Griffin, Inc., a vertically integrated,  
family-owned citrus operation. And my family  
is also engaged in citrus production. Ben  
Hill Griffin, Inc. is one of the larger  
growers of Florida citrus with groves located  
in multiple counties within the production

1 area of Florida.

2 We also operate a packing house  
3 and market our fruit mainly to the domestic  
4 market. Ben Hill Griffin, Inc. groves and  
5 packing house would meet the SBA's definition  
6 as a large grower shipper. Ben Hill Griffin,  
7 Inc. has been growing and shipping fresh  
8 citrus in Florida for more than 60 years. Of  
9 citrus produced by Ben Hill Griffin, Inc., the  
10 majority of our fruit is produced for the  
11 process market, but the fruit produced for the  
12 fresh market is a very important component of  
13 our overall citrus operation.

14 As a fresh fruit grower, we think  
15 it's important Florida's fresh growers have  
16 the order's grower districts better defined so  
17 those Florida citrus growers producing citrus  
18 for the fresh market are fairly represented on  
19 the committee. Proposal No. 3 would change  
20 Section 905.14, redistricting, to read as  
21 follows: The committee may, with the approval  
22 of the secretary, redefine the districts into

1 which the production area is divided, so re-  
2 apportion or otherwise change the grower  
3 membership of the districts or both, provided  
4 that the membership shall consist of at least  
5 eight, but not more than nine, grower members.

6 And any such change shall be  
7 based, so far as practical, upon the  
8 respective averages for immediately preceding  
9 three fiscal periods of 1) the number of  
10 bearing trees in each district, 2) the volume  
11 of fresh fruit produced in each district, 3)  
12 the total number of acres in each district,  
13 and 4) other relevant factors. Each  
14 redistricting or re-apportionment shall be  
15 announced or prior to March 1 preceding the  
16 effective fiscal period.

17 The proposal to remove the time  
18 frame for redistricting, and to base any  
19 changes on three fiscal periods of 1) number  
20 of bearing trees in each district, 2) volume  
21 of fresh fruit produced in each district, 3)  
22 total number of acres in each district, and 4)

1 other relevant factors would allow the  
2 committee to redistrict grower districts as  
3 often as factors within the production area  
4 mandate.

5 Due to the major declines in  
6 bearing tree numbers, production and fresh  
7 shipments, the Florida citrus industry has  
8 experienced over the past decade, this  
9 proposal would allow the committee to  
10 determine grower districts on a timely basis  
11 based on these factors. The authority under  
12 the order to redistrict on an established time  
13 frame every fifth year, with the factors  
14 outlined in Section 905.14, redistricting, the  
15 committee has, in the past, redistricted  
16 grower districts when warranted under the  
17 current provisions of Section 905.14.

18 The committee has compared five  
19 years of data on acreage, shipments and  
20 production. However, given the increased loss  
21 of trees per acre due to disease pressure and  
22 natural disasters, the current guideline for

1     calculating grower districts using acreage is  
2     no longer an applicable method to determine  
3     grower districts. The new industry standard  
4     is to consider bearing trees, not acreage,  
5     when calculating production capacity within a  
6     county or grower district.

7                 Due to heavy tree loss within  
8     producing groves, acreage is not a reliable  
9     indicator of production, as too many groves  
10    have anywhere from 10 percent to as much or  
11    more than 50 percent of their grove acreage  
12    with non-bearing trees or no trees at all. It  
13    is the bearing trees that produce our crops,  
14    and utilizing them for calculating production  
15    is a more reliable indicator of production.

16                It must be noted the Florida  
17    citrus industry pays an assessment on each box  
18    of citrus to help fund the Florida  
19    Agricultural Statistical Service to not only  
20    provide crop estimates every season, but an  
21    accurate tree census every other year.  
22    Therefore, the committee has an accurate and

1 up-to-date census of bearing trees, by variety  
2 and county, to utilize in the redistricting of  
3 grower districts.

4 As previously noted, the Florida  
5 citrus industry utilizes 90 percent or more of  
6 its annual production to produce processed  
7 products. During the last complete season of  
8 2011-'12, approximately two percent of the  
9 early-mid and Valencia orange crop was  
10 utilized for fresh shipments. Which means  
11 that 98 percent of the round orange crop is  
12 utilized for the production of processed  
13 products.

14 Therefore, when these varieties'  
15 production are used by county, it skews the  
16 volume to process utilization, and is not  
17 reflective of fresh volume. Therefore,  
18 calculating fresh volume can best be arrived  
19 at by taking the fresh fruit varieties, those  
20 varieties that return the grower an on-tree  
21 value that exceeds cost of product, and using  
22 their bearing trees per county to calculate

1 fresh volume is much more representative of  
2 fresh growers per county.

3 It should be noted the varieties  
4 we will be using are Navel oranges, red and  
5 white grapefruit, specialty citrus varieties,  
6 Fall-Glo tangerines, Sunburst tangerines,  
7 Tangelos, honey tangerines. Tables 1(a), 2,  
8 3, 4, and 5 illustrate these points.

9 The committee determined, in their  
10 deliberations, that implemented the proposed  
11 changes would allow the committee, in future  
12 seasons, the flexibility to adjust grower  
13 districts to reflect the shift in production  
14 of fresh varieties and fresh volume. In  
15 addition, we foresee the continued loss of  
16 trees and fresh volume, and the shift in  
17 varieties that make up our industry's  
18 composition of fresh shipments.

19 The committee, having the  
20 authority to constitute grower districts  
21 according to where the fresh fruit product is  
22 will better serve the growers of fresh fruit.

1 On a positive note, as our industry begins to  
 2 plant with new fresh fruit varieties/hybrids,  
 3 and fresh fruit volume is increased with new  
 4 and improved production practices currently be  
 5 addressed by the USDA and IFIS researchers  
 6 that combats greening and canker, the  
 7 committee will be positioned to adjust grower  
 8 districts as they evolve in the future.

9 In closing, the fresh segment of  
 10 our industry has been very supportive on this  
 11 proposal. It has been stated more than once  
 12 today this proposal will give the Florida  
 13 citrus grower of fresh fruit a tool in the  
 14 toolbox to better administer the order for the  
 15 benefit of growers.

16 JUDGE CLIFTON: Thank you, Mr.  
 17 Smith. Who has questions for Mr. Smith,  
 18 starting with USDA employees? Ms. Schmaedick.

19 MS. SCHMAEDICK: Thank you, Your  
 20 Honor.

21 EXAMINATION

22 BY MS. SCHMAEDICK:

1           Q       Thank you, Mr. Smith, for your  
2       testimony. On Page 3 of your testimony, you  
3       refer to some tables, Tables 1(a), 2, 3, 4 and  
4       5. It's mentioned at the bottom of that  
5       middle paragraph.

6           A       I believe those were the tables  
7       from Mr. Chadwell's testimony in the very  
8       beginning.

9           Q       Okay, thank you. That was just my  
10      question for clarification.

11          A       Sure.

12          Q       And then, you mentioned, on Page  
13      2, you're discussing the need to include  
14      bearing acres. Is that correct? Bearing  
15      trees.

16          A       Bearing trees versus acres.

17          Q       Correct, sorry, thank you. My  
18      question is how would a newly planted tree be  
19      counted? I believe earlier in the day we  
20      heard that it took about five years for a tree  
21      to become fully productive.

22          A       That's correct. Initially, a new

1       planting is classified as non-bearing. And  
2       after so many years, it is put into the  
3       bearing category. I think three or four years  
4       is the time frame. The first couple of years,  
5       it is still considered non-bearing, which we  
6       do have a number of acres in that category  
7       today from trees that were removed from canker  
8       that have been reset and are still non-  
9       bearing.

10           Q       Thank you for that clarification.  
11       And, just to, I guess, to focus on other  
12       proposals, other than Proposal No. 3, are you  
13       aware of, in general, the other proposals  
14       being proposed today?

15           A       Yes.

16           Q       And are you supportive of those?

17           A       Yes.

18           Q       To what extent have you been  
19       involved in the development of these  
20       proposals?

21           A       I'm, as I stated, I'm not on the  
22       committee, but attend the committee meetings.

1 And, as a fresh grower and shipper, we're  
2 involved with the rule making that the  
3 committee develops.

4 Q And are you aware of outreach  
5 activities to educate the industry at large  
6 about the proposals?

7 A I think, as has been stated, many  
8 of us serve on a number of committees, so  
9 these things kind of work their way around as  
10 different meetings take place.

11 Q So, in your opinion, it's fairly  
12 widely known throughout the industry?

13 A Yes.

14 Q What's being proposed today.

15 A Yes.

16 Q Thank you. No further questions.

17 JUDGE CLIFTON: Who else has  
18 questions for Mr. Smith. Mr. McFetridge.

19 EXAMINATION

20 BY MR. MCFETRIDGE:

21 Q Mr. Smith, just one quick  
22 question. For Proposal No. 3, redistricting,

1 can you foresee any undue burden that would be  
2 placed on any small growers or handlers?

3 A No I don't.

4 Q You stated here that Ben Hill  
5 Griffin, Inc., that's where you are a grower  
6 for them?

7 A I work for Ben Hill Griffin.

8 Q You work for them. As an employee  
9 for them, how do you feel about Proposal 9  
10 about grower sign-ups?

11 A I think that would also be  
12 beneficial. That we have, the majority of our  
13 fruit is company-owned that we pack. But we  
14 do have outside growers that we handle fruit  
15 for. So some of, I mean, other than our  
16 communication, some of those growers would  
17 not, necessarily, be aware of meetings,  
18 notices and so forth. So, by having that  
19 comprehensive list to make sure you're  
20 targeting all of those folks, I think that  
21 would be an improvement.

22 Q Thank you very much.

1 JUDGE CLIFTON: Who else from USDA  
2 has questions of Mr. Smith? Who else in the  
3 room has questions of Mr. Smith? Ms.  
4 Schmaedick.

5 BY MS. SCHMAEDICK:

6 Q Mr. Smith, you just, I believe  
7 spoke to Proposal No. 9, handler registration.  
8 Is that correct?

9 A Yes.

10 Q Are you aware of any other impacts  
11 that a handler registration authority would  
12 have on the industry?

13 A No, other than just increased  
14 communication of proposals and meetings for  
15 the committee.

16 Q Are you aware of what the  
17 functionality of a handler registration might  
18 be for purposes other than information  
19 gathering?

20 A I'm not sure I follow. As far as?

21 Q For example, would a handler  
22 registration, could it, theoretically, be used

1 as a compliance tool?

2 A I don't think so. I mean, I  
3 think, I think it would be beneficial to  
4 ensure, but as a shipper, you know your own  
5 growers. So, if there's a compliance issue,  
6 you're going to make sure your own growers are  
7 in compliance with whatever the rules might  
8 be. So, maybe that's handled more  
9 individually. I don't know if, by gathering  
10 that information through the handlers of the  
11 individual growers, if that would be a help.  
12 I guess it would depend on what the issue was.

13 Q Could you foresee handler  
14 registration being a compliance tool for  
15 ensuring that handlers comply with assessment  
16 rules?

17 A Yes, I think that would, you would  
18 be ensuring that everyone's covered. That  
19 everyone is accounted for.

20 Q And, in your opinion, is that a  
21 good idea?

22 A I think you want to make sure

1       you're capturing all the growers that should  
2       be participating as fresh growers, yes.

3               Q       And your opinion on capturing the  
4       participation of handlers and assessments?

5               A       Yes, that you would, I mean, the  
6       more accountability of having all growers  
7       involved, I think, is better.

8               Q       Thank you. No further questions.

9               JUDGE CLIFTON: Are there other  
10      questions for Mr. Smith from anyone in the  
11      room?

12                               (No response.)

13              JUDGE CLIFTON: Is there any  
14      objection to the admission into evidence of  
15      Exhibit 22?

16                               (No response.)

17              JUDGE CLIFTON: There is none.  
18      Exhibit 22 is admitted into evidence. Mr.  
19      Smith, is there anything else you'd like to  
20      add?

21                               (Whereupon Exhibit No.  
22      22 was received into

1 evidence.)

2 THE WITNESS: No ma'am.

3 JUDGE CLIFTON: All right. Thank  
4 you so much.

5 THE WITNESS: Thank you.

6 JUDGE CLIFTON: You may step down.  
7 And, Mr. Chadwell, who will be the next  
8 witness?

9 MR. CHADWELL: It would be  
10 Proposal No. 1, variety development.

11 JUDGE CLIFTON: Do you want to  
12 deal now with the testimony of the gentleman  
13 who had to leave, Mr. Chaires?

14 MR. CHADWELL: Yes.

15 JUDGE CLIFTON: All right. Who  
16 would like to handle that?

17 MR. HUNT: Yes, if I could, I was  
18 going to read Mr. Chaires's testimony. I am  
19 Frank Hunt, III. And I will read in Mr.  
20 Chaires's testimony. And then, if I'm  
21 correct, then Dr. Gmitter will follow that.  
22 And then, I would follow with my testimony,

1 all in regards to Proposal 1.

2 JUDGE CLIFTON: All right, and  
3 we've had some mention of this earlier, but I  
4 just want the person who knows best to explain  
5 why it is that Mr. Chaires was here this  
6 morning when we started.

7 MR. HUNT: Okay, Mr. Chaires spent  
8 a couple days in the hospital with pneumonia  
9 here, what about a week ago, a little less  
10 than a week ago, and was released on Sunday.  
11 And so, he was not capable of continuing. We  
12 felt like he needed to go. He has respiratory  
13 issues from his illness.

14 JUDGE CLIFTON: All right, and why  
15 is it that you know that this is his  
16 testimony?

17 MR. HUNT: I happen to have it in  
18 front of me with his name on it.

19 JUDGE CLIFTON: Who knows, who can  
20 establish that this is what he would have  
21 provided were he here?

22 MR. HUNT: Okay, Mr. Chaires is

1 the executive --

2 JUDGE CLIFTON: All right, just a  
3 minute. One at a time.

4 MR. HUNT: Mr. Chaires is the  
5 executive director of the Florida Citrus  
6 Packers, and I serve as president of Florida  
7 Citrus Packers, and so we have worked very  
8 closely on these testimonies together, along  
9 with Mr. Hamner and others.

10 JUDGE CLIFTON: That's very  
11 helpful. Thank you. All right, let's go off  
12 record while we distribute the testimony of  
13 Mr. Chaires.

14 (Off the record.)

15 JUDGE CLIFTON: All right, we've  
16 back on record at 3:38. Would you please  
17 spell the name of Mr. Chaires?

18 MR. HUNT: Okay. It's J. Peter  
19 Chaires, the letter J, and then P-e-t-e-r, C-  
20 h-a-i-r-e-s.

21 JUDGE CLIFTON: All right, thank  
22 you. And I have marked the document that says

1 testimony, J. Peter Chaires as Exhibit 23, and  
2 it's a five-page document. And you will be  
3 reading it into the record. I'd like for you  
4 to identify yourself, spell both your names,  
5 and remember that you remain under oath.

6 (Whereupon Exhibit No.  
7 23 was marked for  
8 identification.)

9 Whereupon,

10 FRANK M. HUNT, III,  
11 previously called as a witness herein, having  
12 been previously duly sworn, testified as  
13 follows:

14 THE WITNESS: Yes, okay. I am  
15 Frank M. Hunt, F-r-a-n-k, M, H-u-n-t.

16 JUDGE CLIFTON: All right, are you  
17 familiar with this testimony that's been  
18 marked as Exhibit 23?

19 THE WITNESS: Yes, I am.

20 JUDGE CLIFTON: And do you know  
21 that Mr. Chaires intended to present it  
22 himself today?

1 THE WITNESS: Yes, I do.

2 JUDGE CLIFTON: You may proceed.

3 TESTIMONY PRESENTED BY FRANK HUNT

4 ON BEHALF OF PETER CHAIRES

5 THE WITNESS: My name is Peter  
6 Chaires, and I reside at 457 Cardinal Oaks  
7 Court, Lake Mary, Florida 32746. I serve as  
8 executive director of New Varieties  
9 Development and Management Corporation, NVDMC.  
10 NVDMC is a grower funded, not-for-profit  
11 corporation formed in 2005, which is funded  
12 through a contract with the Florida Department  
13 of Citrus.

14 NVDMC's mission is to support the  
15 development of new citrus varieties, identify,  
16 acquire and evaluate varieties from other  
17 global production areas, serve as a central  
18 licensing mechanism for proprietary citrus  
19 varieties on behalf of nurseries, growers and  
20 packers. Liaison with state and federal  
21 agencies in the field of variety development  
22 and import procedures, and to assure that

1 Florida citrus producers have timely and  
2 affordable access to new varieties.

3 I also serve as executive vice  
4 president of the Florida Citrus Packers, a 53-  
5 year old, not-for-profit cooperative  
6 association. Florida Citrus Packers  
7 represents the interests of commercial packers  
8 and shippers of fresh citrus fruit. The  
9 organization involves itself in regulatory,  
10 legislative, marketing and market access  
11 activities. There are presently 29 packing  
12 houses within its membership.

