

UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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IN THE MATTER OF: :
: :
LEAFY GREEN VEGETABLES : Docket No.
HANDLED IN THE : AO-FE-09-0138
UNITED STATES; : AMS-FV-09-0029
HEARING ON PROPOSED :
MARKETING AGREEMENT :
NO. 970 :
:

Wednesday,
September 30, 2009

Wyndham Jacksonville Riverwalk Hotel
Starboard Conference Room

1515 Prudential Drive
Jacksonville, Florida

The above-entitled matter came on for
hearing, pursuant to notice, at 8:00 a.m.

BEFORE:

Marc R. Hillson
Chief Administrative Law Judge

APPEARANCES:

ON BEHALF OF THE USDA:

SHARLENE DESKINS, Esq., Office of General

Counsel, Marketing Division

ANTOINETTE M. CARTER, Technical Assistant to
the Chief, AMS

MELISSA SCHMAEDICK, Senior Marketing
Specialist, AMS

ANTHONY J. SOUZA, Federal Program Manager, AMS

SUZANNE DASH, Agricultural Economist, AMS

ON BEHALF OF THE PROPONENTS:

JASON RESNICK, Western Growers

CHARLES HALL, Georgia Fruit & Vegetable
Growers Association

HENRY GICLAS, Western Growers

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Charles Hall	1657	1667	1703	
Bill Brim	1710			
	1716	1717		
Ken Hamilton	1738	1743		
Bo Herndon	1757	1759	1772	
Beth Bland	1775	1786	1837	
EXHIBITS				MARK RECD
48				1656 1667
49				1709 1717
50				1738 1755
51				1756 1759
52				1775 1785

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

2 JUDGE HILLSON: Let's go on the
3 record.

4 Good morning, everybody. It is
5 September 30. We are in Jacksonville,
6 Florida, and today is the beginning of the
7 second site of a seven-site hearing. We had
8 three days in Monterey last week, and we'll
9 have two days in Jacksonville today, in the
10 matter of the Leafy Green Vegetables. I'll
11 just read the docket numbers for the record.
12 Again, it's Leafy Green Vegetables Handled in
13 the United States, docket number
14 AO-FV-09-0138, AMS-FV-09-0029, FV-09-970-1.

15 My name's Marc Hillson. I'm the
16 Chief Administrative Law Judge at the
17 Department of Agriculture, and I'll just
18 repeat what I said last week which is that my
19 role is basically to conduct the hearing. I'm
20 not involved in the decision in any way. My
21 job is to make sure the exhibits and the
22 testimony come in in an orderly fashion; if

1 there's any cross-examination, to make sure
2 that's done also in an orderly fashion.

3 I just want to remind people early
4 to put their cell phones on vibrate or to turn
5 them off, as the case may be. We had 47
6 witnesses, I think, in Monterey, and we had 47
7 exhibits introduced, so this being that it's
8 the continuation of a single hearing, I'm
9 going to ask that the reporter make sure that
10 the page numbers for today's hearing pick up
11 where last week's hearing left off. I'm also
12 going to start the exhibit numbers -- the
13 first exhibit is going to be 48. We had 47
14 exhibits there, so I'm viewing this as one
15 continuous hearing.

16 We've already had all the
17 preliminary exhibits in, and I want to remind
18 people when they testify to -- and whenever
19 they get up to ask questions, to state your
20 name and who you're representing at all times,
21 so that the reporter can make sure -- can get
22 everything as correct as can be.

1 I'm just going to ask real briefly
2 for the people who are here, once again, in a
3 representative capacity to introduce
4 themselves. I'll start off with the USDA
5 panel.

6 MS. DESKINS: My name is Sharlene
7 Deskins. I'm an attorney with the Office of
8 General Counsel, and I'm representing the
9 United States Department of -- I'm
10 representing the Agriculture Marketing
11 Service, which is an agency of the United
12 States Department of Agriculture.

13 MS. CARTER: Antoinette Carter
14 with USDA, Agriculture Marketing Service,
15 Fruit and Vegetable Programs, Marketing Order
16 Administration Branch.

17 MS. SCHMAEDICK: Melissa
18 Schmaedick, USDA, AMS, Marketing Order
19 Administration Branch.

20 MR. SOUZA: Anthony Souza, USDA,
21 AMS, Fruit and Vegetable Fresh Products
22 Branch.

1 MS. DASH: Suzanne Dash, AMS,
2 Economic Analysis Branch.

3 JUDGE HILLSON: Mr. Resnick, I'll
4 turn it over to you.

5 MR. RESNICK: Thank you, Your
6 Honor. Jason Resnick, Western Growers,
7 assistant general counsel, and counsel for the
8 proponent group.

9 MR. GICLAS: Hank Giclas, Western
10 Growers.

11 MR. HALL: Charles Hall, Georgia
12 Fruit & Vegetable Association.

13 JUDGE HILLSON: Okay. And is
14 there anyone else here who's here in a
15 representative capacity who would like to
16 introduce themselves?

17 (No response.)

18 JUDGE HILLSON: Okay. I don't see
19 anyone.

20 Just a couple other reminders.
21 All testimony here is given under oath, and
22 anyone who testifies is subject to examination

1 by the USDA panel and cross-examination by
2 whoever wants to cross-examine them.

3 I know that Mr. Resnick and Mr.
4 English had a conversation last week, and we
5 decided that today would be pretty much a day
6 when the proponents would present their case,
7 and tomorrow would be the day where opponents
8 presented their case, but if there's anyone
9 who can only testify today who's not here on
10 the list who wants to testify, who needs to
11 see me when we have our first break -- we'll
12 have a break in a couple of hours probably.
13 I'll have a morning break, a lunch break, and
14 an afternoon break, if necessary, if we go
15 that long.

16 In any event, even if we end up
17 early today, which is something I can't tell
18 right now, we would still have the hearing
19 tomorrow, because there are people who, I
20 believe, could only come tomorrow and who plan
21 to testify tomorrow, so we will do that no
22 matter what.

1 Are there any other preliminary
2 matters I should mention before I let Mr.
3 Resnick call his first witness?

4 (No response.)

5 JUDGE HILLSON: Okay. Mr.
6 Resnick, you may call a witness.

7 MR. RESNICK: Thank you, Your
8 Honor. Jason Resnick. Is there any need to
9 summarize the marketing agreement for --

10 JUDGE HILLSON: I don't have a
11 need, but if you -- I mean --

12 MR. RESNICK: We're happy to
13 provide it. I see a lot of familiar faces who
14 probably don't want to hear a summary of the
15 marketing agreement, but if anyone in the
16 audience has a desire to hear a summary, we'd
17 be happy to provide that. Otherwise, we would
18 just call our first witness.

19 JUDGE HILLSON: Why don't you just
20 call your first -- I don't hear any demands
21 from people who are here, so why don't you
22 call your first witness.

1 MR. RESNICK: Thank you, Your
2 Honor. The proponent group calls Charles
3 Hall.

4 JUDGE HILLSON: I'm going to mark
5 the statement that Mr. Hall gave me as Exhibit
6 48.

7 (The document referred to was
8 marked for identification as
9 Exhibit Number 48.)

10 JUDGE HILLSON: Mr. Hall, please
11 raise your right hand. You don't have to
12 stand up.
13 Whereupon,

14 CHARLES HALL
15 having been first duly sworn, was called as a
16 witness herein and was examined and testified
17 as follows:

18 JUDGE HILLSON: Okay. Can you
19 please state your name and spell it for the
20 record.

21 MR. HALL: Yes. My name is
22 Charles Hall, H--A-L-L.

1 JUDGE HILLSON: Okay. That was
2 easy. And you have a statement you want to
3 read, sir?

4 MR. HALL: I do, sir.

5 JUDGE HILLSON: Why don't you
6 proceed to do so.

7 DIRECT TESTIMONY

8 MR. HALL: Okay. Thank you, Your
9 Honor. My name is Charles Hall. I'm the
10 executive director of the Georgia Fruit &
11 Vegetable Growers Association. Our
12 association represents the interests of
13 growers, shippers, handlers and allied
14 companies involved in the production and
15 distribution of fruits and vegetables grown in
16 Georgia.