13 Proposal No. 1a revises Section  
14 905.4 to read as follows: Section 904.4,  
15 fruit. Fruit means any or all varieties of  
16 the following types of citrus fruits grown in  
17 the production area: (a) citrus sinensis,  
18 Osbeck, commonly called oranges; (b) citrus  
19 paradisi, McFadyen, commonly called  
20 grapefruit; (c) citrus reticulata, commonly  
21 called tangerines or mandarin; (d) citrus  
22 grandis, Osbeck, commonly called pummelo; and

(e) citrus hybrids that are hybrids between or among one or more of the four fruits (a) through (d) of this section and the following: trifoliate orange (*Poncirus trifoliate*), sour orange (*C. aurantium*), lemon (*C. limon*), lime (*C. aurantifolia*), citron (*C. medica*), kumquat (*Fortunella species*), tangelo (*C. reticulata* crossed with *C. paradisi* or *C. grandis*), tangor (*C. reticulata* crossed with *C. sinensis*), and varieties of these species.

In addition, citrus hybrids include tangelo (*C. reticulata* crossed with *C. paradisi* or *C. grandis*), tangor (*C. reticulata* crossed with *C. sinensis*), and temple oranges, and varieties thereof.

Proposal 1b would revise 905.5 to read as follows: Section 905.5, variety. Variety or varieties means any one or more of the following classifications or groupings of fruit: (a) oranges, (a)(1) would be early and midseason oranges, (2) Valencia, Lue Gim Gong, or similar late maturing oranges of the

1 Valencia type, (3) navel oranges.

2 (b) would be grapefruit, red  
3 grapefruit, to include all shades of color and  
4 white grapefruit. (c) would be tangerines and  
5 mandarins which would include (1) Dancy and  
6 similar tangerines, (2) Robinson tangerines,  
7 (3) Honey tangerines, (4) Fall-glo tangerines,  
8 (5) US Early Pride tangerines, (6) Sunburst  
9 tangerines, (7) W-Murcott tangerines, and (8)  
10 tangors. (d) Pummelos, Hirado Buntan and  
11 other pink seeded pummelos. (e) would be  
12 citrus hybrids which would be Tangelos,  
13 including Orlando Tangelo and Minneola  
14 Tangelo, and (2) Temple oranges. (f) other  
15 varieties of citrus fruits specified in 905.4,  
16 including hybrids, as recommended and approved  
17 by the secretary, provided that in order to  
18 add any hybrid variety of citrus fruit to be  
19 regulated under this provision, such variety  
20 must exhibit similar characteristics and be  
21 subject to cultural practices common to  
22 existing regulated varieties.

1                   New citrus varieties are the  
2                   lifeblood of our industry. In Florida many of  
3                   the mainline varieties we have packed and sold  
4                   for generations have either succumbed to pest  
5                   and disease challenges, or reached a point of  
6                   market obsolescence. Florida growers have  
7                   invested heavily and steadily in the  
8                   development of new citrus varieties to meet  
9                   changing demand and consumer preferences.

10                  It is imperative that Marketing  
11                  Order 905 be amended to keep pace with the  
12                  rapidly changing industry, and to maximize its  
13                  relevance and utility to the industry. The  
14                  utilization of varieties in fresh market  
15                  channels is quite variable. The most recent  
16                  data indicates that only five percent of  
17                  Florida round orange production was utilized  
18                  fresh.

19                  However, fresh packed round  
20                  oranges account for up to 60 percent of the  
21                  volume of some family-owned Florida packing  
22                  houses. This fruit is economically

1 significant for their business. Approximately  
2 81 percent of Florida navel oranges are  
3 utilized fresh. And though they are not a  
4 large part of statewide production, they are  
5 very significant to many packing operations  
6 and producers.

7 Approximately 50 percent of the  
8 Florida red grapefruit crop is now utilized  
9 fresh. But we hope to improve on this figure  
10 with time. Packing a variety fresh often  
11 provides superior returns to the grower, and  
12 is the preferred route of utilization for  
13 navel oranges, grapefruit and specialty  
14 varieties. The ability to regulate fresh  
15 shipments protects the interest of growers.

16 The proposed amendment are  
17 intended to update order language to expand  
18 the definition of fruit and varieties to  
19 include new varieties and hybrids of citrus,  
20 consolidate fresh citrus regulation, and  
21 better reflect current Florida citrus industry  
22 operations. Marketing Order 905 was last

1       amended in 2009. Since that time, there have  
2       been many changes within the fresh segment of  
3       the Florida citrus industry.

4               The Florida citrus industry  
5       continues to contract due to the loss of  
6       bearing trees and production, which has been  
7       brought about by the effect of two diseases,  
8       citrus canker and greening, and natural  
9       disasters such as hurricanes. Also, the  
10      percent of Florida's citrus crop utilized for  
11      fresh shipment has contracted to approximately  
12      nine percent of the citrus produced in  
13      Florida.

14             During these years, Florida's  
15      bearing citrus trees have declined by 29  
16      percent, production by 42 percent, and fresh  
17      utilization by 45 percent. The loss of  
18      production has placed increased pressure on  
19      Florida fresh packing operations. In  
20      addition, the value of the juice produced by  
21      some of the most, some or most of the fresh  
22      fruit varieties has continued to decline,

1 which has further segmented the fresh from the  
2 process sector of the Florida citrus industry.

3 The establishment of quality  
4 standards supports demand and improves  
5 Florida's competition position. To maintain  
6 this benefit of the marketing order, the CAC  
7 must include new varieties and hybrids as they  
8 are developed and gain consumer acceptance.  
9 They amendment to include new varieties and  
10 hybrids could have a great impact on growers,  
11 handlers and consumers by ensuring that new  
12 varieties meet the same quality standards  
13 applied to current varieties.

14 Without the development of  
15 seedless and easy-to-peel varieties and  
16 hybrids that can produce in Florida, consumers  
17 will seek varieties currently produced in  
18 California and imported from Spain, Australia  
19 and South Africa. Without new varieties and  
20 hybrids, the future for fresh Florida citrus  
21 would be in doubt.

22 However, the existence of abundant

1 land, infrastructure, expertise, and  
2 productive breeding programs fuel the belief  
3 that the downward trends will be reversed.  
4 When new varieties and hybrids are available  
5 to the Florida citrus industry, it will be  
6 important that the marketing order have the  
7 authority to regulate quality and size  
8 standards, and that it's language be inclusive  
9 of all material likely to emerge from the  
10 breeding programs.

11 Finally, the ability to regulate  
12 all varieties utilized in fresh channels  
13 assures universal participation and support.  
14 It is important that all varieties participate  
15 in programs related to quality, research and  
16 promotion. Universal participation and  
17 inclusion assures maximum benefit to the  
18 Florida grower.

19 JUDGE CLIFTON: First, I want to  
20 ask if there's any objection to Exhibit 23  
21 being admitted into evidence due to the fact  
22 that Mr. Chaires is not, himself, here for

1 cross examination. Is there any objection?

2 (No response.)

3 JUDGE CLIFTON: There is none. I  
4 admit into evidence Exhibit 23. Mr. Hunt, are  
5 you comfortable in answering, or at least  
6 attempting to answer any questions that anyone  
7 here might have about the statements in  
8 Exhibit 23?

9 (Whereupon Exhibit No.  
10 23 was received into  
11 evidence.)

12 THE WITNESS: With Dr. Gmitter's  
13 support here beside me, I'm comfortable trying  
14 to answer any questions.

15 JUDGE CLIFTON: Good. All right,  
16 let's take it that way, then. First of all,  
17 who from USDA has any questions about the  
18 content in Exhibit 23? Ms. Schmaedick.

19 MS. SCHMAEDICK: Thank you, Your  
20 Honor.

21 EXAMINATION

22 BY MS. SCHAMEDICK:

1           Q       And thank you, Mr. Hunt, for  
2       reading in the testimony for your colleague.  
3       I was wondering if you could speak to the  
4       inclusion of pummelos into the new definition  
5       of fruit? Why are pummelos being added?

6           A       Well, you know, pummelos is a  
7       variety that, it's actually been a minor use  
8       variety that's out there. But it is of a  
9       citrus type, and pummelos are gaining  
10      popularity. And a pummelo is a  
11      grapefruit-like fruit. And so, it seemed that  
12      pummelos should come under regulation. Dr.  
13      Gmitter, would you add anything to that, or is  
14      that --

15                 DR. GMITTER: The production of  
16      pummelo in Florida, as well as in California,  
17      is increasing. It's initially been targeted  
18      at Asian markets. But there is becoming more  
19      and more mainstream interest and acceptance of  
20      the variety. You can buy them at Walmart. So  
21      pummelo has, in fact, become a player in very  
22      recent years.

1 BY MS. SCHMAEDICK:

2 Q Would this be an example of a  
3 fruit that has met or is starting to cross  
4 that commercially viable threshold that we  
5 spoke of earlier?

6 A I think it would be.

7 Q And, I apologize up front if I,  
8 this may seem like a really silly question,  
9 but is pummelo its own fruit, or is it a  
10 variety of another fruit?

11 MS. SCHMAEDICK: And, perhaps,  
12 that might be a better question for you, Dr.  
13 Gmitter.

14 DR. GMITTER: Pummelo is a  
15 category of fruit. There are a number of  
16 different varieties of pummelo that exist in  
17 the world. There are white fleshed pummelos.  
18 There are red fleshed, pink fleshed, even  
19 green fleshed pummelos. So, it's one of the  
20 true biological species in citrus, and there's  
21 a great diversity in fruit types. But they  
22 all would be recognized as distinctive based

1 on their size. They're a large fruit. Bigger  
2 than any other citrus fruit.

3 MS. SCHMAEDICK: Thank you, I  
4 appreciate that clarification. So, would that  
5 be the reason for including it as a distinct  
6 line item, if you will, in the definition of  
7 fruit, as well as a specific mention under  
8 variety or the potential parentage of future  
9 hybrids?

10 DR. GMITTER: They are distinctly  
11 different from all other citrus fruit. So, I  
12 think it's justified, it's rational that they  
13 should be listed as a separate item, in my  
14 opinion.

15 MS. SCHMAEDICK: Thank you. I  
16 appreciate that. I do have further questions  
17 about the proposed definitions and the changes  
18 to these two definitions. I'm wondering if I  
19 should, Your Honor, if I should just ask them  
20 now, or if I should wait for further  
21 testimony.

22 JUDGE CLIFTON: Perhaps you should

1 wait, because we don't know what Dr. Gmitter  
2 is going to say. You can always come back to  
3 Exhibit 23 to ask questions of him, Mr. Hunt,  
4 or anyone else. So, it's up to you. The  
5 hardest part will be knowing how to pronounce  
6 the question you want to ask.

7 MS. SCHMAEDICK: Thank you for  
8 that guidance. I will wait for further  
9 testimony. Thank you.

10 JUDGE CLIFTON: All right, would  
11 anyone else from USDA like to ask any  
12 questions now about Exhibit 23? And you all  
13 can wait until you have Dr. Gmitter or Mr.  
14 Hunt testifying, and then use Exhibit 23 to  
15 ask questions if you'd like. All right, are  
16 there any other questions from anyone in the  
17 room right now about Exhibit 23? Everyone may  
18 bring it up later if you wish. But, are there  
19 any questions right now?

20 (No response.)

21 JUDGE CLIFTON: All right, none.  
22 Then, Dr. Gmitter, I think you're next.

1                   MR. HUNT: Well, George is  
2                   throwing us a curve again, Your Honor. He  
3                   suggested, while I have the mic, to go ahead  
4                   and read my testimony, and then we'll have Dr.  
5                   Gmitter, if that would be okay.

6                   JUDGE CLIFTON: Certainly, fine.

7                   MR. HUNT: I am, basically, just  
8                   in support of the proposal with my testimony,  
9                   so I'll go ahead and read that, if that would  
10                  be all right. And Mr. Chadwell's passing out  
11                  copies.

12                 JUDGE CLIFTON: Okay now, hold on  
13                  just a second. What he's passing out now is  
14                  a black and white version of what I had in  
15                  color attached to Mr. Chaires testimony. So,  
16                  it's the same, correct?

17                 MR. HAMNER: They had them  
18                  attached --

19                 MR. HUNT: I don't know whether it  
20                  is or not. I assume it is. It looks the  
21                  same.

22                 DR. GMITTER: Yes, they were

1 attached, yes.

2 JUDGE CLIFTON: Okay. I like the  
3 color version myself.

4 MR. HUNT: Okay, Duke, collect  
5 that other copy, then.

6 JUDGE CLIFTON: So I'm going to  
7 mark the document that has very beautiful  
8 letterhead that says Hunt Bros., brothers  
9 abbreviated, as Exhibit 24. All right, and  
10 Mr. Hunt, although you remain sworn, tell me  
11 again your full name and spell it, please.

12 (Whereupon Exhibit No.  
13 24 was marked for  
14 identification.)

15 Whereupon,

16 FRANK M. HUNT, III,  
17 recalled as a witness herein, having been  
18 previously duly sworn, testified as follows:

19 THE WITNESS: I'm Frank M. Hunt,  
20 III, F-r-a-n-k, letter M, H-u-n-t, III.

21 JUDGE CLIFTON: Thank you. You  
22 may proceed.

## 1 TESTIMONY BY FRANK M. HUNT, III

2 THE WITNESS: Okay, I reside at  
3 803 North Lakeshore Boulevard, Lake Wales,  
4 Florida. I am president of Hunt Bros.  
5 Cooperative located in Lake Wales, Florida.  
6 Hunt Bros. is a closely held family citrus  
7 cooperative made up of family members or  
8 family-controlled corporations. Hunt Bros.  
9 was founded in 1922 by my grandfather, and  
10 today we are into the fourth generation of  
11 family members working in the business.

12 We are growers, packers and  
13 shippers of fresh Florida citrus, producing  
14 and packing fresh various varieties of navel  
15 oranges, round oranges, tangerines, tangelos  
16 and grapefruit. Our fresh fruit is all  
17 marketed and sold by Seald Sweet, LLC located  
18 in Vero, Florida. Hunt Bros. Cooperative  
19 would be considered by the SBA definition, a  
20 large grower and shipper.

21 I am currently serving as  
22 president of Florida Citrus Packers and am a

1 charter board member of the New Varieties  
2 Development and Management Corporation, of  
3 which I am a past president. I currently  
4 serve on the committee as a cooperative  
5 shipper member.

6           The development and availability  
7 of new fresh citrus varieties is of great  
8 importance to our family business. Although  
9 we see a bright and continued future for many  
10 of the varieties we currently pack, it is  
11 clear that we also need access to new  
12 varieties that meet changing consumer  
13 preferences, and that are more robust and able  
14 to survive our unique mix of pest and  
15 diseases.

16           We recognize that our best hope  
17 will be varieties bred in our climate.  
18 Because of this, we have invested tremendous  
19 time and effort to support variety development  
20 and commercialization programs. Shifts in  
21 variety demand can change an industry quickly.  
22 Thirty years ago, our company packed

1 substantial quantities of Robinson and Dancy  
2 tangerines.

3           Though these were fine varieties  
4 for the time, they both fell into disfavor.  
5 They were quickly supplanted by Fall-Glo and  
6 Sunburst tangerines. Eventually, so few of  
7 the Robinson and Dancy varieties were packed  
8 that they were both deregulated. Honey  
9 tangerines have been packed throughout this  
10 time period, but are now seeing an erosion of  
11 support.

12           Fast forward to 2012. For the  
13 first time in a quarter century, the top two  
14 propagated tangerine varieties were not  
15 Sunburst or Honeys. There were two new  
16 tangerines that are rapidly making inroads.  
17 Packers need to be prepared, and the marketing  
18 order needs to be prepared. Hunt Bros.  
19 intends to plant experimental trials of new  
20 easy-peel and seedless varieties in the near  
21 future. Those that prove to be the best  
22 performers, and which our marketing company

1 determine meet the demands of consumers, will  
2 be planted in greater quantity.

3 Companies that plan to be in this  
4 business for the long term must adapt with the  
5 times, and we are taking the steps we feel are  
6 necessary to position ourselves for long-term  
7 success. It is important to Hunt Bros. and  
8 the Florida citrus industry that all new  
9 varieties emerging from the University of  
10 Florida and USDA breeding programs be eligible  
11 for regulation under Marketing Order 905.

12 The ability to regulate these  
13 varieties will assure our company, and other  
14 like us, that the quality and consistency of  
15 the fruit entering channels of trade will meet  
16 consumer demand, compete with product from  
17 other global production areas, and assure a  
18 fair economic return. The marketing order  
19 revisions will enable the regulation of new  
20 varieties, giving us the confidence to plant  
21 and invest.

22 Hunt Bros. is also heavily

1       invested in the process sector of the Florida  
2       citrus industry. We were one of the founding  
3       members of what is today known as Florida's  
4       Natural. It is our expectation that the  
5       process side of our business will remain an  
6       important market. However, we also see a  
7       bright future for the fresh sector. Florida  
8       is the closest local supplier to the eastern  
9       seaboard of the United States, the largest  
10      citrus consuming populous in the world.

11                   This is a coveted market by many,  
12      and one that Florida is well positioned to  
13      recapture. New consumer-friendly varieties will  
14      be a key to our competitive position in this  
15      market. Thank you.

16                   JUDGE CLIFTON: Thank you, Mr.  
17      Hunt. Before I invite other questions, I  
18      notice that the first page has a date April  
19      19, 2013, and the second page has a date April  
20      22, 2013, but it was clearly all one  
21      statement. Do you have any comment about  
22      those dates?