17 In 2008, fruit and vegetable
18 production in Georgia covered over 175,000
19 acres and had a farm gate value of almost \$1
20 billion. In Georgia, the primary commodities
21 covered in the National Leafy Greens Marketing
22 Agreement is cabbage. Georgia produced over

1 9,300 acres of cabbage in 2008 at a farm gate
2 value of 35 million.

3 Georgia also produces 18,000 acres
4 of other leafy greens at a farm gate value of
5 57 million. This acreage includes a small
6 percentage of kale, spinach and leaf lettuce.
7 Most of the other leafy greens under the
8 category of other leafy greens are collards,
9 turnips, and mustard greens, and are not
10 included in the marketing agreement as they
11 are primarily cooked prior to consumption.

12 I'm pleased to provide this
13 testimony in support of the National Leafy
14 Greens Marketing Agreement on behalf of our
15 association. We have worked with other
16 national and regional organizations to develop
17 the proposed leafy greens marketing agreement,
18 and we believe it is an excellent vehicle to
19 maximize the safety of these products that may
20 propose some threat to consumers. We believe
21 with the help of consistent government
22 oversight, the risk of pathogens associated

1 with leafy greens can be reduced.

2 The Georgia Fruit & Vegetable
3 Growers Association is pleased to be a member
4 of the proponent group for this marketing
5 agreement. We have reviewed the proponent
6 testimony submitted at the hearings in
7 Monterey, California, on September 22 through
8 24, 2009. We support the testimony and
9 provisions as presented at the National Leafy
10 Greens Marketing Agreement and entered into
11 the record by the proponents at that meeting.

12 For almost ten years, the Georgia
13 Fruit & Vegetable Growers Association has
14 operated a food safety education program to
15 assist our growers in meeting the requirements
16 that would ensure a safe and wholesome food
17 supply from our farms. Currently we have one
18 full-time staff member and several contracting
19 consultants that work with GFVGA to ensure
20 that their operations meet the appropriate
21 food safety guidelines for third-party audits.

22 As food-borne disease outbreaks

1 have continued drawing national attention, we
2 have lost some consumer confidence in our
3 fresh produce. We believe the National Leafy
4 Greens Marketing Agreement will provide a
5 program to help the consuming public be
6 confident in both domestic and imported leafy
7 greens.

8 The goals of the NLGMA are to
9 provide a mechanism to enable fresh leafy
10 green handlers to organize, to enhance the
11 quality of leafy green vegetable products
12 available in the marketplace through the
13 application of good agricultural and handling
14 practices, to implement a uniform, auditable,
15 science-based food safety enhancement program,
16 to provide for USDA validation and
17 verification of food safety program
18 compliance, to foster greater collaboration
19 between local, state and federal regulators,
20 to improve consumer confidence in leafy greens
21 and fresh leafy greens, and to protect public
22 health.

1 For my testimony today, I would
2 like to address several areas which have
3 generated a number of questions and discussion
4 as the proponent group received input during
5 the educational phase.

6 First, USDA versus FDA: There has
7 been some question as to whether USDA is the
8 proper agency for this as a marketing
9 agreement focused on food safety. The
10 proposal through the National Leafy Greens
11 Marketing Agreement is not intended to
12 override FDA's initiatives, but rather to
13 allow industry to collaborate with FDA, USDA,
14 and state governments to develop a program to
15 meet the needs of all parties.

16 In addition, any best practices
17 adopted by the marketing agreement are to be
18 based on FDA guidance or standards that would
19 be issued by FDA. FDA is the enforcement and
20 policy-making body with USDA providing the
21 operational auditing oversight for the NLGMA.
22 USDA currently has a produce auditing body,

1 both domestically and internationally, that
2 covers good agricultural, manufacturing, and
3 handling practices that are rooted in
4 agricultural industry and understands audits
5 performed in an agricultural setting.

6 The administrative structure of
7 the agreement: The Georgia Fruit & Vegetable
8 Growers Association supports the
9 organizational and administrative structure of
10 the NLGMA. There is an administrative
11 committee that provides governance oversight
12 to the agreement which is organized by zones.
13 The regulation outlines the members per zone
14 making up the committee.

15 While the representation is not
16 perfect, it is workable and regionally
17 represented committee. Although the majority
18 of the leafy green production is in California
19 and Arizona, no zone has controlling votes on
20 this committee. For example, California is in
21 Zone 1, which has six votes. Arizona is in
22 Zone 2 with four votes. The two zones, 1 and

1 2, in which California and Arizona are
2 represented account for only ten of the 23
3 votes on the committee.

4 In addition to handlers and
5 producers on the committee from each of the
6 zones, the administrative committee will also
7 have one representative from the retail area,
8 food service area, the public, and an
9 importer.

10 Small farms: The National Leafy
11 Greens Marketing Agreement is a voluntary
12 program, and as such, it's not mandatory for
13 any handler to participate. It is the policy
14 of the Georgia Fruit & Vegetable Growers
15 Association that any produce offered for
16 commercial distribution and sales should
17 follow good agricultural practices and the
18 minimum guidance as outlined by FDA. It is
19 critically important for all farms to have
20 proper safeguards in place to meet these
21 standards if their produce is in commercial
22 distribution.

1 Some concern has been expressed
2 that small producers are not properly
3 represented on the administrative committee.
4 Section 970.40(a)(9)(B) specifically requires
5 that two producers must be small producers as
6 defined -- two producers on the committee must
7 be small producers as defined in the rules and
8 regulations. As such, it would appear that
9 small growers will have proper representation
10 on the administrative committee.

11 The technical review board: The
12 regulation provides for a technical review
13 board which is critically important to the
14 National Leafy Greens Marketing Agreement.
15 This is the body charged with developing the
16 food safety guidelines and audit metrics
17 utilized by the marketing agreement. Section
18 970.45 in the agreement specifies the people
19 making up the technical review board. The
20 board is charged with appointing subcommittees
21 as necessary to facilitate input and review
22 from regions throughout the production areas

1 as metrics are being developed.

2 There's much interest in these
3 metrics and the best practices, as they can
4 have a great impact on the cost of food safety
5 programs required by the signatories. The
6 technical review board and the subcommittees
7 will use best science-based technologies from
8 several disciplines in developing the metrics
9 for the various production areas under
10 consideration. Utilizing this system, the
11 technical review board plays a key role in
12 tailoring the metrics to enhance food safety
13 without adversely impacting smaller growers,
14 handlers, or their environments.

15 This scientific review system,
16 along with the make-up of the board, was
17 designed to bring together varying expertise
18 in one body. GFVGA believes this is the most
19 effective method to address sound scientific
20 practices and regional differences. The
21 proposed National Leafy Greens Marketing
22 Agreement rule would, at industry's

1 recommendation, introduce a blueprint for food
2 safety that brings together growers, handlers,
3 and our customers to ensure we are producing
4 the safest product possible for the U.S.
5 consumer.

6 In closing, GFVGA believes it is
7 in the best interest of not only Georgia
8 producers but the entire leafy green industry
9 to approve the National Leafy Greens Marketing
10 Agreement. We see this proposed agreement as
11 a strong, effective tool to minimize risk,
12 build consumer confidence, and ensure a safe
13 food supply. We want to thank USDA and FDA
14 for their support of this concept and the
15 willingness to provide guidance in helping us
16 understand the rules we must follow in
17 recommending this proposal.

18 We appreciate USDA's willingness
19 to hold this series of hearings so our leafy
20 green handlers can vote to put this agreement
21 to work for the U.S. consumer as soon as
22 possible. Thank you for the opportunity to

1 present this testimony.

2 JUDGE HILLSON: Thank you. Do you
3 have any further direct of this witness?

4 MR. RESNICK: No, Your Honor.

5 JUDGE HILLSON: Okay. I'm going
6 to receive Mr. Hall's statement into evidence
7 as Exhibit 48.

8 (The document referred to, having
9 been previously marked for
10 identification as Exhibit Number
11 48, was received in evidence.)

12 JUDGE HILLSON: And I'm going to
13 ask the USDA panel if they have any questions
14 of this witness. Ms. Schmaedick?

15 MS. SCHMAEDICK: I just want to
16 make sure everybody can hear me. Okay?
17 Melissa Schmaedick, USDA.

18 CROSS-EXAMINATION

19 BY MS. SCHMAEDICK:

20 Q Good morning.

21 A Good morning.

22 Q And thank you, Mr. Hall, for your

1 testimony. My first question is: Can you
2 describe your involvement with the proponent
3 group and the drafting of the proposal?

4 A Yes, ma'am. The Georgia Fruit &
5 Vegetable Growers Association was a member of
6 the proponent group that was organized as we
7 started putting together this draft of the
8 agreement. We were involved with much of the
9 discussion as the drafting occurred, again
10 putting in our representation of the Southeast
11 as far as growers and handlers of leafy greens
12 within the Southeast, numerous meetings,
13 numerous conference calls.

14 We also did -- have done a good
15 bit of public relations and promotion and
16 education of our growers and other growers
17 across the nation. For that, i chaired a
18 webinar for the proponent group, to educate
19 growers about what the agreement would be
20 about, so --

21 Q So within the area that you
22 represent regionally here, would you say that

1 there's been a significant amount of outreach
2 to explain and discuss this proposal among
3 growers and handlers?

4 A Within our membership, we have
5 done as good a job as we thought possible.
6 There's been several articles in our
7 publications. When the webinar and when this
8 hearing was scheduled, we promoted and
9 publicized those hearings. Our board of
10 directors have discussed the marketing
11 agreement, so I think there has been a
12 considerable amount of outreach to inform
13 growers.

14 And all I can speak for really is
15 for our membership, because that's the only
16 one we have direct contact. However, we do
17 host a conference each year that has a mailing
18 list of about 3,000 people, and much of the
19 information went to that -- with regard to the
20 webinar went to that list also, to make sure
21 they're aware of the webinar was taking place.
22 And I think we had very good participation in

1 the webinar. I don't remember what the final
2 numbers were, but it was a pretty good
3 audience that we had on the webinar.

4 Q And within your group, were there
5 opportunities for people to comment or provide
6 input during the drafting process?

7 A Within the board -- and we asked
8 for input. We didn't receive any direct input
9 from growers, other than board members and
10 people that were the leaders within the leafy
11 green industry in the state.

12 Q Okay. Thank you. You mentioned
13 that your primary product that you cover in
14 Georgia is cabbage.

15 A Yes.

16 Q Is that correct? Could you
17 describe the cabbage industry just briefly for
18 us? What is its growing season? Is it
19 typically packed in the field? Does it go to
20 further processing? Could you just --

21 A If I could delay that question,
22 we'll have some growers that will be

1 testifying that can certainly address the
2 production --

3 Q Sure.

4 A -- of cabbage much better than I
5 can from that standpoint. Essentially, there
6 is a spring crop and a fall crop in cabbage,
7 so it is a double-crop crop in Georgia, but as
8 far as specifically on the production aspects
9 of it, I think some growers could address that
10 better than I could.

11 Q Okay. Certainly. Among your
12 membership, do you represent both small and
13 large entities according to the SBA
14 definition?

15 A We do. Yes. I can't give you
16 numbers on that, but we do have both. We have
17 three different membership categories, and the
18 small -- there are small producers that are
19 members of the association.

20 Q Okay. In your testimony on page
21 1, the third paragraph, you state that, "We
22 believe, with the help of consistent

1 government oversight." Can you explain what
2 you mean by that?

3 A Well, under the Leafy Greens
4 Marketing Agreement, there would be, if you
5 sign on as a signator, it becomes the auditing
6 process and the guidance documents, a part of
7 the agreement, the metrics, becomes a
8 mandatory document for the handlers and then
9 the growers that are operating with that
10 handler. That is an audited process that
11 would be required as a part of that, and
12 that's what I'm referring to as far as
13 government oversight from that standpoint.

14 Right now, most third-party audits
15 are done as generated based on the customer,
16 and some customers do not require -- very few,
17 but some customers would not require third-
18 party audits at this point, so --

19 Q Would that government oversight
20 also apply to the development of the proposed
21 metrics?

22 A I'm going to have to -- I don't

1 have the agreement in front of me. We
2 certainly would have -- I would expect the
3 technical review committee to have USDA and
4 FDA personnel involved with that in the
5 development of those metrics. Right now, most
6 of the metrics within food safety industry has
7 been -- is following the FDA guidance
8 documents, and I don't know whether it's a
9 legal within the document itself that we have
10 FDA and USDA item -- individuals on the
11 technical review, but certainly we would have
12 them as a part of that activity.

13 Q Okay. You mentioned that for
14 almost ten years, your organization has been
15 operating a food safety education program --

16 A Yes.

17 Q -- to assist your growers. So two
18 questions: So if you've been doing that for
19 ten years, that started in 2000.

20 A Roughly 2000, yes.

21 Q Okay. And can you describe what
22 your education program does in general?

1 A I'll be glad to do that, and also
2 the director of that program will be having
3 testimony later in this hearing, too, but --

4 Q Okay.

5 A -- generally -- basically, we
6 provide consulting service for our growers to
7 get them prepared for a third-party audit. We
8 do not -- our association does not do the
9 audit themselves, the third-party audit. This
10 is done by an outside body. When we started
11 the program in 2000, we had a collective,
12 cooperative agreement, if you will, between
13 the Georgia Department of Agriculture, the
14 University of Georgia, our association, and
15 the Georgia Crop Improvement Association.
16 The Georgia Crop Improvement
17 Association is the auditing body. They
18 have -- they audit a number of different
19 items, including the organic program in
20 Georgia, so they are auditors. They do
21 understand the metrics, and they understand
22 how to go in and audit from that standpoint.

1 Our program basically works with
2 the grower, making sure they are educated on
3 how they need to position themselves as far as
4 the recordkeeping, the information they need,
5 the improvements they may need on their
6 facilities, to meet the basic food safety
7 standards.

8 Q And again, you mentioned earlier
9 that your membership includes small grower --

10 A Yes.

11 Q -- entities. Can you speak to the
12 experience of those smaller businesses in your
13 education program, or --

14 A We have had a number -- I mean,
15 and I think Beth Bland can address
16 specifically the numbers that we have, that
17 would be considered small growers in that
18 program better than I can, because she works
19 directly with that, but I do know that we've
20 had a number of small growers that are
21 participating in that program, to reach a
22 third-party audit certification in that

1 program.

2 We have a certification that we
3 call the Georgia GAP Program, and the grower
4 can go through the program and be audited
5 under the Georgia GAP standards which are very
6 similar to another third party, or they can be
7 audited under the Primus Labs standards, so
8 they can receive two -- one or two different
9 classifications, either as a field audit or as
10 a field and a packing facility audit.

11 Q And, again, this has been going on
12 for about ten years.

13 A That's correct. And I think we
14 now have 60 -- roughly 60 farms that have been
15 certified under this program.

16 Q Okay. On page 2 of your
17 testimony, under the goals of the proposed
18 NLGMA, you state, "to foster greater
19 collaboration with local, state and federal
20 regulators." So can you explain what that
21 might include?

22 A Primarily, my envision on this --

1 and I can't speak for all the proponent group.
2 I think this is what the general feeling is,
3 that as the technical review boards are
4 reviewing the metrics and the production
5 practices and those things that would fall
6 within proper food safety guidelines, it would
7 be a collaboration between those agencies, the
8 state agencies and the local agencies from
9 that standpoint.

10 Within Georgia, we're very
11 involved with our Georgia Department of
12 Agriculture, and they participate as a member
13 of our Georgia GAP committee. We identify
14 those areas which may or may not be
15 appropriate from a food safety standpoint, and
16 they also, as far as a part of the audit
17 process, there are certain areas that they are
18 responsible for, particularly within the
19 pesticide area, that they oversee within that
20 program, so I think, again, this will keep all
21 these bodies working together and pulling
22 together from that standpoint, so --

1 Q So would you agree that one of the
2 goals is to -- of this collaboration is to
3 develop regulation that does not conflict with
4 existing programs? Is that part of your goal?

5 A If the existing programs do not --
6 are not meeting the proper metrics for food
7 safety, I would say it would be to either
8 address those programs that, you know, may not
9 be -- I mean, if there are programs out there
10 that aren't science-based, then it would be to
11 address those issues, but also identify areas
12 where there may be specific regional
13 differences.