1                   THE WITNESS: I think the second  
2                   one was computer generated. So, I didn't  
3                   notice it when it was printed.

4                   JUDGE CLIFTON: All right. Now, I  
5                   would invite questions, first by USDA  
6                   employees.

7                   THE WITNESS: Okay, it perhaps  
8                   might be, in regards to this, if they would  
9                   allow Dr. Gmitter to go ahead with his. And  
10                  then we can answer questions together. It  
11                  might save us a little bit of time.

12                  JUDGE CLIFTON: That's fine with  
13                  me.

14                  THE WITNESS: If that's okay.

15                  JUDGE CLIFTON: That's fine with  
16                  everyone. We'll do that. Dr. Gmitter, would  
17                  you, first, you're sworn, so if you'll just  
18                  state and spell your name for us.

19                  Whereupon,

20                  DR. FRED GMITTER, JR.,  
21                  recalled as a witness herein, having been  
22                  previously duly sworn, testified as follows:

1 THE WITNESS: My name is Fred  
2 Gmitter, F-r-e-d. The last name spelled G-m-  
3 i-t-t-e-r.

4 JUDGE CLIFTON: All right, and I  
5 see Jr.

6 THE WITNESS: Jr.

7 JUDGE CLIFTON: All right, and  
8 what is your doctorate in?

9 THE WITNESS: I have a PhD in  
10 plant breeding and genetics through the  
11 Department of Horticultural Sciences at the  
12 University of Florida.

13 JUDGE CLIFTON: Excellent. Well,  
14 we're very happy to have you here.

15 THE WITNESS: Thank you.

16 JUDGE CLIFTON: All right, your  
17 testimony is being distributed now, and I have  
18 five pages here, and I'm marking that as  
19 Exhibit 25. And you may proceed.

20 (Whereupon Exhibit No.  
21 25 was marked for  
22 identification.)

TESTIMONY BY FRED GMITTER

THE WITNESS: Thank you. I am a professor with a 95 percent research appointment in citrus breeding and genetics, based at the University of Florida's Citrus Research and Education Center in Lake Alfred, since 1985. I received my BA and MS degrees from Rutgers, the state university of New Jersey, with a specialization in plant breeding.

I, subsequently, was graduated from the University of Florida in 1985, and was awarded the PhD degree with a specialization in citrus genetics and breeding. I have nearly 30 years of professional experience in the area of citrus genetics.

Currently, I am a University of Florida research foundation professor of citrus genetics and breeding at the University of Florida's Citrus Research and Education Center, and a member of the faculty of the

1 Department of Horticultural Sciences where I  
2 have remained since 1985.

3 My research is focused on the  
4 development of genetically improved citrus  
5 scion and rootstock varieties through the  
6 application of traditional breeding  
7 approaches, and the incorporation of various  
8 tools and techniques of molecular biology and  
9 genomics. In addition, my research program is  
10 deeply involved in structural and functional  
11 genomics of citrus.

12 I have produced more than 130  
13 research articles on citrus genetics and  
14 breeding that include refereed journal  
15 publications, book chapters, bulletins,  
16 invited manuscripts and trade journal  
17 articles. I have gained recognition  
18 nationally and internationally for my  
19 accomplishments and achievements in this  
20 research area, as evidence by more than 85  
21 invitations to speak on these topics at  
22 national and international conferences,

1 meetings and symposiums.

2 I served as the chair of the Crop  
3 Germplasm Committee of the National Clonal  
4 Germplasm Repository for citrus and dates. I  
5 have served as the leader of the International  
6 Citrus Genomics Consortium, ICGC, from 2006  
7 until now. During the past two years, I have  
8 been a principal investigator, PI, or co-PI on  
9 competitive research grant projects that have  
10 totaled more than \$4 million.

11 I serve on the editorial board of  
12 several national and international journals.  
13 I am also an ad hoc reviewer of several  
14 national research program agencies in plant  
15 genetics, genomics and breeding, including the  
16 USDA National Research Initiative and National  
17 Science Foundation.

18 Most relevant to today's topic, I  
19 have been responsible, along with my  
20 colleagues at UF, for the development and  
21 release of more than 10 new citrus varieties  
22 that are aimed at improving the

1 competitiveness of the Florida citrus  
2 industry, processing and fresh market segments  
3 both, in the domestic and global markets.

4 By providing improvements in  
5 existing categories, e.g., sweet oranges with  
6 earlier or later maturity, improved color and  
7 flavor attributes, et cetera, as well as  
8 generating new and unique hybrids that may  
9 revitalize the struggling fresh fruit  
10 business.

11 The scientific world is in the  
12 midst of a pervasive revolution based on  
13 genome sequencing technology, which is leading  
14 to dramatic new insights on fundamental  
15 understanding of biological organisms and  
16 their relationships one to another. Citrus  
17 science is sure to be affected by these  
18 tremendous advances in technology, and  
19 subsequent new understandings.

20 However, these advances are  
21 proceeding more rapidly than are the  
22 conventions of taxonomy upon which the

1 definitions of citrus species and their  
2 derived varieties are based. At the present  
3 time, I see no need to be concerned with  
4 changes in names or identifies of citrus  
5 species as they currently exist.

6           There are two changes I would  
7 recommend to the existing, and I'll add here,  
8 proposed definitions as found in 905.4, fruit,  
9 simply to be in line with currently accepted  
10 norms. Specifically, the currently accepted  
11 binomial for pummelo is citrus maxima merr,  
12 m-e-r-r, not citrus grandis, as listed  
13 previously. Further, there is an incorrect  
14 spelling of poncirus trifoliata, ending with  
15 an "a", not p. trifoliate, ending with an "e"  
16 as currently written. Minor corrections from  
17 a professor.

18           As indicated, I am a citrus  
19 breeder who, together with colleagues, has  
20 released many new varieties already, some of  
21 which have already been produced and marketed  
22 commercially, such as our sugar belle mandarin

1        hybrid and the valquarius sweet orange, which  
2        is just now coming into production for the  
3        juice industry. We are actively developing  
4        several more that we hope may have benefit to  
5        the Florida citrus industry in the coming  
6        years.

7                        Some of these will, very  
8        obviously, fit into existing categories such  
9        as sweet orange. But others, clearly, are of  
10       hybrid origin, and will present relatively  
11       unique attributes that may distinguish them  
12       from currently known market varieties.  
13       Varieties are being released by the UF Citrus  
14       Breeding Program in a fast track testing  
15       option under pre-negotiated conditions, where  
16       limited numbers of trees will be grown by  
17       interested growers, but no fruit will be  
18       allowed for sale.

19                       Once these selections have been  
20       assessed for their potential value, and  
21       growers or others make decisions to plant  
22       sufficient numbers of trees to produce a

1 supply of fruit for marketing through ordinary  
2 commercial channels, commercialization will  
3 proceed. In my opinion, this seems a logical  
4 point at which questions regarding regulation  
5 of quality standards could be considered and  
6 addressed.

7                   There will, undoubtedly, be  
8 situations where the fruit of varieties will  
9 not meet quality or size standards,  
10 particularly the latter. The fresh citrus  
11 market has seen dramatic growth in consumer  
12 preference for small sized mandarin fruit that  
13 are easy to peel, seedless and convenient.  
14 The breeding programs in Florida have made  
15 advanced selections which, currently, are  
16 under evaluation to meet this relatively new  
17 consumer demand, and I believe these would not  
18 meet currently defined standards on size.

19                   Another example where existing  
20 quality standards may not readily be met is a  
21 new variety that has very recently been made  
22 available, currently known as UF914. This is

1 a hybrid of pummelo with grapefruit that  
2 produces fruit larger than the otherwise  
3 resembling ordinary grapefruit. It,  
4 generally, has higher sugar levels and lower  
5 acidity, yet retains the red pigmentation,  
6 flavor and aroma of ordinary grapefruit.

7 A critical important attribute of  
8 this particular variety is its extremely low  
9 content of furanocoumarins, those chemicals  
10 contained in ordinary grapefruit that are  
11 responsible for the so-called grapefruit juice  
12 effect, and subsequent medical recommendations  
13 regarding limited grapefruit consumption. As  
14 a consequence of its unique chemical  
15 composition, there could be a very substantial  
16 demand for fruit of this variety by consumers.

17 It is now UF policy that new  
18 citrus varieties, indeed, whenever practical,  
19 all new plant varieties developed, are  
20 patented or protected under appropriate  
21 conventions to protect intellectual property.  
22 New varieties can be made available as

1 exclusive or general releases. Under the  
2 former, negotiations take place according to  
3 publicly known UF policies, and license are  
4 granted to public or private entities that  
5 become responsible for commercialization  
6 policies, including decisions in industry-wide  
7 production levels, distribution and  
8 availability of propagation materials, et  
9 cetra. Trademark protection can be sought, as  
10 well.

11                   General releases are those absent  
12 any exclusivity, though royalty fees will  
13 still, most likely, be established. Further  
14 details on the UF policy and associated  
15 processes can be obtained from the UF IFIS  
16 deemed for research, as well as from the  
17 Florida Foundation Seed Producers, a non-  
18 profit direct support organization of UF with  
19 responsibility for managing plant germplasm  
20 and new varieties coming from the breeding  
21 program.

22                   In my opinion, it is essential

1       that the industry be enabled to utilize the  
2       provisions of Marketing Order 905 in the  
3       rapidly changing citrus variety landscape,  
4       with many more new varieties becoming  
5       available than ever before, to support the  
6       position of Florida fresh industry and the  
7       evolving and fluid marketplace that is  
8       currently at hand.

9                       New varieties, by their very  
10       nature, will present unique marketing  
11       opportunities. But also will, implicitly,  
12       present different and unique quality  
13       attributes that will likely require visitation  
14       of the measures and standards of quality  
15       relative to those applied to the current  
16       portfolio of varieties. The success of these  
17       new varieties, as well as the future of  
18       Florida's fresh citrus industry, will be  
19       better secured by ensuring that new varieties  
20       will be required to meet quality standards.  
21       Thank you.

22                       JUDGE CLIFTON: Thank you, Dr.

1 Gmitter. I'm going to ask USDA employees to  
2 ask any questions you have of either Dr.  
3 Gmitter or Mr. Hunt, and you may refer to any  
4 of the exhibits that we have, including 24 and  
5 25. Ms. Schmaedick, would you begin?

## EXAMINATION

BY MS. SCHMAEDICK:

8 Q Thank you, Dr. Gmitter, for your  
9 testimony. I'd like to start with just a few  
10 clarification of terms of that you used in  
11 your testimony. On Page 1, I am not familiar  
12 with citrus scion. Could you tell me what  
13 that means, or what that is?

14 A Certainly. Citrus trees are  
15 composite organisms. There is a rootstock and  
16 a scion. A scion is the fruiting variety. It  
17 may be an orange, a mandarin, a pummelo, and  
18 it is grafted or budded onto a rootstock,  
19 which is a genetically distinct plant. Most  
20 fruit crops, many fruit crops are grown in  
21 this way; apples, peaches, grapes. There is  
22 a rootstock and there is a scion, which is the

1       fruiting variety.

2               Q       Thank you for that clarification.  
3       I aware of that technique, I just didn't know  
4       the term, so thank you. And I believe the  
5       term functional genomics. I think you touched  
6       on that later in your testimony. But could  
7       you just tell us what that is in layman's  
8       terms, please?

9               A       The simple answer is no. But I  
10      will give it a shot. In the past 15 years,  
11      there's been an explosion in biological  
12      sciences, in genome sequencing. The genome is  
13      the collection of DNA of any given organism,  
14      and breaking it down into the individual four  
15      letters of the genetic code. And so, we  
16      produce these things for a number of  
17      organisms, including many citrus varieties.

18                      So now we have a catalog, a  
19      library of all the genes that exist within an  
20      orange, within a mandarin, whatever citrus  
21      you're looking at. The question then becomes  
22      what do these genes actually do. We can

1 define them based on computer algorithms and  
2 complex software. We can identify genes based  
3 on the characteristics of the sequences. But  
4 there are about 25,000 to 30,000 genes in the  
5 genome.

6 And so the question, then, really  
7 becomes which genes are responsible for what  
8 attributes, what characteristics, what  
9 phenomena, what metabolism, what whatever you  
10 want to look at. So that's as close as I can  
11 get in layman's terms to what functional  
12 genomics is.

13 Q And there are only 30,000?

14 A Yes. Actually fewer. It looks  
15 more like 26,000, but it depends on who's  
16 counting.

17 Q I apologize. I'd like to get back  
18 to the question of pummelo that I asked  
19 earlier. Are you familiar with how the  
20 production of pummelos has increased over the  
21 past few years? Can you tell me its, sort of,  
22 relevance in context to the other types of

1 citrus fruits that are being grown, and how  
2 it's grown over time?

3 A When I began working here 25 years  
4 ago, there was a very limited production of  
5 pummelo. Over the years, I cannot tell you  
6 the acreage or the rate of increase, but over  
7 the years it has become, as I mentioned  
8 earlier, an item of general commerce. When I  
9 began here, most of the pummelos that were  
10 grown in Florida were marketed up the east  
11 coast, primarily to Asian food stores, Asian  
12 people being most familiar with the pummelo,  
13 and it actually being the citrus fruit of  
14 choice for most Asians.

15 Now, in fact, you do see pummelos  
16 in Walmart and in the supermarket chain  
17 stores, and they're coming from Florida, as  
18 well as from California. So it's increased.  
19 It hasn't increased nearly as much as the  
20 production of mandarins have in the last 10  
21 years, exploding in California, for example.  
22 But it has become an item of commerce.

1                   Our breeding program has developed  
2                   several new pummelo varieties with improved  
3                   attributes, and there is a growing interest  
4                   among some in the fresh citrus community to  
5                   produce these. It's still viewed more as a  
6                   niche market in many ways, but it's growing.

7                   Q       So, in your professional opinion,  
8                   the pummelo has arrived at the point where it  
9                   should be officially incorporated into the  
10                  marketing order's definition of fruit?

11                  A       In my opinion, yes.

12                  JUDGE CLIFTON: Mr. Hamner,  
13                  identify yourself, please.

14                  MR. HAMNER: George Hamner. The  
15                  way we understand commercially viable, though,  
16                  the committee would have to vote on that. And  
17                  in all candor, I would say probably not. That  
18                  the volume of pummelos, although increasing,  
19                  is probably not to what would be the level we  
20                  would consider commercially viable. Remember,  
21                  we're dealing with a document. We're looking  
22                  well into the future as to when it would be

1 commercial, and that's why it's there, in my  
2 opinion.

3 MS. SCHMAEDICK: Thank you, Mr.  
4 Hamner. Is it not also true that, in order to  
5 be able to regulate a pummelo variety, it must  
6 first be officially included in the definition  
7 of fruit of which varieties --

8 MR. HAMNER: Yes, I think that's  
9 the importance of what Dr. Gmitter is saying.  
10 Is that he recognizes, as has made us  
11 recognize, it is a variety or category unto  
12 itself, where we used to think of it as a  
13 grapefruit.

14 MS. SCHMAEDICK: Thank you. And  
15 let's see, Mr. Hunt, I had a question for you.  
16 Are you aware of any growers in the production  
17 area that only produce pummelos?

18 MR. HUNT: That are only producing  
19 pummelos? No I am not.

20 MS. SCHMAEDICK: Dr. Gmitter?

21 DR. GMITTER: No I am not.

22 MR. HAMNER: There's one named Dr.

1 Benimerito in the Indian River District.

2 MS. SCHMAEDICK: He only produces

3 --

4 MR. HAMNER: Yes. He only  
5 produces pummelos on a 40-acre grove. Sells  
6 them in Miami and to the Asian groups and  
7 potential around the country. He's the only  
8 one I know of.

9 JUDGE CLIFTON: Would you spell  
10 his name for us?

11 MR. HAMNER: Oh, man. It's spells  
12 like it's sounds. He's Filipino. It's Dr. B-  
13 e-n-i-m-e-r-i-t-o,  
14 Benimerito.

15 JUDGE CLIFTON: Do it again.

16 MR. HAMNER: Dr., D-r. B-e-n-i-m-  
17 e-r-i-t-o.

18 JUDGE CLIFTON: So all of that,  
19 that Benimerito is all just his last name.

20 MR. HAMNER: It's one word.  
21 That's his last name, and I, we call him Beni,  
22 so I have no idea what his real first name is.

1 JUDGE CLIFTON: Okay, then, thank  
2 you.

3 MS. SCHMAEDICK: And this  
4 individual doesn't produce any of the other  
5 citrus fruit?

6 MR. HAMNER: No he does not.

7 MS. SCHMAEDICK: To your  
8 knowledge, is this individual aware of the  
9 proposal to potentially regulate pummelos?

10 MR. HAMNER: Very much so, and he  
11 is very in favor of doing this. He's wondered  
12 why we're taking so long.

13 MS. SCHMAEDICK: Thank you. I'll  
14 just ask the question, and whoever has an  
15 answer can answer. How about that? Okay.  
16 Are there any other, or any hybrid fruit or  
17 varieties that are fairly new to the market  
18 that are currently competing and not  
19 regulated?

20 MR. CHADWELL: Arthur Chadwell.  
21 Sugar belle is one that has, is it the sugar  
22 belle?

1 DR. GMITTER: That's right.

2 MR. CHADWELL: Is in it's, I would  
3 still say in it's experimental stage, and has  
4 not been classified nor regulated yet.

5 MS. SCHMAEDICK: And is the --

6 MR. CHADWELL: Very limited  
7 quantities have been produced.

8 MS. SCHMAEDICK: Is the sugar  
9 belle a product of one of the current covered  
10 categories? Is it an orange, grapefruit,  
11 tangerine or tangelo?

12 DR. GMITTER: We released it and  
13 called it a mandarin hybrid. So it's a  
14 tangerine.

15 MS. SCHMAEDICK: Thank you.

16 DR. GMITTER: Tangerine and  
17 mandarin are --

18 MS. SCHMAEDICK: Right, right.

19 DR. GMITTER: -- very confusing  
20 terms, and have different meanings to  
21 different people but, basically, are the same  
22 thing.

1 MS. SCHMAEDICK: So, in your  
2 professional opinion, because it is part of  
3 the tangerine family, the committee would have  
4 the authority to recommend that that variety  
5 become a regulated variety. Is that correct?

6 DR. GMITTER: They could have  
7 that, yes.

8 MR. HAMNER: George Hamner. Yes  
9 ma'am, that's what I would think, yes.

10 MS. SCHMAEDICK: Thank you.

11 JUDGE CLIFTON: This is very  
12 small. How do you spell sugar belle?

13 DR. GMITTER: S-u-g-a-r second  
14 word belle. Here's your chance for French, B-  
15 e-l-l-e.

16 JUDGE CLIFTON: Thank you.

17 DR. GMITTER: You're welcome.

18 MS. SCHMAEDICK: And I believe  
19 this question would be more directed toward  
20 either Mr. Chadwell or Mr. Hamner. In your  
21 opinion, could assessment collected under the  
22 marketing order potentially be used to develop

1 hybrids, specifically, through research and  
2 development programs?

3 MR. HAMNER: Yes ma'am, I do  
4 believe that would be considered, could be  
5 considered.

6 MS. SCHMAEDICK: Are there any  
7 programs currently?

8 MR. HAMNER: No ma'am, because we  
9 are, the Department of Citrus is funding the  
10 development for the industry right now. But  
11 if that failed, I guess the CAC could pick up  
12 the ball if we needed to.

13 MS. SCHMAEDICK: Do you believe  
14 that that would be supported by producers and  
15 handlers regulated --

16 MR. HAMNER: Yes ma'am. The  
17 original New Varieties Development Management  
18 Corporation was started through Florida Citrus  
19 Packers and funded by fresh fruit growers,  
20 transferred to the, the funding has gone to  
21 the DOC, and it's still funded through fresh  
22 fruit funds. And, as a fresh fruit items, yes

1       ma'am, it would be very supported. You heard  
2       Frank Hunt's testimony about the future. And  
3       he's just, as a grower to himself, it's very  
4       much across the board.

5                       MS. SCHMAEDICK: Thank you. I'm  
6       not sure if this particular issue is relevant  
7       in the citrus industry, but Dr. Gmitter you  
8       earlier said that the hybrid process, I guess,  
9       involves genetic mapping and, I guess,  
10      manipulation, perhaps, of the genetics to  
11      create hybrids. Is that correct?

12                     DR. GMITTER: Genetic mapping is a  
13      tool.

14                     MS. SCHMAEDICK: Oh, I'm sorry.

15                     DR. GMITTER: That's okay.

16                     MS. SCHMAEDICK: I'm not very  
17      technical in this area.

18                     DR. GMITTER: That's all right.  
19      Of the varieties that we've produced up until  
20      this point in time that have been made  
21      available for release, these have all been  
22      developed using traditional plant breeding

1 approaches, including crossing a male and a  
2 female parent, as well as the selection of  
3 naturally occurring mutations. Which has been  
4 the history of citrus genetic improvement for  
5 several millennia.

6 MS. SCHMAEDICK: So, I guess my  
7 question is, and I think you touched on this  
8 in your testimony. In the process of  
9 developing these hybrids, you mentioned that  
10 there are patents that go along with that.

11 DR. GMITTER: Yes.

12 MS. SCHMAEDICK: So then, how does  
13 that work within the industry in terms of how  
14 would one get a license to produce a new  
15 fruit? And is that costly? Would it be a  
16 burden on small entities, for example, small  
17 producers that want to produce a new fruit?

18 DR. GMITTER: Do you want to give  
19 it a shot?

20 MR. HAMNER: Sure. We have,  
21 George Hamner. We have, within the industry,  
22 through New Varieties Development Management

1 Corporation, that's part of its purpose. Is  
2 to set up licensing and handling the  
3 coordination of development of the plant  
4 material from the seed through people like Dr.  
5 Gmitter, and into the hands of small growers.

6           You heard earlier today about fast  
7 track, where we have tier one, tier two, tier  
8 three. That is the process. It's in place,  
9 and we have agreed funding on, already, on  
10 paper for the licensing. Where we actually  
11 make royalty payments to the people involved,  
12 and move through the system accordingly. And  
13 every grower has a shot at doing this.

14           So, the system does exist, and it  
15 is to the benefit of small growers because of  
16 the way it's set up. More so even than big  
17 growers, frankly.

18           DR. GMITTER: If I might  
19 elaborate. The University of Florida position  
20 begins with an invitation to negotiate which  
21 goes out to all. And the process is open and  
22 transparent for who may be licensed,

1 ultimately, for any given cultivar. And, up  
2 until this point in time, the process has  
3 resulted in licenses being granted, not  
4 directly from the University of Florida, but  
5 from Florida Foundation Seed Producers, this  
6 direct support organization that was listed  
7 earlier.

8 Licenses have been granted for the  
9 two varieties, thus far, that have been  
10 licensed to the New Varieties Development  
11 Management Corporation.

12 MS. SCHMAEDICK: So these new  
13 varieties are as accessible to small producers  
14 as they would be to large producers?

15 DR. GMITTER: Absolutely.

16 MR. HAMNER: Yes, provided you  
17 sign up in the beginning, when they're first  
18 offered. There is a process you have to  
19 follow, not matter what your size.

20 MS. SCHMAEDICK: And if you miss  
21 that window, what happens? Does it become  
22 more expensive?

1                   MR. HAMNER: You just, you don't  
2 do, you can pick up in tier three later on.  
3 Further down the road, you can pick up, you  
4 can pick up the material that is available to  
5 everyone after a period of time anyway. You  
6 just miss out on the early experimentation,  
7 and maybe the early start of a process.

8                   DR. GMITTER: The process was  
9 designed to incentivize growers who are  
10 interested to come forward.

11                  MR. HAMNER: Right.

12                  DR. GMITTER: There's a nominal  
13 fee to enter tier one, \$50, and you're  
14 entitled to up to 30 trees. And that tier one  
15 status gives you tier two status, a lower  
16 royalty rate, should you decide to go  
17 commercial. If you miss the window, you still  
18 have a chance to get in as tier three at a  
19 higher fee. And it's also important to say  
20 that these royalty rates were negotiated  
21 painstakingly between the University of  
22 Florida, Florida Foundation Seed Producers,

1 and the industry at large.

2 MS. SCHMAEDICK: And Mr. Hunt, in  
3 your opinion, at that tier three level does  
4 the royalty expense, would that prohibit a  
5 small producer from deciding to grow that new  
6 hybrid?

7 MR. HUNT: No, I don't think so.  
8 You have to understand that this has been an  
9 evolving process that is intellectual  
10 property, or the breeding of new varieties has  
11 become something that, globally, is being  
12 licensed and patented and controlled by  
13 private entities, by public entities, by, you  
14 know, it's a very evolving thing.

15 And, once upon a time, it was a  
16 25-30 year process to get a new variety. And  
17 times have changed. The industry's changed.  
18 It was imperative that we were able to get  
19 these varieties out, get them evaluated. And,  
20 truthfully, until you got them in the hands of  
21 a commercial grower, the breeders couldn't  
22 give you a variety with a guarantee to it.

1 They didn't know.

2 And they could research it on  
3 small plantings in various conditions. But  
4 once it got out into the industry, it may or  
5 may not perform. So, what we've developed  
6 here is, with the realization that they were  
7 going to be released with patents. There were  
8 going to be royalties attached to them. Then  
9 we formed the NVDMC to represent the industry.  
10 And this was done, really, at initiative of  
11 the Florida Citrus Packers.

12 The NVDMC, then, has negotiated  
13 and worked with Florida Foundation of Seed.  
14 Florida Foundation of Seed, though you can't  
15 legally be given a preference, they have given  
16 preference to us, and we have gotten varieties  
17 and worked with them, and it's made these  
18 varieties available.

19 The three-tier process was  
20 designed to say okay, we have a variety that  
21 looks like it's got potential. It's got  
22 characteristics that we're really interested

1 in. Fred's got three trees. Maybe it works,  
2 maybe it doesn't work. And so, we want to get  
3 those varieties out into a commercial setting.

4 So that what we're trying to do is  
5 incentivize growers in that tier one to take  
6 these trees, grow them out, see what various  
7 cultural practices, various environmental  
8 settings, soils and so forth would produce.  
9 And if it looks good, we'll go commercial with  
10 it, tier two. But you're giving those growers  
11 that were in tier one a little bit of a head  
12 start into tier two.

13 The grower that's in tier three,  
14 and in some cases it may be the small grower  
15 that says you know, I really can't afford to  
16 experiment here. I'm going to just ride this  
17 one out. They have the opportunity to be in  
18 tier one, but they can ride it out, wait and  
19 see okay, yeah, this is going to be a winner.  
20 I'm in tier two.

21 The royalty at that level is  
22 somewhat higher, but it's not prohibitive to

1       that grower being able to enter at that level.  
2       And then he's getting something that's proven.

3               MS. SCHMAEDICK: Right, so it's  
4       kind of a trade off on the cost benefit  
5       analysis.

6               MR. HAMNER: Right.

7               MS. SCHMAEDICK: Do you take the  
8       risk at the early stage, and may not have the  
9       return. Or do you wait until it's proven.

10              MR. HAMNER: Exactly.

11              MS. SCHMAEDICK: Is that what  
12       you're saying?

13              MR. HAMNER: Exactly.

14              MS. SCHMAEDICK: Okay, thank you.  
15       And, this question has been asked several  
16       times, but could anyone of you tell me what is  
17       the general grower level of enthusiasm within  
18       the industry for the development of hybrids?  
19       Do you think it's widely supported? Anybody?

20              MR. HAMNER: Yes ma'am. It's very  
21       highly supported.

22              MR. HUNT: I think so. And, in

1 fact, in the current environment we're in,  
2 there's some angst over why we don't have  
3 something faster.

4 MR. HAMNER: Actually, they're  
5 taking a little too long.

6 MS. SCHMAEDICK: I see.

7 MR. HAMNER: We dropped from 30  
8 years, and we're looking for six months.

9 MS. SCHMAEDICK: I see.

10 DR. GMITTER: Our breeding program  
11 has been supported, not only by NVDMC over  
12 time, but also through another taxing  
13 mechanism within the industry for more than 15  
14 years now. So, it's been a long-term  
15 investment, a long-term interest on behalf of  
16 all segments of the industry.

17 MS. SCHMAEDICK: Thank you. Those  
18 are my questions for now, thank you.

19 JUDGE CLIFTON: Before I ask for  
20 more questions from USDA, do any of you want  
21 to add anything at this point?

22 MR. HAMNER: No.

1 JUDGE CLIFTON: All right, then  
2 other questions from USDA employees first?  
3 Mr. McFetridge.

4 MR. MCFETRIDGE: Marc McFetridge,  
5 USDA. To be honest, I've never eaten a  
6 pummelo. Just a quick question. I know you  
7 said that it was very popular with the Asian  
8 population. Is pummelo native to Florida, or  
9 is that a species that's been brought over  
10 from the Pacific Rim or Asia?

11 DR. GMITTER: There are no citrus  
12 that are native to Florida. Citrus originated  
13 in the old world in Southeast Asia. Primarily  
14 in between China and Northeastern Indian, and  
15 we used to Indochina Southeast Asia.

16 MR. MCFETRIDGE: Thank you. I  
17 didn't know that. Dr. Gmitter, I have a quick  
18 question for clarification. Your testimony,  
19 on Page 3, the top part of it you're talking  
20 about the scientific names for pummelo and for  
21 the other one, I'm sorry, I can't even come  
22 close to pronouncing it correctly. So, is the

1 notice of hearing, is that incorrect for the  
2 scientific names for pummelos? You have it  
3 here for citrus maxima and in the transcript  
4 it's C. gradu --

5 DR. GMITTER: C. grandis.

6 MR. MCFETRIDGE: Grandis.

7 DR. GMITTER: You know, citrus  
8 taxonomists come and go, and names come and  
9 go.

10 MR. MCFETRIDGE: Okay.

11 DR. GMITTER: The currently most  
12 widely recognized binomial name, which is the  
13 two names, the Latin names for pummelo is  
14 citrus maxima, and that has been the case for,  
15 perhaps, the last 15 years. In scientific  
16 circles, that's the name that's expected to  
17 appear in journal articles, refereed journal  
18 articles and so on. Citrus grandis was widely  
19 used, and still you can find it. But, citrus  
20 maxima is the preferred.

21 The second one, poncirus  
22 trifoliata, many times spell check will

1 convert trifoliata to trifoliate. And I don't  
2 know if that's the case in this situation or  
3 not. But the official name of that species is  
4 poncirus trifoliata, with an a at the end.

5 MR. MCFETRIDGE: Okay. So, based  
6 on your professional opinion, to basically  
7 made the order as accurate as possible, the  
8 pummelo probably should be switched over from  
9 the citrus grandis to citrus maxima?

10 DR. GMITTER: That is my  
11 suggestion, yes.

12 MR. MCFETRIDGE: All right. And  
13 just double checking the hearing, the notice  
14 of the hearing. It looks like the spell check  
15 did transfer it over to an "e" instead of an  
16 "a." Thank you. On Page 4, Dr. Gmitter, you  
17 talked about the so-called grapefruit effect.  
18 Could you just elaborate on that for us?

19 DR. GMITTER: Certainly. There is  
20 this family of chemicals called  
21 furanocoumarins that are found in grapefruit.  
22 These chemicals interact with an enzyme

1 produced in the liver, in the human liver.

2 This enzyme is involved in the metabolism of  
3 pharmaceutical drugs, things such as statins,  
4 for example, blood pressure medications, birth  
5 control pills, depression medications.

6 These enzymes break down the  
7 medicines into smaller molecules. They  
8 metabolize. And so, as pharmaceutical  
9 companies and the medical community are trying  
10 to determine what the dosages should be for  
11 people, they're assuming that these enzymes  
12 are functioning within a certain normal range  
13 of activity. So the drugs are being broken  
14 down.

15 Furanocoumarins inhibit the  
16 activities of these enzymes. So what happens  
17 with certain specific pharmaceuticals, not all  
18 meds, is that rather than being metabolized,  
19 they remain unmetabolized and are absorbed in  
20 the bloodstream at higher concentrations. So  
21 the concentration of the medicines in the  
22 human bloodstream is higher than what was

1       calculated and anticipated.

2                       Therefore, the medical community,  
3       generally, recommends people who are taking  
4       certain statins, not all statins, certain  
5       blood pressure medications, if you're on these  
6       medicines, you should not drink grapefruit  
7       juice, you should not eat grapefruit. I think  
8       it's important to state that there are few or  
9       no documented cases of any harm occurring to  
10      people as a consequence of this.

11                      It's also important to state that  
12      there is variation among human beings, among  
13      individuals, in terms of the suppression of  
14      enzyme activity or, in fact, even their own  
15      native level of these enzymes. Grapefruit  
16      juice was the first food in which such  
17      potentially significant interactions were  
18      discovered. So it became, if you will, the  
19      poster child for food medical interactions,  
20      and it's received negative notoriety as a  
21      consequence of that.

22                      MR. MCFETRIDGE: Based on this

1       grapefruit effect, do you see that this could  
2       have some type of, I guess, affect on  
3       resulting in the decline in grapefruit juice  
4       consumption, too?

5                   DR. GMITTER:  It clearly has.  If  
6       we look at our population who enjoy  
7       grapefruit, generally, they're older people.  
8       Younger people aren't particularly fond of  
9       that sour bitter fruit like some of the old  
10      timers are.  The older people, generally, are  
11      more likely to be on blood pressure meds, on  
12      statins, and so on.  And so, you do have this,  
13      there has been, certainly, an impact on the  
14      market for grapefruit and grapefruit products.

15                  MR. MCFETRIDGE:  Thank you.  I  
16      just have another quick question for Mr. Hunt.  
17      In your testimony, you talked about the top  
18      two tangerine varieties are not Sunburst or  
19      Honey.  I was wondering if you'd just  
20      elaborate what are the two top varieties now?

21                  MR. HUNT:  What I was referring to  
22      is what was being propagated in the nurseries,

1 so what are growers now planting going  
2 forward. And so, though the Sunburst was very  
3 popular in the early '90's and through the  
4 '90's and up until recent years, sunburst  
5 today are not being propagated in the  
6 nurseries and planted. And growers today are  
7 looking towards some of the new varieties that  
8 have come in more recently such as the Tango  
9 and the U.S. Early Pride.