14 I mean, our association feels that
15 there needs, as these metrics are developed,
16 there needs to be looked at from a regional
17 standpoint, the practices that we have --
18 production practices that we have in Georgia
19 may not be the same as the production
20 practices in Ohio. It doesn't mean that we're
21 not producing safe product. It's just that
22 the practices may be different.

1 So as those metrics are developed,
2 then they need to be addressed from a regional
3 production basis and identified to make sure
4 that they are meeting proper food safety
5 guidances and guidelines.

6 Q So you mentioned the term
7 "region," and you also stated that you were
8 familiar with the hearings that took place in
9 Monterey. So can you describe to me what you
10 mean by the term "region" and some of the
11 factors that might go into determining what a
12 region is?

13 A I would define "region" as that
14 area that is contiguous from the production
15 practice standpoint. Our production practices
16 in the Southeast, particularly in South
17 Georgia, may be different than a region of
18 Southern California that may be more of a
19 desert-related type climate where we have a
20 very high humidity climate, so there are going
21 to be regional differences.

22 As the metrics are developed,

1 there's going to be regional differences that
2 will need to be addressed in putting together
3 those metrics, so that we are following good
4 production practices, but also following good
5 food safety practices from that standpoint, so
6 that's -- when I define -- when I say,
7 regional, I'm really speaking more of a
8 production practice region, climate region,
9 than I am -- would be specifically geographics
10 on what, too, because the Southeastern area's
11 going to be different than Southern California
12 area.

13 Q In some cases, could a production
14 region fall into two different zones?

15 A It could, because currently the
16 zones as defined in this, Zone 5 Florida is
17 in. Zone 4, Georgia's in. There is leafy
18 green production in North Florida that would
19 be -- geographically region-wise and
20 production region-wise, North Florida and
21 South Georgia are very similar, production and
22 similarities from that standpoint. So there

1 could be overlap, regional overlaps, within
2 the zone structure of the administrative
3 committee.

4 Q Okay. On page 2 of your
5 testimony, you state that, "The proposal is
6 not intended to override FDA's initiatives,
7 but rather to allow industry to collaborate
8 with FDA and USDA and state governments to
9 develop a program that meets the needs of all
10 parties." When you say, all parties, does
11 that also include perhaps the different
12 interests of, let's say, organic versus
13 conventional?

14 A I would hope whatever metrics we
15 come up with would be ones that would be --
16 that could cover all parties, that within the
17 guidance of what FDA guidelines are for safe
18 product, so that we're working within the
19 overall FDA guidance documents for what would
20 be considered safe food safety practices, and
21 that the production practices can be
22 established so that we can meet those

1 guidelines.

2 Q So your understanding is that the
3 guidelines could co-exist with the national
4 organic program, for example.

5 A I can't -- I don't know the
6 national organic program, so I really can't
7 address how those food safety guidelines will
8 match up from that standpoint, but I think we
9 all have to, you know, have -- no matter how
10 the product is produced, it has to be produced
11 safely.

12 Q Okay. And the intent is to
13 collaborate.

14 A That's correct.

15 Q Okay. You've mentioned a couple
16 of times the FDA guidance document. Can you
17 tell us more about what that document is?

18 A FDA -- in 1998, FDA issued the --
19 and I may be misquoting the proper title, but
20 basically a guidance document for proper
21 growth and use of -- under the food safety
22 guidelines for production of fresh fruits and

1 vegetables. That has been served as basically
2 our overall umbrella of guidance until
3 recently, and they just have recently come out
4 with specific guidance documents for leafy
5 greens, tomatoes and melons, so, again -- and
6 it's under, I guess, a rulemaking comment
7 period at this point. So where exactly those
8 guidance documents will go, I'm not sure.

9 I think that as we develop a
10 metrics under the Leafy Greens Marketing
11 Agreement, that metrics, from a collaborative
12 standpoint of industry, academia, federal
13 regulators working together to create those
14 metrics, I would hope that at some point --
15 what I envision would be that these would --
16 this would become the FDA guidance, of course,
17 working within the -- knowing that FDA has
18 ultimate authority on this, but working
19 together with that, we can come up with a
20 document that would be proper from that
21 standpoint.

22 Q You don't happen to have copies of

1 those FDA documents, do you?

2 A I do not with me. No.

3 Q Okay. On page 3 of your testimony
4 under administrative structure -- and, again,
5 sort of drawing from some of the testimony
6 that we received in Monterey -- would you be
7 opposed to a reconsideration of the definition
8 of zones, if that were appropriate?

9 A I think that if the testimony, you
10 know, drives in that direction, I don't think
11 we're -- I would not be opposed to it. You
12 know, we certainly need to look at, you know,
13 how that structure would work out.

14 Q Uh-huh. And what about the
15 membership of the technical review board and
16 the marketing board? Would you be opposed
17 to --

18 A Not -- again, we've had some
19 discussions of other areas that may need to be
20 represented on the technical review board
21 also, so the proponent group may be presenting
22 testimony later, suggestions of what could be

1 added to that technical review board.

2 Q Okay. Thank you. My last
3 question is regarding the language in the
4 proposed order that talks about a
5 certification mark. What is your
6 understanding of how that mark would be used
7 under the proposed program?

8 A Again, I don't see -- I don't have
9 the language in front of me. My understanding
10 would be that that mark would be used as a
11 marketing mark, so that a consumer would
12 realize that if they're getting a product
13 that's -- ha been under this marketing
14 agreement, that that mark should represent
15 that the growing, handling, producing areas of
16 that particular product has followed good food
17 safety practices.

18 Q And in your opinion, is there a
19 relationship between the quality of a product
20 and the lack or minimization of the potential
21 for contamination?

22 A I assume you could probably

1 produce a poor head of lettuce under very good
2 food safety guidelines, but certainly those
3 that are being produced under good food safety
4 guidelines would tend to be a better product.

5 I don't -- I think that that's -- when
6 you're -- how to say that? The guidelines are
7 not going to create a quality product. It's
8 going to create a quality process, and that --
9 and generally the product that comes out at
10 the end of that process is going to be a
11 quality product.

12 Q Okay. Thank you.

13 MS. SCHMAEDICK: I don't have any
14 other questions.

15 JUDGE HILLSON: Any other
16 questions from the panel? Go ahead, Ms.
17 Carter.

18 MS. CARTER: Antoinette Carter
19 with the USDA.

20 BY MS. CARTER:

21 Q Good morning, Mr. Hall.

22 A Good morning.

1 Q Just a few follow-up questions for
2 you.

3 A Okay.

4 Q With regards to the membership of
5 Georgia Fruit & Vegetable Growers Association,
6 how many members does your organization
7 represent?

8 A We have approximately 400 members.
9 Approximately 350 of those are growers. The
10 other 50 or so are allied seed, supplier-type
11 members.

12 Q Okay. And you mentioned that --
13 mentioned the Georgia GAP Program.

14 A Yes, ma'am.

15 Q Are the majority of your growers
16 associated with that program, or did you say
17 about 60 of those growers?

18 A Approximately 60 farms have been
19 certified under the Georgia GAP or we have
20 provided service to them as far as
21 consulting -- working with them on the -- on
22 being certified, either under a third-party

1 audit that's not necessarily Georgia GAP or
2 Georgia GAP certification.

3 Q Now, are those producers, do they
4 grow conventionally as well as organic, or do
5 you know that information?

6 A I would -- Ms. Bland can answer
7 that specifically. I think the majority of
8 those, if not 100 percent, are conventional
9 growers.

10 Q Okay. Now, do you have members
11 that you -- as a part of your association that
12 do grow organically?

13 A We do.

14 Q Do you know what --

15 A I can't give you -- you know, I'm
16 aware of from a personal standpoint, because
17 I know the members, you know, between five and
18 ten members that I know that are -- but there
19 may be a number more than that, because a
20 number of our growers do grow organically, you
21 know, in some areas, again depending on the
22 crop.

1 Q Do any of your growers currently
2 source product to signatory handlers under,
3 say, the California or Arizona marketing
4 agreements?