10 MR. MCFETRIDGE: Okay, thank you.  
11 That's all the question I have.

12 JUDGE CLIFTON: What other  
13 questions do USDA employees have, of any of  
14 the people sitting at what I'm calling the  
15 board table? Ms. Schmaedick.

16 MS. SCHMAEDICK: I have another  
17 question for Dr. Gmitter. Would you mind  
18 looking at the definition of fruit in the  
19 notice? Oh, you might not have it.

20 DR. GMITTER: I don't have that.

21 MS. SCHMAEDICK: That's okay.  
22 I'll just elaborate on my question.

1 DR. GMITTER: Okay, I'm looking at  
2 copy.

3 MS. SCHMAEDICK: So, in the  
4 current definition of fruit, we have Temple  
5 oranges, tangelos and Honey tangerines listed  
6 as, I believe you referred to them as  
7 categories. In the proposed changed  
8 definition, Temple oranges, tangelos and  
9 tangerines are removed. And my question is,  
10 I'll break it down into a series.

11 In the removal of Temple oranges,  
12 based on your professional opinion, are Temple  
13 oranges then classified along with the  
14 Paragraph A which would be citrus sinensis,  
15 Osbeck, commonly called oranges?

16 DR. GMITTER: Absolutely not.

17 MS. SCHMAEDICK: No. Where do  
18 they go, then?

19 DR. GMITTER: They are, based on  
20 our best information, they would be classified  
21 under what we call the tangors, which are  
22 hybrids of citrus reticulata, mandarin or

1       tangerines, with sweet oranges. That they  
2       were ever called Temple oranges is a misnomer.  
3       And citrus history is full of misnomers.  
4       There are Satsuma oranges, as well, which  
5       really are not oranges at all, but are  
6       mandarin types. So the use of the word orange  
7       there is an historical misnomer commonly used.

8                   MS. SCHMAEDICK: So this, in  
9       effect, is a correction in that it's not its  
10      own category, but this Temple orange, which  
11      is, I guess, a common name is, technically, a  
12      fruit that would fall in the category of  
13      tangerines or mandarin. Is that correct?

14                  DR. GMITTER: It would fall in the  
15      category of tangors.

16                  MS. SCHMAEDICK: Tangors. Do we  
17      have a --

18                  DR. GMITTER: Which is under --

19                  MR. HUNT: Citrus hybrids.

20                  DR. GMITTER: -- citrus hybrids.

21                  MS. SCHMAEDICK: I see, okay.

22                  DR. GMITTER: You see the last

1 sentence there? In addition, citrus hybrids  
2 include tangelo, tangor, citrus reticulata x  
3 citrus sinensis.

4 MS. SCHMAEDICK: Thank you.

5 MR. HUNT: And Temple oranges.

6 DR. GMITTER: And Temple oranges.

7 MS. SCHMAEDICK: Okay. Thank you  
8 for that clarification. So then, is it also  
9 correct that tangelos, are tangelos a hybrid,  
10 as well?

11 DR. GMITTER: Tangelos, yes, are  
12 hybrid of citrus reticulata by citrus paradisi  
13 or citrus maxima. Hybrids of tangerines with  
14 grapefruits or with pummelos.

15 MS. SCHMAEDICK: Okay, thank you.  
16 And then Honey tangerines, now would they be  
17 captured in c) citrus reticulata, Paragraph C

18 DR. GMITTER: Yes and no. They  
19 look like tangerines. They peel. We call  
20 them Honey tangerines. The varietal name,  
21 actually is Murcott. Based on molecular  
22 evidence that's been generated in recent

1 years, we know, also, that the Honey  
2 tangerine, like Temple, is a hybrid that  
3 originated between some mandarin and some  
4 sweet orange. When one makes hybrids, one  
5 generates a diverse family of individuals. So  
6 that's why they don't look like each other,  
7 necessarily.

8 MS. SCHMAEDICK: I understand.

9 DR. GMITTER: Similar, but not the  
10 same.

11 MS. SCHMAEDICK: And in the  
12 proposed language, again I just want to  
13 clarify that the proposal is to include a new  
14 category which would be pummelo, and it would  
15 remove these hybrids, Temple oranges,  
16 tangelos, Honey tangerines, which would be  
17 captured under a new Paragraph E. Is that  
18 correct?

19 DR. GMITTER: Yes, as I read it.

20 JUDGE CLIFTON: Just so the record  
21 is clear, a new paragraph what letter?

22 MS. SCHMAEDICK: D, as in David.

1 JUDGE CLIFTON: D, as in David.

2 Thank you.

3 MS. SCHMAEDICK: The other  
4 question I have for you is regarding, just a  
5 moment, I need to find my copy of the notice.  
6 In the proposed Paragraph C, which reads  
7 citrus hybrids that are hybrids between or  
8 among one or more of the four fruits a through  
9 d of this section. I just want to make sure  
10 that this is, technically, correct, in that  
11 Paragraph A refers to oranges, B refers to  
12 grapefruit, C refers to tangerines or  
13 mandarins, D refers to pummelo, and that all  
14 the hybrids that we're discussing today have  
15 a parent of one of the four above mentioned  
16 categories. Is that correct?

17 DR. GMITTER: All that we've been  
18 discussing today, yes, that's correct.

19 MS. SCHMAEDICK: And, in your  
20 professional experience, are there other  
21 hybrids that are being developed that do not  
22 include one of the four categories mentioned?

1 DR. GMITTER: Well, Paragraph E  
2 lists one or more of the four fruits a through  
3 d of this section, and the following, and it  
4 lists a whole range of other species, lemons,  
5 limes, kumquats, and the various hybrids of  
6 tangors and tangelos. As a plant breeder, I  
7 look at the whole collection as the pallet  
8 with which we work.

9 MS. SCHMAEDICK: So, in your  
10 professional opinion, the way that Paragraph  
11 E is proposed, that would meet the industry's  
12 needs in terms of establishing authority to  
13 regulate future hybrids as they develop.

14 DR. GMITTER: Yes. It's actually  
15 a fairly broad collection of other parents  
16 that may or may not, actually, be utilized in  
17 the process. So it's broad, and it should  
18 encompass --

19 MS. SCHMAEDICK: And is my  
20 understanding that of the two parents that are  
21 needed to create a hybrid, at least I think  
22 it's limited to two, can it be more than two?

1 DR. GMITTER: We can get very  
2 complicated.

3 MS. SCHMAEDICK: Okay.

4 DR. GMITTER: Yes, there can be  
5 more than two. In some cases, we have created  
6 what we call somatic hybrids.

7 MS. SCHMAEDICK: Oh.

8 DR. GMITTER: Most hybrids we talk  
9 about are sexual hybrids, male and female.  
10 We're able, through some tissue culture  
11 technology, to create somatic hybrids, where  
12 we are fusing cells of two different types,  
13 and creating a new type, which then, in and of  
14 itself, can be used as a male or a female  
15 parent to make the crosses.

16 So, in reality, some of the new  
17 hybrids that are coming out that are seedless  
18 have been developed through this technological  
19 approach. So, it is possible to have, there's  
20 never more than one mother and one father.  
21 But the father and/or the mother can be more  
22 complicated than just itself alone.

1 MS. SCHMAEDICK: So with that  
2 information, the way I interpret this proposed  
3 definition is that at least one of the parents  
4 were, a faction of one of the parents needs to  
5 be, in layman's terms, an orange, a  
6 grapefruit, tangerine or mandarin or a  
7 pummelo. Is that correct?

8 DR. GMITTER: That's right, for  
9 the varieties that are grown and produced in  
10 Florida. If we begin to talk about lemons,  
11 then we start to look at other parental  
12 combinations to create lemons and limes. But,  
13 with the varieties that are commonly grown  
14 here in Florida, and that are regulated, it's  
15 one of those four or, potentially, several  
16 guys or ladies.

17 MS. SCHMAEDICK: Okay, thank you.  
18 I want to turn your attention to the proposed  
19 definition of variety. Specifically, there's  
20 a new Paragraph F that is being proposed, and  
21 I want to, specifically, look at the phrase  
22 that comes at the end of that paragraph. It

1       says that in order to add any hybrid variety  
2       to citrus fruit to be regulated under this  
3       provision, such variety must exhibit similar  
4       characteristics and be subject to cultural  
5       practices common to existing regulated  
6       varieties.

7                       In your professional opinion, will  
8       that language work with the future development  
9       of hybrids for this industry?

10                      DR. GMITTER: I think it should  
11       work, given that the word similar is being  
12       used there. Were identical there, I would say  
13       no, that's restrictive and it's going to not  
14       result in outcomes that we're all looking for.  
15       But similar, yes, it works, in my opinion.

16                      MS. SCHMAEDICK: Thank you, and  
17       just for the record, what might be some of the  
18       subtle differences that could be seen? For  
19       example, earlier today we heard about new  
20       varieties that might be entering into the  
21       market that have a shorter growing season.  
22       Would that be a subtle difference in the

1 cultural practices, or could you explain?

2 DR. GMITTER: No, I think what was  
3 being referred to is a shorter period of time  
4 when the fruit might actually be harvested,  
5 not necessarily a shorter growing season.  
6 With perennial planting, it's always there,  
7 and I think that's what was being referred to  
8 was the --

9 MR. HAMNER: I think what --  
10 Melissa here I think you've worn us out.

11 MS. SCHMAEDICK: I've worn myself  
12 out.

13 JUDGE CLIFTON: It's not just the  
14 reporter, it's the rest of us. Talk into  
15 that, if you will.

16 MR. HAMNER: Okay, the similar has  
17 to do with the production practices. When you  
18 grow oranges you'd have certain spray programs  
19 with grapefruit, certain spray programs. In  
20 any given grove there's never identical  
21 programs, they're always similar, there are  
22 different chemicals people use. And I think

1       that that's what the implication here is, is  
2       that you will be in a program similar to what  
3       you were doing if you were growing that  
4       category or that variety, et cetera, that's  
5       all. It's pretty comprehensive and it's  
6       pretty, there's never an identical. You could  
7       use one chemical or another chemical, but in  
8       the end it's a similar program, that's what I  
9       think this intended here.

10                               EXAMINATION

11                           BY MS. SCHMAEDICK:

12               Q       Thank you.

13               A       Coward.

14               Q       So, to sum it up in layman's  
15       terms, if it's grown like an orange?

16               A       It's going to be grown like an  
17       orange it's going to be called an orange, or  
18       some, a hybrid or an orange, yes.

19               Q       And it still should be covered by  
20       the program?

21               A       Yes, we think it's covered.

22               Q       Okay.

1                   MR. GMITTER: I'm sorry, I gave a  
2                   specific example with this UF-914, which is a  
3                   hybrid of Pummelo with grapefruit. It's very  
4                   grapefruit like, it's similar to grapefruit,  
5                   yet it's, if you saw it.

6                   MR. HAMNER: We grow it, we use  
7                   similar programs for growing it.

8                   MR. GMITTER: Yeah, the production  
9                   would be the same. It's similar but not  
10                  identical to grapefruit.

11                  MS. SCHMAEDICK: Excellent, thank  
12                  you. And one last question for Mr. Chadwell.  
13                  In the definition of variety there are fairly  
14                  significant rearranging almost of the way  
15                  varieties of oranges, grapefruit, tangerines  
16                  and mandarins are presented. Can you give me  
17                  the reason behind why this rearranging  
18                  occurred? Maybe Mr. Hamner?

19                  MR. HAMNER: Dr. Gmitter can  
20                  correct me if in layman's terms this is too  
21                  simplistic. But the reality starts with  
22                  hybrids working backwards, rather than from

1 the fruit varieties or the past working  
2 forward. We try to simplify the list and then  
3 capture it in the part where we have hybrids  
4 because that's what the hybrids are based on,  
5 and that, with the rearranging was necessary  
6 to make the hybrid paragraph work. If that  
7 makes sense.

8 JUDGE CLIFTON: And just for the  
9 record, the person who just gave us that  
10 testimony was Hamner, not Chadwell.

11 MR. HAMNER: Right, I'm George  
12 Hamner.

13 BY MS. SCHMAEDICK:

14 Q So, a follow up question, for  
15 example, under paragraph eight, oranges,  
16 number two, you have Valencia, Lue Gim Gong  
17 and similar late maturing oranges or the  
18 Valencia type, so that's a fairly  
19 comprehensive description.

20 A Which paragraph, where are we?

21 Q I'm sorry, section 905.5.

22 A I've got it, I'm with you, okay.

1           Q       So, is that a fairly comprehensive  
2 description of a number of varieties that fall  
3 --

4           A       Yes.

5           Q       -- into that definition?

6           A       Yes, yes, for that very reason,  
7 yes.

8           Q       Is there a listing of the specific  
9 varieties somewhere?

10          A       I think it's yet to be determined.

11          Q       Okay.

12          A       That's why we had to write this  
13 the way we did, underneath it.

14          Q       Thank you. I have no further  
15 questions, thank you.

16                 JUDGE CLIFTON: Are there other  
17 questions from USDA employees? Are there  
18 questions from anyone? I see none. I'm going  
19 to turn to Exhibit 24, which has the Hunt  
20 Brothers letterhead. Is there any objection  
21 to Exhibit 24 being admitted into evidence?  
22 There is none, Exhibit 24 is admitted into

1 evidence. I have Dr. Gmitter's testimony,  
2 that's Exhibit 25. Is there any objection to  
3 Exhibit 25 being admitted into evidence?  
4 There is none. Exhibit 25 is admitted into  
5 evidence. Who is next?

6 (Whereupon, Exhibits 24  
7 and 25 were received  
8 into evidence.)

9 MR. HAMNER: Your Honor, we have  
10 two other presenters, it's 5:00 o'clock, we  
11 can get these done in an hour. It's kind of  
12 a, in my mind it's a regurgitation of some of  
13 the stuff we've already done and I don't know  
14 how it, the staff feels about it. They both  
15 live here, but we would like to try and get  
16 done tonight because I think it's much simpler  
17 if we can keep this, if they can read quickly  
18 and we'll see how they go.

19 JUDGE CLIFTON: I don't --

20 MR. HAMNER: I know you don't like  
21 the word quickly.

22 JUDGE CLIFTON: The only person

1 here who could read quickly and make it work  
2 is Hunt.

3 MR. HAMNER: He did good.

4 JUDGE CLIFTON: He did good.

5 MR. HAMNER: All right, Frank,  
6 would you read these other two? Quentin Roe  
7 is up and then Larry Black.

8 JUDGE CLIFTON: All right, I'd  
9 like to take, I'm sorry, but I'm going to eat  
10 into your one hour. Let's take a ten minute  
11 stretch break, and during that I want us to  
12 advise the personnel who has to stay here with  
13 us until six that we need them to stay here  
14 with until six. And I want the sound man to  
15 advise that we will not need the equipment  
16 tomorrow, which means we have to finish  
17 tonight.

18 MR. HAMNER: Yes, that's right.

19 JUDGE CLIFTON: Okay, thanks.

20 MR. HAMNER: If that's okay, if  
21 not we need to make other arrangements.

22 JUDGE CLIFTON: Please be ready to

1 go at 5:13.

2 (Off the record.)

3 JUDGE CLIFTON: All right, we're  
4 back on the record at 5:12. I'm going to  
5 swear you in in the seated position. Would  
6 you raise your right hand, please.  
7 Whereupon,

8 QUENTIN ROE,  
9 called as a witness herein, after having been  
10 first duly sworn, was examined and testified  
11 as follows:

12 JUDGE CLIFTON: Thank you. Please  
13 state and spell your name.

14 THE WITNESS: Quentin Roe, Q-u-e-  
15 n-t-i-n, R-o-e.

16 JUDGE CLIFTON: And I've marked  
17 the document that's entitled Quentin Rose,  
18 testimony proposal number two and number  
19 seven, as Exhibit 26. You may proceed.

20 (Whereupon, Exhibit No.  
21 26 was marked for  
22 identification.)

TESTIMONY BY QUENTIN ROE

THE WITNESS: My name is Quentin Roe, I reside at 829 State Road 540 West in Winterhaven, Florida. I am President of William G. Roe and Sons, Inc., a family owned shipper of Florida citrus, currently in our 85th year in operation. William G. Roe and Sons, Inc. is a large shipper by the SBA definition.

I personally own 25 acres of grove in Polk County, Florida. I am on the executive committee of both Florida Citrus Packers, Florida Fruit and Vegetable Association, and the board of directors of the New Varieties Development and Management Corporation. I served on the Florida Citrus Commission for one term, and currently serve as a shipper member of the Citrus Administrative Committee, known as the committee.

We have combined the second proposal and the seventh proposal together, as

1       they both address intrastate regulation of  
2       fresh Florida citrus shipments.

3               JUDGE CLIFTON: Now, just to make  
4       sure that gets typed right, please spell  
5       intrastate.

6               THE WITNESS: I-n-t-r-a-s-t-a-t-e.

7               JUDGE CLIFTON: Thank you.

8               THE WITNESS: The production area  
9       of Florida is defined as Section 905.7,  
10      production area. Production area means that  
11      portion of the State of Florida, which is  
12      bounded by the Suwanee River, the Georgia  
13      border, the Atlantic Ocean, and the Gulf of  
14      Mexico. Production area boundaries are also  
15      the boundaries used in the Florida citrus  
16      industry to define the intrastate regulation  
17      area.