5 A To my knowledge, no.

6 Q None of them do. Okay. And I
7 guess with regards to the national proposal,
8 have you looked at what the impact will be on
9 your membership at all?

10 A I'm not sure I understand the
11 question.

12 Q I guess, do most of your growers
13 currently have practices that they're
14 currently doing with regards to best practices
15 for growing and/or handling their product?

16 A I would say the majority of our
17 growers that are growing on a commercial
18 basis, that are putting their product into a
19 commercial distribution, are following some
20 food safety guidelines. Those that are moving
21 into a retail or food service distribution
22 channel, those would definitely be third-party

1 audited growers. The others are probably
2 doing -- are doing some food safety
3 guidelines, but they may not be having been
4 audited or being certified at this point.

5 Q And the other witness that's going
6 to come after you will be able to talk
7 specifically about what some of those things
8 are these growers are doing specifically?

9 A Yes, yes. The growers can
10 certainly address that, and Ms. Bland can
11 address exactly what's going on with the food
12 safety guidelines that we have in Georgia.
13 Yes.

14 Q On page 2 of your prepared
15 statement, you mentioned that, "We believe
16 that the National Leafy Greens Marketing
17 Agreement will provide a program to help the
18 consuming public be confident in both domestic
19 and imported leafy greens." In your opinion,
20 why do you believe the proposal should cover
21 both domestic as well as imported product?

22 A We -- I don't know what

1 percentage, but we import, you know, a high
2 percent of leafy greens into this country that
3 are imported from other countries, and we
4 should be -- our consumers should feel safe,
5 whether they're buying domestic-grown produce
6 or imported produce. We think that this
7 agreement would, through the handler
8 signatory, would allow for the imported
9 products also to be following the same
10 standards that our domestic growers are
11 following.

12 Q Okay. And bullet number 2 under
13 the goals of the National Leafy Greens
14 Marketing Agreement, the proposed agreement,
15 mentioned is, "To enhance the quality of fresh
16 leafy green vegetables, vegetable products
17 available in the marketplace through the
18 application of good agricultural and handling
19 practices."

20 How does the proponents envision
21 this objective being achieved by the proposal?

22 A Well, the quality from the

1 standpoint of the food safety standpoint that
2 if the signators are handling product that
3 have followed good agricultural practices on
4 the farm and they have followed good
5 agricultural practices as it moved forward to
6 the consumer, it should be a quality product
7 from a food safety standpoint, and you can
8 be --

9 There's nothing 100 percent safe.
10 I mean, that's -- we all strive for 100
11 percent safeness, but there's -- obviously
12 there's -- just within industry, there's not
13 100 percent safe industry, so it would present
14 a higher quality product from a food safety
15 standpoint, and that's really what this bullet
16 is addressing, is the food safety aspect of
17 that product.

18 Q Okay. And I wanted to just direct
19 your attention to page 3 of your prepared
20 statement with regards to the administrative
21 structure --

22 A Okay.

1 Q -- of the -- I guess, of the
2 administrative committee. Did you provide any
3 input with regards to -- I think you mentioned
4 the make-up of what the committee structure
5 would be.

6 A Right.

7 Q What was the rationale or the
8 importance for including membership with
9 regards to retail or food service? I believe
10 there's public member as well as importer.

11 A Well, the proponent group felt
12 that these are important components and parts
13 of the food distribution channel and to the
14 consumer from that standpoint, and that having
15 these additional individuals on there, we felt
16 that would enhance and strengthen the
17 administrative committee as far as the
18 oversight from the Leafy Greens Marketing
19 Agreement.

20 From the retailer's standpoint, we
21 have a market review committee that's a part
22 of that. Certainly most of the product is

1 either going into a retail location or a food
2 service location, and they need to be --
3 again, as we were talking earlier, from a
4 collaborative standpoint, we need to have
5 input. We need to work with all these
6 components of the distribution channel, so
7 that that's -- and that was the real reason
8 for having these people on the administrative
9 committee, so that they're a part of that
10 discussion from that standpoint.

11 Q Okay. And ensuring that all
12 concerns of these various segments would be
13 addressed as well?

14 A Absolutely. Right. So that if we
15 do have issues or problems, that can be
16 handled at the administrative committee level,
17 or either sent back to a technical review or
18 market review board.

19 Q Okay. And with regards to the
20 public member, could that be a member of
21 the -- could that be a consumer?

22 A Yes.

1 Q Okay. I believe that's all I
2 have. Thank you.

3 A Thank you.

4 JUDGE HILLSON: Anything else from
5 the panel? Ms. Dash?

6 MS. DASH: Suzanne Dash.

7 BY MS. DASH:

8 Q If there was a National Leafy
9 Greens Agreement, do you think Georgia leafy
10 green growers would increase sales?

11 A I don't know. I would hope that
12 we would. Obviously cabbage being our primary
13 product of the entire list that's under the
14 leafy greens area from that standpoint, I
15 would think that those handlers that are
16 following the Leafy Greens Marketing Agreement
17 metrics would certainly -- I would think that
18 we would increase market share from that --
19 maybe not market share, but would maybe
20 increase consumer share, which would also
21 increase market share from that standpoint,
22 but I can't definitively say that. I mean,

1 this is just speculation.

2 Q Do you think grower prices might
3 increase?

4 A They could. Again, anytime we add
5 cost at the production level, we hope that the
6 grower is compensated from that increased
7 price, whether it's at the -- you know,
8 whether it's a production input cost, whether
9 it's food safety costs, whether it's a
10 marketing cost for the grower. That doesn't
11 always happen, but the -- if you look at the
12 prices of our products today, it's almost the
13 same as it was in 1980.

14 Much of the pricing that our
15 growers are getting, it's just that we've
16 become much more effective and efficient in
17 that production, so it doesn't always happen
18 that way, but we would certainly hope that,
19 you know, we would see those growers that are
20 following good food safety practices would see
21 increase in sales and an increase in pricing
22 for their product.

1 Q Do you know if most of your leafy
2 green producers in Georgia produce mostly in
3 Georgia, or do they maybe have like a farm in
4 Georgia and a farm in Florida?

5 A Again -- and this is just based on
6 my knowledge, which is fairly limited on
7 individual farm operations. But I would think
8 that most of them do produce only in Georgia.
9 We may have a few that's close to the Florida
10 line that may have farms in Florida, but
11 generally most of our growers are going to be
12 Georgia producers.

13 Q Do you have a sense that -- of
14 what percent of leafy green growers in Georgia
15 belong to your organization?

16 A Of the major producers, I would
17 think that probably -- and when I say, major
18 producers, I'm speaking of growers that are
19 producing from a commercial standpoint. I
20 would think we probably have 70 to 75 percent
21 of those producers as members of the
22 association.

1 Q Okay.

2 A The larger producers. Yes.

3 Q I think you said this earlier, but
4 could you say again what you consider
5 commercial producers?

6 A Production that will go into the
7 distribution chain, that's going to be sold to
8 a supermarket or a food service operation. We
9 have a number of producers, particularly up in
10 the mountains in North Georgia, that are
11 roadside market producers. I mean, they grow
12 one or two acres of cabbage, and they sell at
13 the roadside market.

14 So, you know, that's not -- unless
15 that's a licensed market as such, you know,
16 that particular grower -- you know, there is
17 a -- I don't necessarily consider that when
18 it's a pick-your-own type operation or that
19 kind of thing, it's going into commercial.
20 And I may be differing with the terms here,
21 but that's -- generally most of our
22 production -- most of our cabbage production

1 is going to a commercial distribution chain,
2 where it's going to a supermarket or to a food
3 service operation.

4 Q And is most of your cabbage, do
5 you think, sold fresh or --

6 A The majority would be fresh
7 market. Yes.

8 Q Okay. Thank you. That's all the
9 questions I had.

10 JUDGE HILLSON: Is there anything
11 else from the panel? Mr. Souza?

12 MR. SOUZA: Anthony Souza, USDA.

13 BY MR. SOUZA:

14 Q Good morning, Mr. Hall.

15 A Good morning.

16 Q In your statement on page 2, the
17 goals of the National Leafy Greens Marketing
18 Agreement are, bullet 4, "to provide for USDA
19 validation and verification of a food safety
20 program." Could you explain what you mean by
21 "USDA validation"?