18              Proposal number two revises  
19      Section 905.9, handle or ship, to read as  
20      follows, means handle or ships mean to sell,  
21      transport, deliver, pack, prepare for market,  
22      grade, or in any other way to place fruit in

1 the current of commerce within the production  
2 are, or between any point in the production  
3 area and any point outside thereof. This  
4 proposal would authorize the regulation of  
5 intrastate shipments, even though it is not  
6 being proposed to do so at this time.

7                   Currently, grade and size for  
8 intrastate shipments are regulated by the  
9 Florida Citrus Commission under the Florida  
10 Department of Citrus rules, chapter 20. The  
11 order currently regulated interstate and  
12 export fresh citrus. The inclusion of  
13 intrastate regulation of fresh shipments would  
14 authorize all fresh Florida citrus regulation  
15 to be under the order. This proposal has  
16 industry support and does not conflict with  
17 the existing state regulations. In the last  
18 16 months the committee has reviewed and  
19 considered this proposal. It has been  
20 discussed by industry organizations and two  
21 members of the Florida Department of Citrus  
22 601 Committee, where on the committee's rule

1 sub-committee, and at no time has the  
2 inclusion of intrastate regulation been an  
3 issue within our industry.

4 Proposal number seven revises  
5 Section 905.52, issuance of regulations, to  
6 read as follows, A, whenever the secretary  
7 shall find from the recommendations and  
8 reports of the committee, or from other  
9 available information, that to limit the  
10 shipment of any variety would tend to  
11 effectuate the declared policy of the act, he  
12 shall so limit the shipment of such variety  
13 during a specified period or periods. Such  
14 regulations may, one, limit the shipments of  
15 any grade or size or both of any variety, in  
16 any manner, as may be prescribed, and any such  
17 limitation may provide the shipments of any  
18 variety grown in regulation area two, shall be  
19 limited to grades and sizes different from the  
20 grade and size limitations applicable to  
21 shipments of the same varieties grown in  
22 regulation area one. Provided that whenever

1 any such grade or size limitation restricts  
2 the shipment of a portion of a specified grade  
3 or size of a variety, the quantity of such  
4 grade or size that may be shipped by a handler  
5 during a particular week, shall be established  
6 as a percentage of the total shipments of such  
7 variety by such handler, in such prior period  
8 established by the committee, with the  
9 approval of the secretary in which he shipped  
10 such variety. Clear? Okay.

11 Two, limit the shipment of any  
12 variety by establishing and maintaining only  
13 in terms of grades or sizes, or both, minimum  
14 standards of quality and maturity. Three,  
15 limit the shipment of total quantity of any  
16 variety by prohibiting the shipment thereof,  
17 provided that no such prohibition shall apply  
18 to exports or be effective during any fiscal  
19 period with respect to any variety other than  
20 for one period, not exceeding five days during  
21 the week in which Thanksgiving day occurs, and  
22 for not more than two periods not exceeding a

1 total of fourteen days during the period  
2 December 20th to January 20th, both dates  
3 inclusive.

4 Four, establish, prescribe and fix  
5 the size, capacity, weight, dimensions,  
6 marking, parentheses, including labels and  
7 stamps, end parentheses, or pack of the  
8 container or containers which may be used in  
9 the packaging, transportation, sale, shipment,  
10 or other handling of fruit, provided that such  
11 regulation shall not authorize the use of any  
12 container or marking which are prohibited  
13 under Florida statutes and regulations  
14 effective thereunder.

15 Five, provide that any or all  
16 requirement effective pursuant paragraphs A,  
17 parentheses A, parentheses one, parentheses  
18 two, parentheses three and parentheses four,  
19 this section applicable to the handling of  
20 fruit may be different for the handling of  
21 fruit within production area, the handling of  
22 fruit for export, or the handling of fruit

1       between the production area and any point  
2       outside thereof within the United States.  
3       Provided that such requirements shall not  
4       authorize the handling of fruit in any way  
5       that is prohibited under Florida statutes and  
6       regulations effective thereunder.

7                       B, prior to the beginning of any  
8       such regulations the secretary shall notify  
9       the committee of the regulation issued by him,  
10      and the committee shall notify all handlers by  
11      mailing a copy thereunder to each handler who  
12      has filed his name with said committee for  
13      this purpose.

14                   MR. HILL: Can we stop for one  
15      moment, Your Honor? I noticed that it was  
16      section five is the last section that's  
17      actually changed the regulation as it  
18      currently sits.

19                   JUDGE CLIFTON: So, what we just  
20      read, B, really doesn't have to have  
21      underlining because it's not new?

22                   MR. HILL: B, C and D, are all the

1 same.

2 JUDGE CLIFTON: So that's good, so  
3 we still need you to read it, but it's not as  
4 important because it's not a change. But go  
5 back and read me again this B.

6 THE WITNESS: This will B, non-  
7 underlined. Prior to beginning of any such  
8 regulations the secretary shall notify the  
9 committee of the regulation issued by him.  
10 And the committee shall notify all handlers by  
11 mailing a copy thereof to each handler who has  
12 filed his address with said committee for this  
13 purpose. C, not underlined, whenever the  
14 secretary finds from the recommendations and  
15 the reports of the committee, or from other  
16 available information, that a regulation  
17 should be modified, suspended or terminated  
18 with respect to any of the shipments of fruit  
19 in order to effectuate the declared policy of  
20 the act, he shall so modify, suspend or  
21 terminate such regulation. If the secretary  
22 finds that a regulation obstructs or does not

1       tend to effectuate the declared policy of the  
2       act, he shall suspend or terminate such  
3       regulation. On the same basis, and in like  
4       manner, the secretary may terminate any such  
5       modification or suspension.

6                   D, not underlined, whenever any  
7       variety is regulated pursuant to paragraph,  
8       parentheses A, parentheses three, of this  
9       section, no such regulation shall be deemed to  
10      limit the right of any person to sell,  
11      contract to sell or export such variety, but  
12      no handler shall otherwise ship any fruit of  
13      such variety which was prepared for market  
14      during the effective period of such  
15      regulation.

16                   JUDGE CLIFTON: Okay, now before  
17      you continue, does everyone who knows agree  
18      that those last three sections are, include no  
19      change?

20                   MR. HAMNER: I believe it's  
21      straight of the current order.

22                   JUDGE CLIFTON: All right, thank

1       you Mr. Hamner. All right, now you may  
2       resume.

3                   THE WITNESS: This proposal to  
4       regulate containers and establish quality  
5       standards for the production area intrastate  
6       shipments would give intrastate regulatory  
7       authority to the committee. The order does  
8       not have the authority to regulate export  
9       containers in part five of Section 905.52, if  
10      the container is not prohibited under Chapter  
11      601. Currently, the regulation of pack and  
12      containers for intrastate, interstate and  
13      export shipments are under the authority of  
14      Chapter 20, approved by the Florida Citrus  
15      Commission, and inspected for compliance by  
16      the Division of Fruit and Vegetables.

17                   The pack and containers are  
18      standardized and not marked specific, even  
19      though different containers are used in  
20      different markets. Currently, recommendations  
21      for changes to pack and container are  
22      developed by the fresh industry and presented

1 to the Florida Citrus Commission for their  
2 approval. It should be noted that moving  
3 forward with new varieties and hybrids, the  
4 fresh segment of our industry needs to keep  
5 the flexibility of current, flexibility to  
6 establish minimum grade, size, pack and  
7 container regulations for the different  
8 markets.

9           The industry mandates inspection,  
10 each lot of citrus packed for the fresh  
11 market, and this will continue so there would  
12 be no impact on this, on inspection.  
13 Compliance has not been a problem within the  
14 fresh industry, and these proposed changes  
15 should not have any adverse impact on  
16 compliance, of compliance.

17           The committee has determined that  
18 all fresh Florida citrus regulations should be  
19 under the authority of the order, as the fresh  
20 segment of the Florida citrus industry  
21 continues to contract, and has less  
22 association with the process segment of the

1 industry. Also, intrastate fresh markets are  
2 regulated under Chapter 20.35, and are  
3 currently regulated at different quality  
4 standards than interstate or export shipments  
5 regulated under the order.

6 Intrastate markets have been  
7 recognized by our industry as unique, in part  
8 as they are located within the production  
9 area, and that much of the fruit is sold  
10 locally by fruit stands and gift fruit  
11 shippers. Much of this fruit is handpicked by  
12 the consumer, and they know it is fresher and  
13 they accept a lower external quality. It  
14 should be noted that internal quality is  
15 maintained at the highest U.S. number one  
16 standard. Also, a much greater percentage of  
17 this fruit is sold in bins, ten box  
18 containers, as mentioned above fruit in these  
19 containers are used by fruit stands so that  
20 consumer, so that the consumer, so the  
21 consumer may choose their own fruit versus  
22 fruit packed in cartons or bagged.

1                   The proposals to regulate  
2     intrastate shipments, proposal number two, and  
3     the proposal, proposal number seven, to  
4     regulate containers and intrastate shipments  
5     separately from interstate and export  
6     shipments, would have no immediate impact on  
7     growers, handlers or consumers. The industry  
8     is currently regulating intrastate shipment in  
9     containers through state regulations.

10    However, the fresh Florida citrus industry has  
11    determined having the federal authority in  
12    place would ensure quality standards remain if  
13    the state authority is dropped.

14                  This authority will not be  
15    implemented unless state regulations are no  
16    longer in effect. The proposed amendments do  
17    include regulating intrastate shipments,  
18    containers and different quality standards  
19    within the production area would not have an  
20    adverse effect on small businesses if  
21    approved. Adding the authority to regulate  
22    intrastate shipments would have no direct cost

1 to the industry. If implement at current  
2 intrastate shipment level the committee would  
3 collect grower assessments from shippers on  
4 the approximately two million cartons,  
5 additional cartons of fresh Florida citrus,  
6 which are shipped to intrastate markets on  
7 approximately six percent, or approximately  
8 six percent of Florida's fresh citrus  
9 shipments.

10                   However, the net cost to the  
11 industry may be negligible, or could even be  
12 lower, as these costs would shift from the  
13 state to the order. As presented earlier in  
14 testimony, the industry supports these  
15 proposals as it authorizes all fresh fruit  
16 regulation for Florida citrus to be authorized  
17 under the order for the Florida fresh citrus  
18 grower and shipper, if the Florida citrus  
19 industry chooses to move in that direction in  
20 the future. As stated earlier, it is another  
21 tool for the Florida citrus fresh fruit grower  
22 to have in their toolbox. Thank you.

1 JUDGE CLIFTON: Well done, Mr.  
2 Roe. What questions does anyone from USDA  
3 have for Mr. Roe? Ms. Schmaedick?

4 EXAMINATION

5 BY MS. SCHMAEDICK:

6 Q Thank you, Mr. Roe, for your  
7 testimony. One of the questions I have for  
8 you is can you provide examples of where pack  
9 and container regulations might need to be  
10 different for different markets? Do you have  
11 an example that you can give to us?

12 A No, ma'am.

13 Q As far as marking, one of the  
14 proposed changes is to include labels and  
15 stamps as a form of marking on containers.  
16 Could you provide me with more specific  
17 examples of what those might be like, labels  
18 and stamps, why would they be used or what  
19 would they look like?

20 A Let me defer to Mr. Chadwell.

21 JUDGE CLIFTON: Mr. Chadwell?

22 MR. CHADWELL: Arthur Chadwell.

1       These were just the stickers.

2                   JUDGE CLIFTON:   Microphone.

3                   MR. CHADWELL:   Referring to just  
4       the type of identification that we put on the  
5       fruit, marking, when we mark each fruit with  
6       labeling and stickers, so we're just covering  
7       the bases, not such much as what's being done,  
8       we just make sure that this authority was  
9       there as we, as our industry changes, and with  
10      new varieties and looking forward to how we  
11      promote them, advertise them and identify  
12      them.  We wanted to make sure that they may  
13      have different containers and may be different  
14      marking requirements and labeling pieces of  
15      fruit for better identification.  So, we just  
16      wanted to be inclusive that this language was  
17      there moving forward if we so need in the  
18      promotion and marketing and identifying fruit  
19      for the customers, as these are going to be  
20      new varieties.

21                  MS. SCHMAEDICK:  Thank you for  
22      that clarification.  So, currently you don't

1       have a situation where, for example you have  
2       an export market that needs a particular type  
3       of container and it is different from  
4       something you would use for your domestic  
5       market?

6                   MR. CHADWELL: Not currently.

7                   MS. SCHMAEDICK: But, if I'm  
8       understanding you correctly, there is that  
9       potential?

10                  MR. CHADWELL: There is a  
11       potential, and now knowing what the future  
12       holds we just tried to cover the bases. As  
13       marketing changes and the word is changing, so  
14       to speak, we just want to make sure there was  
15       an authority, if needed, that we could rely  
16       upon, or come to use.

17                  MR. HAMNER: Melissa, this is  
18       George Hamner. I think what, we have  
19       different markets with different containers  
20       and markings now, but it's not regulated, it's  
21       by choice of shipper, customer, et cetera.  
22       Into the future there was a consideration

1 given that maybe with new varieties, if we do  
2 advertising, we may want an XYZ sticker to go  
3 on a tangerine by requirement to go to that  
4 tangerine for identity if we have different  
5 things. At present we do not have a  
6 regulation like that. So that's why that,  
7 looking into the future, we were trying to get  
8 this done.

9 MS. SCHMAEDICK: Thank you. In  
10 reviewing the proposed changes to the  
11 definition of handler, or handled, excuse me,  
12 it would be Section 905.9 of the order, I  
13 understand that the term consigned will be  
14 removed. Can you tell me if that activity,  
15 the act of consignment, would be captured in  
16 the revised definition of to handle?

17 THE WITNESS: I'm going to defer  
18 to Mr. Chadwell.

19 MR. CHADWELL: What section is  
20 that?

21 MS. SCHMAEDICK: 905.9, the  
22 definition that is currently in the CFR, it

1 includes the term to sell or consign under the  
2 act of handle of ship. Is that something that  
3 is, is that a term that is outdated and are  
4 you upgrading the definition?

5 MR. CHADWELL: Melissa, it's too  
6 late to give, catch a curve or --

7 MS. SCHMAEDICK: I apologize.

8 MR. HAMNER: Consigned is left  
9 out.

10 MS. SCHMAEDICK: Yes, is that on  
11 purpose?

12 JUDGE CLIFTON: Mr. Hamner, just  
13 so we know who you are.

14 MR. HAMNER: George Hamner.  
15 Within industry norm I don't think, probably  
16 it would be considered outdated, but the  
17 reality, because handling fruit, buying,  
18 flooring, selling, I mean all of it gets  
19 lumped together now to us. I mean, consigned  
20 would just be one entity, and so to me if  
21 they, if you pulled it out its probably,  
22 that's what I would have assumed. I didn't

1 realize it.

2 MR. CHADWELL: Arthur Chadwell. I  
3 don't remember ever discussing consigned, so  
4 it may have just slipped through the cracks  
5 and not be there, because that was never in  
6 any of our discussions at all, we never  
7 discussed consigned. So, that, if it's  
8 omitted, that word would have been omitted  
9 inadvertently.

10 MS. SCHMAEDICK: Thank you, I  
11 believe that concludes my questions for  
12 proposal to seven. Thank you.

13 JUDGE CLIFTON: All right, and do  
14 you have any for proposal seven.

15 MS. SCHMAEDICK: No, Your Honor,  
16 I'm finished, thank you.

17 JUDGE CLIFTON: All right. Say it  
18 again, Ms Varela.

19 EXAMINATION

20 BY MS. VARELA:

21 Q Jenny Varela, USDA. Mr. Roe, I  
22 hopefully just have a couple quick questions

1       for you so you can finish up. I want to ask  
2       you some questions regarding your time you  
3       served on the commission, just to get an idea  
4       of how they function. We have already  
5       established that there is really a small  
6       percentage of fruit that is sold as fresh. I  
7       would imagine that fruit sold within the state  
8       that is fresh is an even smaller percentage.  
9       Would you say that that makes their fresh  
10      regulations kind of not the most important  
11      item of discussion with the commission, do  
12      they tend to focus on other issues first?

13           A       Oftentimes that is true.

14           Q       And in your opinion if, if they  
15      did decide to do away with regulations is that  
16      something, now that it's in the rules that  
17      they can make decisions on, they could decide  
18      one day through a vote to just get rid of the  
19      regulation, correct? It wouldn't have to go  
20      through the legislature anymore?

21           A       I believe that is correct.

22                   JUDGE CLIFTON: Before you ask

1 your next question, who else said that's  
2 correct?

3 MR. HAMNER: Sorry, George Hamner,  
4 that is correct.

5 BY MS. VARELA:

6 Q So, do you see making this type of  
7 decision to add the authority to the order now  
8 as a way of kind eliminating the time it would  
9 take to add it later? I think you said early  
10 in your testimony that we've talked about this  
11 for about 16 months. So do you as an active  
12 member of the industry thing it's important to  
13 have this in place before the commission takes  
14 a step like that, if they ever do?