22 A This would be as a part of this

1 agreement, there would be audits made of the
2 growers and the handler operations, that they
3 are following the metrics that are set down by
4 the agreement. This is a provision of the
5 agreement, and it would be supervised or
6 overseen by USDA, so that's really what I'm
7 referring to is the audit process that would
8 go on for verification, that that grower is
9 following the metrics that's been established
10 by the agreement.

11 Q Thank you. Under the same bullet,
12 you speak about compliance, and you have a
13 compliance portion within the proposed
14 agreement. Could you give an explanation of
15 what your understanding of that component is?

16 A The -- if a handler signs on as
17 signator to the agreement, they are saying
18 that all the growers that they are purchasing
19 or they're handling their product from are
20 following the metrics that are set down by the
21 agreement. There would be an audit or
22 compliance system in place where an auditor,

1 a USDA overseen auditor would be going to that
2 grower or location to audit those metrics, to
3 make sure they're doing those things that
4 they -- you know, that are said to be -- that
5 needs to be done within the metrics operation,
6 so that's -- when I say, compliance, that's --
7 I'm saying that this is a -- we're ensuring
8 that the grower is complying with that.

9 Q You mentioned USDA-overseen
10 auditor. What do you mean by that?

11 A There would be -- again, referring
12 back to the agreement, when I say, USDA, it
13 would be an agreement auditor, but it would be
14 a USDA-approved person, whether they're
15 trained or whether it's a third party that
16 USDA has approved, that would be actually
17 doing the audit on the farm.

18 Q Thank you.

19 JUDGE HILLSON: Anything else from
20 the panel? Ms. Deskins?

21 MS. DESKINS: Sharlene Deskins,
22 Office of General Counsel.

1 BY MS. DESKINS:

2 Q I just had -- you're familiar with
3 the definition of leafy greens that's
4 contained in the agreement.

5 A Yes, ma'am.

6 Q To your knowledge, are all the
7 vegetables or herbs listed there grown within
8 the state of Georgia or the Southeast?

9 A Of the ones that are listed in the
10 agreement, they're not all grown in Georgia.

11 Q But could they be grown in this --

12 A Possibly. I don't know that they
13 could be grown and be able to be grown
14 commercially from a -- you know, they may --
15 you know, oranges can be grown in Georgia, but
16 you can't really grow enough to sell them on
17 a commercial market, so those that are
18 primarily -- we have cabbage as our main leafy
19 green under the agreement, with some spinach
20 and kale and a few leafy lettuce. But those
21 are the primary leafy greens that we grow
22 commercially in Georgia that would be covered

1 under the agreement.

2 Q Okay. Thank you.

3 JUDGE HILLSON: Anything else from
4 the panel?

5 (No response.)

6 JUDGE HILLSON: Any other
7 questions from anyone else here? Any
8 redirect, Mr. Resnick?

9 MR. RESNICK: Yes, Your Honor.
10 Jason Resnick. May I approach the witness,
11 Your Honor?

12 JUDGE HILLSON: Go right ahead.

13 REDIRECT EXAMINATION

14 BY MR. RESNICK:

15 Q Mr. Hall, I want to direct your
16 attention to the Federal Register notice of
17 the NLGMA, Section 970.69 regarding the
18 official certification mark.

19 A Yes.

20 Q If you wouldn't mind just taking a
21 moment to read that, and then I'll direct your
22 attention specifically to subsection (b).

1 Would you please read subsection (b)?

2 A Certainly.

3 Q Into the record.

4 A Subsection (b), "The committee may
5 license signatories to affix the official
6 certification mark to bills of lading or
7 manifests, subject to the verification,
8 suspension, revocation requirements, or any
9 other such use as recommended by the committee
10 and approved by the secretary to carry out the
11 purposes of the agreement. The signatory's
12 compliance with the regulations under this
13 agreement is a condition precedent and
14 subsequent to the signatory's entitlement to
15 use the mark."

16 Q Is there anything in that section
17 that would require the mark appear on consumer
18 packaging?

19 A No.

20 Q Does that refresh your
21 recollection --

22 A Yes, sir.

1 Q -- as to how the certification
2 mark might be used?

3 A Right. On the bill of lading,
4 rather than on the package itself.

5 Q Okay. Thank you.

6 A Okay.

7 JUDGE HILLSON: Anything else?
8 Okay. Thank you -- oh, sorry. Go ahead, Mr.
9 Giclas.

10 MR. GICLAS: Hank Giclas for
11 Western Growers.

12 BY MR. GICLAS:

13 Q Mr. Hall, I wanted to ask. You
14 talked about the Georgia Fruit & Veg GAP
15 program. Having 60 farms that are certified
16 as part of that, some of them small, I wanted
17 to ask: You know, would you anticipate that
18 these growers would have to make a significant
19 investment to meet food safety requirements
20 that might be developed under a National Leafy
21 Greens Marketing Agreement --

22 A No, sir. Currently the guidelines

1 that they are following to be certified under
2 the Georgia GAP and other third-party audit
3 processes, they would -- I would not imagine
4 any metrics that would be established by this
5 agreement would be more difficult than what
6 they're already following within the third-
7 party audits.

8 Q Thank you. I just had one other
9 question. Do your members have to comply with
10 multiple sets of buyer specifications to do
11 business in the marketplace today?

12 A Yes, sir. Most of them -- and I
13 think you'll hear testimony from those
14 growers -- they'll have anywhere from two to
15 five audits from other auditing companies that
16 are required from that standpoint.

17 Q So the USDA panel asked about the
18 potential for increased sales or increased
19 prices as a result of the national marketing
20 agreement. I'm curious if you think that the
21 National Leafy Greens Marketing Agreement
22 might present any opportunity for reducing

1 costs, particularly in the area of these
2 multiple audits.

3 A I would hope it would reduce costs.
4 I mean, that's the ultimate goal in our --
5 from our standpoint for the grower, that we
6 would wind up with one audit that is
7 satisfied, that is recognized by the retail
8 and food service industry, so that we begin to
9 reduce the number of audits that a grower
10 would have to undergo before the product -- as
11 the product's going to market.

12 I think we've seen through the
13 California leafy green agreement that there
14 are companies that have -- that had their own
15 set of audit guidelines, and they're now
16 following the California leafy green
17 agreement, rather than using their own. So as
18 the -- and this isn't an instantaneous thing
19 that would happen, but over a period of time,
20 the companies would recognize the National
21 Leafy Greens Marketing Agreement guidelines
22 and metrics are sufficient, and they would not

1 have to have their own individual audits.

2 MR. GICLAS: Thank you. I have no
3 other questions.

4 JUDGE HILLSON: Any other
5 questions for this witness?

6 (No response.)

7 JUDGE HILLSON: Thanks for
8 testifying, sir. You may step down.

9 MR. HALL: Thank you, sir.
10 (Whereupon, the witness was
11 excused.)

12 JUDGE HILLSON: And, Mr. Resnick,
13 you may call your next witness.

14 MR. RESNICK: Thank you, Your
15 Honor. Proponent group calls Bill Brim.

16 Does the panel want the witness to
17 have their name placard on the table as we did
18 in Monterey, or does it not matter since we're
19 not doing video?

20 JUDGE HILLSON: It's convenient,
21 but it's not essential, I guess.

22 (Pause.)

1 JUDGE HILLSON: I'm going to mark
2 Mr. Brim's written statement as Exhibit 49.

3 (The document referred to was
4 marked for identification as
5 Exhibit Number 49.)

6 JUDGE HILLSON: Would you please
7 raise your right hand, sir.
8 Whereupon,

9 BILL BRIM

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

13 JUDGE HILLSON: Okay. Could you
14 please state your name and spell it for the
15 record.

16 MR. BRIM: Bill Brim, B-I-L-L, B-
17 R-I-M.

18 JUDGE HILLSON: And you have a
19 statement you want to read. Is that correct?

20 MR. BRIM: Yes, sir.

21 JUDGE HILLSON: All right. You
22 can proceed.

1 MR. BRIM: Thank you, Your Honor.

2 DIRECT TESTIMONY

3 MR. BRIM: My name is Bill Brim.

4 I am co-owner of Lewis Taylor Farms and
5 Quality Produce, Incorporated, a farm and
6 shipping operation in Tifton, Georgia. The
7 farm was originally established as a vegetable
8 seedling operation by my father-in-law in the
9 1940s. Today we still grow vegetable
10 seedlings, 115 million vegetable transplants,
11 18 million pine tree seedlings.

12 However, our operation has
13 expanded to also include 4,500 acres of mixed
14 vegetables. Included in the 4,500 vegetable
15 acres are 120 acres of cabbage and 20 acres of
16 kale. Lewis Taylor Farms is classified as a
17 large farm operation under SBA guidelines, and
18 Quality Produce is classified as a large
19 handler.

20 Three years ago, September of
21 2006, I watched with horror as the USDA Food
22 and Drug Administration issued unprecedented

1 "do not eat" advisory related to spinach. As
2 we all know, the FDA advisory was caused by E.
3 coli outbreak 0157:H7 that sickened over 200
4 people and eventually caused three deaths,
5 although at the time, how terrible for the
6 growers that grow that did not have any of the
7 contaminated spinach. The entire industry was
8 suffering from that one incident. All I could
9 do at that time was offer a prayer for those
10 growers devastated by the instance and thank
11 God that I was not growing spinach anymore at
12 that time.

13 However, less than 24 months
14 later, I found myself in a similar situation
15 with the tomato fiasco during the summer of
16 2008. This time I was one of the affected
17 growers. In June of 2008, we began harvesting
18 what appeared to be one of the best tomato
19 crops in a number of years. Less than two
20 weeks later, FDA began issuing consumer
21 warnings concerning salmonella in tomatoes.
22 While all of the official FDA statements

1 identified Georgia as a safe state, the market
2 dried up. I had over 25 acres of tomatoes
3 that were not harvested because we had not
4 market, roughly a \$1.5 million loss.

5 Both of these situations occurred
6 due to the failure in the execution of the
7 farm's standard operation procedures and the
8 inadequate food safety practices. Because
9 Lewis Taylor Farms has always been an advocate
10 for a strong food safety policy, we support
11 the National Leafy Greens Marketing Agreement.
12 We were the first farm certified under the
13 Georgia GAP Food Safety Program in 2001.

14 At Lewis Taylor Farms, food safety
15 oversight and considerations have gone from a
16 low priority ten years ago to today being an
17 essential tool for us in order to produce,
18 harvest, and sell produce. It is one of our
19 top focuses at Lewis Taylor Farms. We have
20 two full-time employees that are responsible
21 for issuing food safety compliances in our
22 farm and packing operation.

1 It is my belief that NLGMA is an
2 excellent example of our industries coming
3 together, developing a unified proposal and
4 recommendations, a national program to benefit
5 the consuming public with a stronger food
6 safety policy. As proposed, the National
7 Leafy Greens Marketing Agreement will develop
8 food safety metrics that are based on sound
9 science and specific to regions to reduce the
10 potential of microbial contaminations of leafy
11 green crops.

12 Leafy green growers have faced
13 many challenges in recent years, particularly
14 as it relates to the cost of production. The
15 cost of disease and insect protection, along
16 with crop fertilization, have significantly
17 increased. Our fertilization costs alone have
18 increased over 350 percent since 2005. While
19 the production input costs are skyrocketing,
20 the prices we receive for our crops have
21 remained flat.

22 Yet I come here to advocate a

1 National Leafy Greens Marketing Agreement that
2 includes an assessment, because I believe it
3 will actually help our industry and my farm.
4 It is my hope that the NLGMA food safety
5 metrics for leafy greens that includes good
6 agricultural practices, good manufacturing
7 practices and good handling practices will
8 eventually be accepted by all companies
9 purchasing leafy greens.

10 I understand in California many
11 companies are moving away from having their
12 own audits or super-metrics and instead
13 accepting the California LGMA guidelines for
14 their CA operations. As this National Leafy
15 Greens Marketing Agreement matures, I hope a
16 similar practice evolves, having one food
17 safety audit accepted by most of my customers
18 which save the industry and our farmers money.

19 I currently under go three audits
20 a year for various customers. By having a
21 science-based regional-specific national food
22 safety metrics would be beneficial for most

1 growers. While I cannot speak for all
2 growers, I do know most of our large and mid-
3 size producers in Georgia follow good
4 agricultural practices, and handling food
5 safety procedures similar to those we follow
6 at our farm. Food safety is critically
7 important to our state and industry.

8 In fact, this issue is so
9 important that the Georgia Fruit & Vegetable
10 Growers Association has a full-time staff
11 person working with our GFVGA membership to
12 ensure Georgia produce has been grown under
13 the best management practice and our growers
14 adhere to good agricultural practices.

15 A National Leafy Greens Marketing
16 Agreement would enable leafy green handlers
17 across the United States to work together to
18 enhance the marketability of fresh leafy green
19 vegetables by providing for USDA validation
20 and verification of program compliances. This
21 would most importantly improve consumer
22 confidence in leafy greens.

1 Thank you for holding this
2 hearing, and I appreciate the opportunity to
3 submit this testimony in support of the
4 National Leafy Greens Marketing Agreement.

5 JUDGE HILLSON: Do you have any
6 further direct of this witness, Mr. Resnick?

7 MR. RESNICK: I do, Your Honor.

8 JUDGE HILLSON: Go right ahead,
9 then.

10 MR. RESNICK: Jason Resnick.

11 DIRECT EXAMINATION

12 BY MR. RESNICK:

13 Q Mr. Brim, can you give the panel
14 an indication of what your food safety costs
15 are today?

16 A We try to narrow it down to a per-
17 box basis, and it's somewhere between 23 and
18 25 cents per box that we spend extra on food
19 safety at this point.

20 MR. RESNICK: That's all I have.
21 Thank you.

22 JUDGE HILLSON: Okay. I'm going

1 to receive Mr. Brim's written direct into
2 evidence as Exhibit 49.

3 (The document referred to, having
4 been previously marked for
5 identification as Exhibit Number
6 49, was received in evidence.)

7 JUDGE HILLSON: Now we'll ask the
8 panel if they have any questions of Mr. Brim.
9 Ms. Schmaedick?

10 MS. SCHMAEDICK: Melissa
11 Schmaedick, USDA.

12 CROSS-EXAMINATION

13 BY MS. SCHMAEDICK:

14 Q Good morning, Mr. Brim.

15 A Good morning.

16 Q Thank you for your testimony.

17 A Yes, ma'am.

18 Q My first question is you mentioned
19 that you have 4,500 vegetable acres.

20 A Yes, ma'am.

21 Q 120 of those acres are cabbage and
22 20 acres are kale.

1 A Yes, ma'am.

2 Q So under the SBA guidelines for
3 determining whether or not a business entity
4 is a small or large business, for growers,
5 it's gross receipts of 750,000. Looking
6 specifically at your gross receipts for leafy
7 green products that would be impacted by this
8 agreement, would you qualify as a large or a
9 small grower?

10 A I would be a small grower in the
11 leafy green aspect of it.

12 Q Okay.

13 A Total operations, I would be, you
14 know, a large.

15 Q Okay. Now, in paragraph 2 on page
16 1 of your testimony, you said the entire
17 industry was suffering from that one incident,
18 that one incident referring to the spinach E.
19 coli outbreak in 2006. Can you tell me how
20 your specific operation was impacted?

21 A My operation was not specifically
22 impacted. Anybody that was growing spinach --

1 I luckily did not -- I had grown spinach up
2 until that year, and then I -- we had a wet
3 season, so I didn't get to plant any early,
4 and then once the spinach outbreak happened in
5 California, I chose not to plant any -- not to
6 even go in out there. It was too set to
7 plant, so I never planted any spinach, but I
8 had been planting spinach up until that time.
9 But all my friends and growers in California
10 were devastated by the outbreak.

11 Q Were spinach growers in other
12 parts of the country also impacted?

13 A Yes. Up in Michigan, I'm sure.
14 I've talked to growers up there, and even
15 through talking with our chain store people
16 that we directly sell to, they said that their
17 spinach sales were down less than 50 percent.