15 A I think that's a prudent move for  
16 the fresh food industry in Florida.

17 Q Thank you.

18 JUDGE CLIFTON: Does anyone else  
19 from USDA have questions for Mr. Roe? Does  
20 anyone else in the room have questions for Mr.  
21 Roe? Mr. Roe, do you agree with Ms. Varela's  
22 assumption that the intrastate sales of citrus

1       may in fact have even a smaller percentage of  
2       fresh fruit? Do you have any basis of  
3       measuring one way of the other on that?

4               THE WITNESS: Intrastate is fruit  
5       that's just sold within the State of Florida,  
6       that's a much smaller volume of fruit than is  
7       sold throughout the rest of the country and  
8       the rest of the world.

9               JUDGE CLIFTON: All right, would  
10       the proportion of fresh fruit be any different  
11       from the interstate and export sales?

12              THE WITNESS: I'm not sure I  
13       understand the question.

14              JUDGE CLIFTON: All right, let's  
15       assume just for a minute that, I don't know,  
16       80 percent of the citrus that goes out of  
17       Florida to other states or internationally is  
18       processed, assume that, 80 percent of it is  
19       processed and 20 percent of it is fresh.

20              THE WITNESS: Okay.

21              JUDGE CLIFTON: Do you have any  
22       reason to believe that percentages would be

1 any different for intrastate sales?

2 THE WITNESS: I think this is an  
3 apple and orange question, okay. All the  
4 processed fruit sold in the state is processed  
5 in the state, so it's not shipped out of the  
6 state to process.

7 JUDGE CLIFTON: Okay.

8 THE WITNESS: So, all the fruit  
9 that leave the state as fruit is fresh fruit.  
10 You do not have any processed fruit that  
11 leaves the state as fruit, it leaves the state  
12 as a manufactured product. So I still might  
13 not understand your question.

14 JUDGE CLIFTON: Yes.

15 MR. HAMNER: Your Honor, let me,  
16 can I try and answer?

17 JUDGE CLIFTON: Yes, would you  
18 please, Mr. Hamner.

19 MR. HAMNER: This is George  
20 Hamner. I think what you're looking for is  
21 this proportion between what was intrastate  
22 versus interstate.

1 JUDGE CLIFTON: What I thought Ms.  
2 Varela asked him to assume, what I thought she  
3 asked him to assume is that the proportion of  
4 sales that are fresh might even be lower for  
5 the intrastate sales.

6 MR. HAMNER: Right, if you looked  
7 at sales as one entity now and forget about  
8 interstate and intrastate for a moment as a  
9 number, 100, and interstate is 80 percent and  
10 intrastate would be 20 percent, for instance.  
11 Whether this rule goes through or not, the  
12 proportion that is intrastate, which is very  
13 small, versus what goes interstate, will stay  
14 the same. I mean the intrastate shipments,  
15 just because of population, delivery, et  
16 cetera, is a very small portion of fresh fruit  
17 sales, and it stays proportionate each year.

18 JUDGE CLIFTON: All right, thank  
19 you for that. And I may have totally  
20 misunderstood Ms. Varela's question and what  
21 she wanted him to assume.

22 MR. HAMNER: It sounded like to me

1        what she wanted was, is within the commission  
2        is that intrastate sales is even less of an  
3        item that they look at and talk about, versus  
4        the other fresh fruit sales, it's even lower.  
5        If fresh fruit sales is a lower entity or  
6        lower picture in the Department of Citrus  
7        versus processed product, then intrastate  
8        would be even smaller.

9                    JUDGE CLIFTON: Is that what you  
10       were alluding to, Ms. Varela?

11                   MS. VARELA: Correct.

12                   JUDGE CLIFTON: All right, thank  
13       you all. Mr. Chadwell?

14                   MR. CHADWELL: Arthur Chadwell.  
15       Not to belabor the point, but it would be two  
16       million cartons historically for, it means a  
17       million boxes, which when we have 170 million  
18       box productions it's very minuscule and is  
19       not, and is not even on the radar for the  
20       Department of Citrus.

21                   JUDGE CLIFTON: Very helpful all  
22       of you, thank you. All right, what other

1 questions for Mr. Roe? Are there any  
 2 objections to the admission into evidence of  
 3 Exhibit 26? There are none. Exhibit 26 is  
 4 admitted into evidence. Thank you, Mr. Roe.  
 5 And the next witness, you may approach. I'm  
 6 going to mark the document that is entitled  
 7 Larry Black testimony as Exhibit 27. And I'll  
 8 swear you in seated. Would you raise your  
 9 right hand, please. Please state and spell  
 10 your name.

11 (Whereupon, Exhibit No.  
 12 26 was received into  
 13 evidence.)

14 (Whereupon, Exhibit No.  
 15 27 was marked for  
 16 identification.)

17 Whereupon,

18 NORMAN LARRY BLACK, JR.,  
 19 called as a witness herein, after having been  
 20 first duly sworn, was examined and testified  
 21 as follows:

22 THE WITNESS: Norman Larry Black,

1 Jr. N-o-r-m-a-n, Larry, L-a-r-r-y, Black, B-  
2 l-a-c-k, junior.

3 JUDGE CLIFTON: Thank you, you may  
4 proceed.

5 TESTIMONY BY NORMAN LARRY BLACK, JR.

6 THE WITNESS: Good afternoon, my  
7 name is Larry Black, I reside at 1860 Pinnacle  
8 Drive, Lakeland, Florida. I'm a small grower  
9 producing oranges, tangerines and grapefruit  
10 on 220 acres. I'm also the General Manager of  
11 Peace River Packing Company, which has been in  
12 our family for 85 years and is located in Ft.  
13 Meade, Florida.

14 Peace River Packing Company grows,  
15 harvests and packs Florida citrus from our  
16 family's 2,000 acres of groves and also for  
17 outside growers. Peace River Packing would be  
18 considered a large shipper according to the  
19 SBA definition. I'm a shipper member of the  
20 committee, a board member of Florida Citrus  
21 Mutual, the Florida Citrus Packers and the  
22 Citrus Research and Development Foundation,

1 Incorporated.

2 Proposal nine would amend Section  
3 905.7 to provide for the registration of  
4 handlers, which would aid the committee in  
5 compliance and increase communication by  
6 keeping shippers better informed of provisions  
7 of the order. The revision to Section 905.7,  
8 handler, handler is synonymous with shipper  
9 and means any person, except for a common  
10 contract carrier transporting fruit for  
11 another person, who as owner, agent or  
12 otherwise, handles fruit in fresh form, causes  
13 fruit to be handled, each handler shall be  
14 registered with the committee pursuant to  
15 rules recommended by the committee and  
16 approved by the secretary. The State of  
17 Florida Department of Citrus, Chapter 601,  
18 Florida Statutes, Florida Citrus Code 601.4,  
19 requires each packing house or shipper that  
20 prepares Florida citrus for fresh market in  
21 Florida to register annually with the Florida  
22 Department of Agriculture through the division

1 of fruit and vegetables.

2 In addition, Section 601.56,  
3 Florida Statutes, or the Florida Citrus Code,  
4 requires Florida citrus shippers, as a citrus  
5 fruit dealer in Florida, be approved by the  
6 Department of Citrus for a citrus fruit  
7 dealers license. What the committee is  
8 proposing would not replace these requirements  
9 as authorized by the Florida Citrus Code. The  
10 committee's propose this amendment to  
11 strengthen the order's compliance with  
12 shippers.

13 Section 905.53, inspection and  
14 certification of the order, requires each  
15 shipper to have each lot of citrus inspected  
16 by the Florida Department of Agriculture  
17 Division of Fruit and Vegetables, also known  
18 as the division. The division certifies that  
19 the lot of fruit means all applicable  
20 requirements of the order as recommended by  
21 the committee and approved by the secretary.  
22 Florida Department of Citrus rules, chapter

1     20.4, describes the information required to be  
2     entered on the manifest, who it issues the  
3     manifest, and certificate of inspection. The  
4     inspector certifies on the manifest all the  
5     pertinent information for that lot of citrus.  
6     This includes certifying the lot meets the  
7     regulatory requirements of the order, which  
8     refers to minimum grade and size as authorized  
9     by the secretary. Each shipper and inspector  
10    has a copy of the most current CAC regulation  
11    bulletin, which are updated each time the  
12    committee recommends and the secretary  
13    approves a regulation change.

14                    A copy of the manifest goes with  
15    each certified lot of citrus shipped to  
16    regulated markets. The committee contracts  
17    annually with the division to furnish the  
18    committee, by month, each shippers regulated  
19    shipments, both interstate and export, and  
20    that's inter, i-n-t-e-r, state and export.  
21    And these shipments are used to calculate each  
22    shippers assessment. It is also from the

1 manifest that we get the entire grade and size  
2 information for each regulated shipment.

3 The committee has not experienced  
4 major compliance issues in the past, but is  
5 always looking for ways to improve compliance  
6 of the orders regulations and the collection  
7 of assessments. Each season the committee  
8 conducts a review of the CAC compliance plan,  
9 known as the compliance plan, and the CAC  
10 internal control policies, known as internal  
11 controls, and updates if needed, both to  
12 improve it's compliance procedures. Upon the  
13 committee's approval of the compliance plan is  
14 forwarded to the USDA for their review and  
15 approval. The internal controls are approved  
16 and forwarded to the USDA.

17 Both the compliance plan and  
18 internal controls are implemented by the  
19 committee's management throughout the season  
20 as each plan mandates. There are procedures  
21 in both the compliance plan and internal  
22 controls to ensure handlers are fully informed

1 of any violations and are given time to take  
2 corrective actions. In the very limited cases  
3 of minimum grade and size regulation  
4 violations, the majority of the reported  
5 violations have been less than a pallet, which  
6 would be equivalent to 54 cartons of citrus.  
7 In the past, most of the violations have been  
8 clerical errors by the shipper's shipping  
9 department. In the last few seasons, with  
10 most shippers using bar coding systems for  
11 loading trucks or containers, these violations  
12 have all but been eliminated.

13 JUDGE CLIFTON: Have all but been  
14 eliminated, so almost?

15 THE WITNESS: Exactly, they're  
16 very minimal and clerical in nature.  
17 Collection of the committees assessments  
18 should be enhanced, could be enhanced by using  
19 the registration of shippers as a tool to  
20 ensure compliance with the assessment  
21 provision of the order.

22 It must be noted, the committee

1 recommends an assessment fee to cover it's  
2 expenses in the administration of the order  
3 and as approved by the secretary. Shipper  
4 collect the assessment fee from their growers,  
5 so shippers should remit those assessments in  
6 a timely manner. The committee has not  
7 experienced many late or uncollectible  
8 assessments, but feel this proposal could aid  
9 in the collection of assessments. The  
10 committee does outline in the compliance plan  
11 a detailed time line for the collection of  
12 those assessments, which ensure due process  
13 for the shipper to comply with the committees  
14 collection of past due assessments.

15 The committee will develop a  
16 shipper registration form, which would include  
17 contact information along with other pertinent  
18 information deemed necessary for the operation  
19 of the order. A notice and comment period  
20 would be provided for the industry to comment  
21 on the registration form. The information  
22 from the shipper registration form will

1 provide valuable contact information, be  
2 beneficial in communication, and assist in the  
3 compliance provisions of the order. Since  
4 this is an administrative proposal, the cost  
5 to the order and shippers will be negligible  
6 and will require limited time by the shipper  
7 to complete the registration form. This  
8 proposal is not controversial and there is  
9 support within the industry.

10 In closing, there are a few main  
11 points that should be noted. First, this is  
12 another tool Florida citrus growers that  
13 market their fruit in the fresh channel of  
14 trade would have available as our industry  
15 works to meet challenges that lie ahead. This  
16 would provide more efficient communication  
17 with shippers, the committee would continue to  
18 review and update our compliance plan and  
19 internal controls annually to ensure shippers  
20 are afforded due process in the handling of  
21 order violations, and also strengthen the  
22 compliance provisions of the order. And last,

1       there is support within our industry for this  
2       proposal.

3                       In closing, the Florida citrus  
4       growers producing fruit for the fresh market  
5       have supported the order for 74 years, and the  
6       proposed amendment will afford the committee  
7       more options in the administration of the  
8       order. Mr. Chadwell will give an overview of  
9       how the committee would implement this  
10      proposal.

11                     JUDGE CLIFTON: Do you, Mr.  
12      Chadwell, want to add anything before I invite  
13      questions?

14                     MR. CHADWELL: I think it might  
15      help, because I think it's going to clarify a  
16      few things.

17                     JUDGE CLIFTON: You may proceed,  
18      and you may stay there.

19                     MR. CHADWELL: I will come up  
20      there because I've got a few things to hand  
21      out.

22                     JUDGE CLIFTON: All right, then

1 let's go off record. Now, should Mr. Black  
2 remain seated?

3 MR. CHADWELL: He can be  
4 dismissed.

5 JUDGE CLIFTON: He can step down?

6 MR. CHADWELL: Yes.

7 JUDGE CLIFTON: All right, thank  
8 you so much, Mr. Black. Please stay because  
9 you may have questions after Mr. Chadwell  
10 speaks, thank you. And let's go off record  
11 while Mr. Chadwell distributes what he's got.

12 (Off the record.)

13 JUDGE CLIFTON: All right, we're  
14 back on record, it's 5:56, and Mr. Black, I'm  
15 aware that in four minutes you have to slip  
16 away and I understand that. So, if we don't  
17 get to ask you questions it's okay. All  
18 right, you remain sworn, and would you again  
19 state and spell your name.

20 Whereupon,

21 ARTHUR B. CHADWELL,  
22 recalled as a witness herein, having been

1 previously sworn, testified as follows:

2 THE WITNESS: Arthur Chadwell, A-  
3 r-t-h-u-r, C-h-a-d-w-e-l-l.

4 JUDGE CLIFTON: Thank you, you may  
5 proceed.

6 MR. HILL: Your Honor, if we  
7 could, we'd like to ask him just a few  
8 questions before he --

9 JUDGE CLIFTON: All right, let me  
10 interrupt you Mr. Chadwell and do you want to  
11 begin? Ms. Schmaedick, you may ask questions  
12 that you have for Mr. Black.

13 EXAMINATION

14 BY MS. SCHMAEDICK:

15 Q Thank you, Mr. Black for your  
16 testimony, and I'll say I can appreciate  
17 needing to pick up your child, so I will be  
18 brief.

19 A Thank you.

20 Q I understand that you're a small  
21 grower, and I believe that you may be the only  
22 small grower who has testified today, so I

1 appreciate you taking time to answer  
2 questions. In your capacity as a small grower  
3 do you support all of these proposals?

4 A I do.

5 Q Not just number nine that you  
6 testified to?

7 A I do, I'm aware and have been  
8 involved in the process and feel the industry  
9 is well aware of the proposals. They've been  
10 vetted within the industry and they're good  
11 for our future.

12 Q And have you interacted with other  
13 small growers or small handlers?

14 A Yes.

15 Q And in your opinion do they also  
16 support, specifically, the small grower  
17 entities?

18 A Specifically the grower component,  
19 I've interacted with other small growers and  
20 all are in full support that I've interacted  
21 with.

22 Q Do you anticipate any negative or

1       increase in costs as a result of these  
2       proposed amendments?

3               A       I believe the changes that are  
4       proposed will make the CAC more efficient and  
5       will actually lower cost for the industry  
6       going forward.

7               Q       And in your opinion, in general  
8       has the marketing order provided you support  
9       as a small grower entity, has it been  
10      beneficial to you?

11              A       Absolutely.

12              Q       Thank you for your time, I have no  
13      further questions.

14              A       Thank you.

15                      JUDGE CLIFTON: Thank you, Ms.  
16      Schmaedick. Mr. Hill?

17                      MR. HILL: Thank you, Your Honor.

18                      JUDGE CLIFTON: That's all? Any  
19      other questions of Mr. Black before he leaves?  
20      All right, thank you so much Mr. Black, that  
21      was important, thank you for doing that while  
22      he was still here. Did I admit into evidence?

1 All right, is there any objection to the  
2 admission into evidence of Exhibit 27, which  
3 is Larry Black's testimony? All right,  
4 Exhibit 27 is admitted into evidence. Now,  
5 Mr. Chadwell, back to you.

6 (Whereupon, Exhibit No.  
7 27 was received into  
8 evidence.)

9 THE WITNESS: My name is Arthur  
10 Chadwell, I reside at 723 Success Avenue,  
11 Lakeland, Florida. I am the Manger of the  
12 Citrus Administrative Committee, and I have  
13 few comments on the registration of shippers.  
14 I have included a copy of the Florida  
15 Department of Agriculture and Consumer  
16 Services FDACS Division of Fruit and Vegetable  
17 Inspection Manifest, it is the legal sized  
18 document which provides the documentation  
19 required by the order, as well as the Florida  
20 Department of Citrus rules.

21 This is a document that provides  
22 the committee with shipment information by

1 completed, by documents, the shipment  
2 information, well I don't, it's completed by  
3 a document of fresh shipments as well as a  
4 sample of the sample shipper registration  
5 form.

6 MR. HAMNER: Would you like  
7 Kathleen to re-write that?

8 THE WITNESS: Is there any  
9 questions?

10 JUDGE CLIFTON: Pardon? Just  
11 leave it like it is, it's fine.

12 THE WITNESS: I thought it was  
13 important that, this is very much on the  
14 administrative side of the committee and  
15 that's why I chose to go, to present this  
16 additional information that I am most familiar  
17 with. It benefits the committee, improves  
18 communication amongst, with growers, it aids  
19 committee with compliance, those are the two  
20 main issues for this. Shipper registration,  
21 the shipper registration, and I have included  
22 a sample form that we have developed, but

1 shipper registration will be completed by the  
2 shipment. The shipper must have a Florida  
3 citrus fruit dealers license, as Mr. Black has  
4 presented in his testimony. It would provide  
5 the committee with contact information, a  
6 physical address for their packing facility,  
7 a billing address approved by the manger, and  
8 then the committee would post-approve my  
9 actions in approving the registrations.

10 Fresh shipments time frame, to  
11 reiterate fresh shipments begin in late  
12 September to early October. 95 percent of the  
13 fresh shipments occur October through April.  
14 The majority of the shippers have completed  
15 shipments by late April. Five percent of the  
16 fresh shipments occur after, in April through  
17 June. And there is approximately anywhere  
18 from 60 days to 150 days between seasons.

19 Due process for shippers, our  
20 discussion of this way back in developing this  
21 was concerned that, what kind of due process  
22 would we have. We have the internal control

1 policies which are reviewed and approved  
2 annually, in their internal controls invoicing  
3 policies are in the internal controls. Each  
4 season the committee reviews and submits the  
5 CAC compliance plan to the secretary for  
6 approval. The compliance plan outlines time  
7 frames for collection of assessment, and it  
8 states in there payments are due 30 days after  
9 invoice date, past due, first past due notices  
10 are mailed after the 30 days, and second past  
11 due notices are certified, or mailed certified  
12 mail after 40 days.

13 In summary, this is going to be an  
14 aid to support compliance. It's cost neutral,  
15 promotes communications with shippers and is  
16 supported by the industry. I also have  
17 included just, I thought it would be good for  
18 the record that I have included a copy of the  
19 manifest, which is the legal document for the,  
20 that is for the division of fruit and  
21 vegetable, which is authorized under the order  
22 as I mentioned earlier, and this contains the

1     pertinent information required for regulation  
2     of shipments. And this document is certified  
3     by the division, before we get the information  
4     that we use in the collection of assessments,  
5     and also if there were a violation of any  
6     greater sized regulations. So, I just wanted  
7     to show that it's a very detailed document,  
8     nothing would change in our registration of  
9     shippers that would, that we would still use  
10    this document, and so it wouldn't be any  
11    change.

12                 The other thing I've included is a  
13    regulation bulletin just to show, I just  
14    mentioned a time or two, by varieties that are  
15    regulated what the minimum grade size and if  
16    they're interstate or export. And I just  
17    thought it would be good for the record to  
18    have the documentation of what we put out as  
19    the regulations required by, when recommended  
20    by the committee and approved by the Secretary  
21    of Agriculture. So, I'm open to any questions  
22    that you may have.

1 JUDGE CLIFTON: All right,  
2 questions for Mr. Chadwell on this part of his  
3 testimony? Ms. Schmaedick.

4 BY MS. SCHMAEDICK:

5 Q Thank you Mr. Chadwell for your  
6 presentation. Can you tell me, in the  
7 development of this proposal was there any  
8 research done on other agricultural marketing  
9 order programs that have this authority?

10 A Yes, in the development of this we  
11 used the Florida Tomato Committee, yes, the  
12 Florida Tomato Committee and their marketing  
13 order. So, we were, we didn't try to, we used  
14 language that had already been approved in a  
15 different marketing order and had been  
16 successfully used. So, we went to language  
17 that was in an order that had been working for  
18 an order and for an industry, that's where we  
19 modeled this from.

20 Q And did you have or enter into any  
21 discussions with that industry in terms of the  
22 successfulness of that authority?

1           A       In the past year I have talked to  
2 Reggie Brown, the manager of the Florida  
3 Tomato Committee, and talked to him about it's  
4 effectiveness for his industry, and he thought  
5 it was a very good tool, and suggested that it  
6 would be a good tool for our industry.

7           Q       Do you anticipate a situation  
8 where there may be a, well first of all let me  
9 ask for clarification, what happens if you  
10 have this handler registration authority in  
11 effect, what happens if a handler does not pay  
12 their assessments?

13          A       That's why I put, if you'll notice  
14 that's what, in our, we are approximately a  
15 six month industry, and so because we, when we  
16 assess a shipper it is on certified,  
17 documented shipments. So there is a time  
18 lapse, so when we start shipping in October  
19 it's almost the end of November, a three to  
20 four week time frame before we get the  
21 certified numbers. So there's, we're always  
22 playing catch up so to speak. And so our

1 season, as I mentioned earlier, ends in March  
2 to April, and so those billings would go out,  
3 by then as the shipments are declining the  
4 certification process speeds up. But in, our  
5 physical year ends July 31, and so we would  
6 have, the shipper would have time to, you  
7 know, go through our due process. Then we  
8 have, with the season starting in last  
9 September, October, there is that, almost 150  
10 day time frame from when they last did their  
11 shipments, when we could, you know, do the due  
12 process on billing, and before they start  
13 again. And so because of that length of time  
14 frame we feel that, you know, that a shipper  
15 would have more than enough due process to pay  
16 their assessments, before the beginning of  
17 another season.

18 Q And what would happen if they did  
19 not pay those assessments?

20 A I would anticipate, of course this  
21 just give us authority, we would have to write  
22 those rules, but my anticipation was that any

1 marketing order violation, be it a grade size  
2 violation and or an assessment, after due  
3 process they would have to clear it up before  
4 they could be issued a license to operate.

5 Q So, for clarification, are you  
6 saying that they, if they were in violation,  
7 having not paid their assessments, that they  
8 could potentially not be able to ship outside  
9 of the State of Florida?

10 A I would say so, yes. To me it  
11 would be any regulated area, anywhere that we  
12 regulate the fruit they would not be able to  
13 ship to interstate or export markets.

14 Q Would they be able to ship within  
15 the State of Florida, as long as DOC regulated  
16 it?

17 A Yes, because that is not, we do  
18 not regulate that fruit, so yes, that would  
19 not be part of it, under the existing law  
20 without the intrastate regulation, that's  
21 correct. But the DOC has their own collection  
22 in the State of Florida, as you would suspect,

1 have their own due process on this. This was  
2 mainly put in, just there again, to have the  
3 authority to use as a tool for compliance and  
4 not knowing what lies ahead. But we thought  
5 it was a good idea, the industry did, to have  
6 shipper registration, to just give us one more  
7 layer of control on compliance. And also, a  
8 more important tool to be able to communicate  
9 with those shippers.

10 Q Within your industry are there  
11 currently examples of handler not paying  
12 assessments?

13 A We, the industry has a very good  
14 track record on handlers paying assessments,  
15 to say it is a problem that's not so.  
16 However, in the tough economic times there  
17 are, from time to time, shippers that go out  
18 of business at the end of the season, and  
19 without notice. And so this is, and it's  
20 usually at the end of the season, and so  
21 there's a lag in getting the certified numbers  
22 and all. So, from time to time there are

1 cases where shippers have gone out of business  
2 and left the marketing order with unpaid  
3 assessments. But at the same token, by that  
4 state, they've left growers, the Department of  
5 Citrus, the Department of Agriculture,  
6 everybody in, we're not alone. You'll find  
7 out that when a shipper, a handler that is in  
8 financial trouble, be in financial trouble  
9 with everyone, starting with the grower most  
10 of the time.

11 MR. HAMNER: Melissa, can I, this  
12 is George Hamner. But when we did this at the  
13 committee level it was after we considered  
14 intrastate, which is now here, we considered  
15 it and we had done increased assessment  
16 potential, this was kind of the last thing in  
17 line. For the future, if we decide, if the  
18 DOC did not exist and we had to have some form  
19 or fashion to protect the CAC in collecting  
20 assessments that we don't have today. The  
21 anticipation would be registration would be  
22 like a license, you couldn't ship without it

1 if you didn't pay your bills. That was in a  
2 nutshell. But we haven't written, because  
3 that, we haven't gotten to the point of that,  
4 we haven't written any of the, that kind of a  
5 compliance penalty since it's only  
6 authorization to do so.

7 BY MS. SCHMAEDICK:

8 Q Thank you for that clarification.  
9 Mr. Chadwell, have you found that the, what  
10 you describe as a due process that you  
11 currently have within your compliance plan, is  
12 that effective, the outline of time lines and  
13 notices?

14 A Yes, it's, we've been effective in  
15 collecting assessments, except for those cases  
16 where they go out of business and close, just  
17 close their doors. And then that time, and  
18 most of those end up in bankruptcy. But yes,  
19 we are successful in collecting, it's just  
20 that every now and then you get a shipper  
21 that, in most cases these are people that come  
22 into the business for a year or two and then

1 out. As you heard today, most of these  
2 businesses have been around for decades. But  
3 the cost of getting in the business now we  
4 have fewer people coming in, just because of  
5 the decline in production and shipments. But  
6 every now and then you'll get somebody that  
7 starts up, and is not as familiar with the  
8 regulations, all regulations not just ours.  
9 So, we thought this would be a tool that we  
10 could use, and we felt comfortable with the  
11 time frame between when we end the season and  
12 when we start, that that gave plenty of time  
13 for the due process to be served to the  
14 handler. Because these, technically the  
15 handler is taking the assessment from the  
16 grower returns. So it's the grower's money  
17 that they are not remitting to us.

18 Q Thank you, no further questions,  
19 thank you.

20 JUDGE CLIFTON: Mr. Chadwell, do  
21 you have anything you'd like to add?

22 THE WITNESS: No, I guess the only

1     thing is that we were, in discussing this and  
2     bringing it forward we were very conscious of  
3     the due process to make sure that handlers  
4     were afforded the opportunity. And we felt  
5     that as we stated within our time frames and  
6     the 30 day first notice, then the second  
7     notice and by noticing with certified mail,  
8     that we were affording ample time to and due  
9     process for handlers. And this, and then when  
10    the registration would not occur the first  
11    day, August 1, it would occur when they were  
12    getting ready to ship. So, that adds another  
13    60 days, so we felt that there was going to be  
14    ample time if and when we ever had to pull a  
15    registration, to clarify that before the  
16    beginning of a season.

17                   JUDGE CLIFTON: Are there any  
18    questions of Mr. Chadwell on any of these  
19    exhibits or this part of his testimony from  
20    anyone? Is there any objection to the  
21    admission into evidence of Exhibit 28? There  
22    is none. Exhibit 29, which is the power

1 point? There is none. Exhibit 30, which is  
2 the registration form? Exhibit 31, well wait  
3 a minute, what is 30, 30 is not the  
4 registration form, it's the manifest?

5 THE WITNESS: It's the manifest.

6 JUDGE CLIFTON: It's the manifest,  
7 thank you. 31, which is the registration  
8 form, or 32, what do I call 32, Mr. Chadwell?

9 THE WITNESS: That's a regulation,  
10 Citrus Administrative Committee bulletin.

11 JUDGE CLIFTON: A regulation  
12 bulletin, all right. Is there any objection  
13 to any of those being admitted into evidence?  
14 There is none, Exhibits 28, 29, 30, 31 and 32  
15 are admitted into evidence. Is there any  
16 other evidence to come before this proceeding?  
17 Mr. Hill?

18 (Whereupon Exhibits No.  
19 28 through 32 were  
20 marked for  
21 identification and  
22 received into evidence.)

1                   MR. HILL: There is no evidence, 1  
2 through 32, that's fine --

3                   JUDGE CLIFTON: Yes, you may do  
4 that now, do you want to do anything further?

5                   MR. HILL: Just to propose that we  
6 very much make the proposed changes --  
7 necessary to --

8                   JUDGE CLIFTON: All right, very  
9 good. I'd like to make two comments. One is  
10 transcript will be posted on an agricultural  
11 marketing service website, the exhibits will  
12 be posted, the proposals to correct the  
13 transcript should be posted there to if anyone  
14 has any proposals to correct the transcript.  
15 Those are not made to improve people's  
16 grammar, those are not even made to correct a  
17 witnesses mis-statement. The only reason for  
18 transcript corrections is if the court  
19 reporter got it wrong. So, even if it's a bit  
20 of a mess, we leave it that way and the people  
21 who are putting together the orders know that.  
22 And it's not necessary that a persons written

1 testimony match what was said from the witness  
2 stand, rather the person who is making use of  
3 it can look at both of them and figure out  
4 what to use.

5 So, there shouldn't be a lot of  
6 transcript corrections. But if people's names  
7 are spelled wrong and you know the right name  
8 you should fix it, or if the court reporter  
9 just mistook the word, got it wrong, then we  
10 need to fix it. All right, do we know where  
11 people would look on the website to find the  
12 proceedings from this hearing, what part of  
13 the website they will go to?

14 MS. SCHMAEDICK: This is Melissa  
15 Schmaedick. On the marketing order and  
16 agreement division website there are specific  
17 links to each marketing order program. If one  
18 were to click on the marketing order 905, all  
19 information will be listed on that particular  
20 page.

21 JUDGE CLIFTON: Excellent, very  
22 good, all right, great. Now, I'll now

1 entertain anything further that we need to put  
2 on the record before we break down and depart.  
3 Ms. Schmaedick?

4 MS. SCHMAEDICK: Will there be an  
5 opportunity to file briefs?

6 JUDGE CLIFTON: Yes, normally the  
7 transcript will take about 30 days before you  
8 have it in your hand. You should have the  
9 opportunity to consider it and file any  
10 corrections and briefs. Some people like to  
11 do that as one package, while their writing  
12 their brief they're looking for corrections to  
13 the transcript. Anything you want to do is  
14 fine and any time table is fine, so long as  
15 you do it from receipt of the transcript. So,  
16 I can set parameters now if you want them, and  
17 then for example, let's find out first do you  
18 want to make your proposed transcript  
19 corrections simultaneously with submitting a  
20 brief? First of all, let's find out, who  
21 might be submitting briefs? Let's go off  
22 record for just a moment.

1 (Off the record.)

2 MR. HAMNER: We found out if  
3 you're not, you miss a meeting you get to be  
4 chairman, you volunteer you get to be  
5 something else, so no.

6 JUDGE CLIFTON: We're back on  
7 record, it's 6:22. So, some of the things  
8 that we might do, for example, is the  
9 transcript is deposited with the hearing  
10 clerk, along with the invoice. The hearing  
11 clerk then keeps the original as the record  
12 copy, and then forwards the copies that the  
13 agricultural marketing service ordered, and  
14 forwards the bill to the agricultural  
15 marketing service. That, the date that the  
16 hearing clerk receives the transcript is  
17 identifiable. So you could measure from that  
18 date and for example say proposals to correct  
19 the transcript would be due 45 days after the  
20 transcript is deposited with the hearing  
21 clerk.

22 You could also say, and then I

1 would expect the government to help there, as  
2 well as the industry, then you could either  
3 have your briefs due at that same time, or  
4 later than that. So, what would you prefer,  
5 for example, Mr. Chadwell, since you might be  
6 writing one? Do you think 45 days will be  
7 enough, consider where you are in the  
8 calendar.

9 MR. CHADWELL: Yes.

10 JUDGE CLIFTON: I know you're  
11 busier at some times than others.

12 MR. CHADWELL: 45 days would be  
13 fine.

14 JUDGE CLIFTON: Okay, now at 45  
15 days, will probably start about 30 days from  
16 now, maybe a little shorter.

17 MR. CHADWELL: You get tier one in  
18 30 days, tier two is 45 days.

19 JUDGE CLIFTON: All right, then  
20 I'm going to order that proposed transcript  
21 corrections, if you have any. Now, you don't  
22 have to make immaterial proposals, you don't

1 have to do misspellings, but it's helpful if  
2 its peoples names. So, there don't have to  
3 be, you don't have to correct everything in  
4 the transcript, but material changes, things  
5 that would make a difference in the outcome  
6 should be addressed, if the court reporter got  
7 it wrong. If the court reporter got it right,  
8 but you know its wrong, you should address it  
9 in your brief. Such and such was said, that's  
10 not true.

11 All right, so both the proposed  
12 transcript corrections and the briefs should  
13 be filed with the hearing clerk no later than  
14 45 days after the hearing clerk receives the  
15 transcripts from the court reporter. Then  
16 what I do is I certify the transcript, which  
17 actually means I say what the transcript  
18 consists of, what corrections I approve and  
19 what the exhibits were. Then I'm done, then  
20 it's all up to the agricultural marketing  
21 service to take it from there. All right,  
22 what else do we need to do? Ms. Schmaedick?

1 MS. SCHMAEDICK: I believe that  
2 covers our tasks for the day.

3 JUDGE CLIFTON: All right, very  
4 fine, who will apologize to our hosts for our  
5 tardy departure?

6 MR. HILL: I went out there and  
7 did that before.

8 JUDGE CLIFTON: You're a good man,  
9 thank you Mr. Hill. All right, this concludes  
10 our record at 6:26.

11 (Whereupon, the hearing was  
12 concluded at 6:26 p.m.)  
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