18 Q And are you aware of whether or
19 not that particular incident also had an
20 impact on small business entities that might
21 sell to outlets other than just commercial
22 retail outlets?

1 A I think anybody that had a row of
2 spinach was affected by the outbreak, because
3 we lost consumer confidence. Once you lose
4 consumer confidence in anything, you lose
5 sales. So I think whether it was a smaller
6 grower, a roadside grower or whoever, people
7 had read about spinach. They're not going to
8 eat spinach anymore, so, yes, there was an
9 impact for everybody, I think.

10 Q So based on your experience, you
11 just mentioned consumer confidence. Is there
12 a relationship between a consumer's perception
13 of quality and whether or not they perceive a
14 product to be contaminated?

15 A I would think so. I think quality
16 would be considered part of our food safety
17 efforts, you know, as to making sure that we
18 let the consumer know that the food safety
19 that we do certainly -- it increases the
20 quality of the -- and the characteristics of
21 the plant. It gives them the confidence to
22 eat the product.

1 Q You also mentioned the 2008 tomato
2 outbreak, and you said that you were impacted
3 by that event.

4 A Yes, ma'am.

5 Q And in your testimony, you state,
6 "While all of the official FDA statements
7 identified Georgia as a safe state, the market
8 dried up."

9 A Yes.

10 Q So in your opinion, is that just
11 another example of how the entire industry,
12 regardless of where an outbreak might occur,
13 that really it's a -- it's something that
14 affects everybody in the industry?

15 A Oh, definitely. No question about
16 it. Once you hear of an outbreak, whether it
17 be in California or Alabama or South Carolina
18 or Georgia, if it's tomatoes, which FDA came
19 out and advised us that our state was safe,
20 still all the consumer heard was salmonella
21 and tomatoes. So, yes. I think there's a
22 direct correlation, and of course, I feel

1 that -- well, never mind.

2 Q On page 2 of your statement, you
3 mention that you have been participating in
4 the Georgia GAP Program since 2001.

5 A Yes, ma'am.

6 Q And you also mentioned that there
7 were some initial costs to becoming compliant
8 within that program. Is that correct?

9 A Oh, yes, ma'am.

10 Q In your opinion, have there
11 been -- have the benefits of participating in
12 that program outweighed or equaled the costs
13 that you invested?

14 A Yes, ma'am. I think so. I think
15 any money that we could spend to better serve
16 the communities and our consumer public to
17 make a safer product, I think, you know,
18 that's an opportunity that we have to take
19 advantage of.

20 Q And in the proposed agreement, are
21 you aware that GHPs and GMPs would also be
22 included?

1 A Yes, ma'am.

2 Q And what is your opinion of that?

3 A Well, we are participating in
4 audits that the GHPs and GMPs are part of our
5 program, so it's not going to really change
6 our program initially that much. I think it
7 will just be an added advantage to us, to be
8 able to say that we are part of leafy green
9 agreement, and it further embolds our food
10 safety program.

11 Q In your opinion, is it important
12 to include all phases of the leafy green
13 product life, if you will, from growing
14 through the end of the handling process?

15 A Yes, ma'am.

16 Q Under the proposed agreement, do
17 you believe that there is the opportunity to
18 create metrics that would be appropriate to
19 grower and handling operations in Georgia?

20 A Could you repeat that, please,
21 ma'am?

22 Q Sure. Under the proposed

1 agreement, do you believe that there is the
2 opportunity to create metrics that would be
3 appropriate to Georgia's specific growing and
4 handling environments?

5 A Yes, ma'am. I hope so.

6 Q On page 3 of your statement, again
7 you mentioned the term "regional-specific."
8 Can you talk about how that term "region"
9 applies to handling and production in Georgia?
10 Are there different regions within Georgia,
11 for example?

12 A Well, I think there are different
13 ways of production levels that Georgia does.
14 North Florida does it different from South
15 Florida or different from California, so I
16 think -- I hope that what will happen in our
17 region, our production prices will be taken
18 into consideration when they form the metrics
19 for that and at least give us an opportunity
20 to be on a different page, because some of the
21 things aren't going to apply that apply in
22 California. Some of the things that apply in

1 Florida won't apply, you know, for us in South
2 Georgia, so I hope there will be different
3 aspects of it to take effect.

4 Q Can you provide some examples of
5 what some of those differences might be?

6 A Well, the one thing that just
7 comes to my mind right now is overhead
8 watering in Georgia, where in Florida they do
9 very little. In California they do very
10 little, so there would be some different
11 metrics for us, but it would probably be more
12 difficult for us because of overhead watering,
13 and probably water sampling would be a little
14 different than they do in California. Not
15 that it would be good for Georgia, but it
16 would be different, you know, and it would
17 allow us to be in control of what we're doing,
18 and then make sure that we're doing it in the
19 right manner.

20 Q Can you explain what overhead
21 watering is?

22 A Well, do you know what pivot

1 irrigation is?

2 Q Uh-huh.

3 A Okay. Just pivot irrigation type
4 or sprinkler irrigation.

5 Q Okay. I believe that's it for my
6 questions. Thank you.

7 A Yes, ma'am.

8 JUDGE HILLSON: Does anyone else
9 on the panel have questions of this witness?
10 Ms. Carter?

11 MS. CARTER: Antoinette Carter
12 with USDA.

13 BY MS. CARTER:

14 Q Good morning, Mr. Brim.

15 A Good morning.

16 Q I just had a follow-up question
17 for you with regards to page 2 of your
18 prepared statement, and I believe in response
19 to some of Ms. Schmaedick's questions, you
20 mentioned that you're currently engaged in GAP
21 Program, as well as doing some good handling
22 as well as good manufacturing practices as

1 well.

2 A Right.

3 Q Could you explain specifically
4 what are some of the components in terms of
5 best practices you're currently doing with
6 regards to good agricultural practices on the
7 production side?

8 A Well, in all of our operations, we
9 use plastic gloves, picking and packing. We
10 use hair nets. We keep our SOPs up on all our
11 waters in our fields, full field samples of
12 all of our water, and also in our packing
13 facilities, and we have SOPs available at any
14 point in time, every day, where we do these
15 practices. It gives us an opportunity to, you
16 know, keep up with it, and if we validate our
17 records.

18 Q And you mentioned SOPs. What does
19 that stand for?

20 A Standard operating procedures for
21 us.

22 Q Okay. And are there any other

1 things that you do with regards to -- in terms
2 of practices outside of sanitary requirements
3 and worker requirements? Are there any other
4 things that you currently do, that you can
5 think of?

6 A Nothing that I can think of right
7 now, other than the sanitary, you know, Porta-
8 Potties, everything that we do in that area,
9 but, no, nothing else.

10 Q And then with regards to on the
11 handling and manufacturing side, are you able
12 to share with us some of the things that
13 you're currently doing in --

14 A Well, all of our handling and
15 processing our packing facilities, we are able
16 to categorize it, trace forward and trace
17 back, all of our product that we pick, what
18 field it comes out of, when it was picked, the
19 day it was picked, what inventory is in the
20 cooler at all times, and then actually when it
21 goes out, it can go to the trace back area for
22 chain store.

1 Chain store has a code that they
2 come back and trace back. We can tell them
3 within minutes where our products come from,
4 what field it was picked in, and what field it
5 was -- when it was last sprayed, whatever
6 information they need.

7 Q Thank you.

8 A Uh-huh.

9 JUDGE HILLSON: Other questions?
10 Ms. Dash?

11 MS. DASH: Suzanne Dash.

12 BY MS. DASH:

13 Q If there's a national agreement,
14 do you think it will help you market your
15 leafy greens?

16 A I think that it will give us an
17 opportunity to build our consumer confidence
18 in our product. I don't think that it's going
19 to increase our price. Now, I would like
20 for -- you know, would you pay an extra dollar
21 if we have that insignia on the side of the
22 bag? We'd be glad to, you know, to do that,

1 but I don't think it's going to happen, you
2 know. I think that what's going to happen is
3 it's going to build consumer confidence, so it
4 might -- we might achieve more sales. I don't
5 know that it's going to increase our price
6 any.

7 Q Thank you. We had several
8 witnesses in California talk about the cost to
9 comply with the California agreement or maybe
10 more generally food safety costs, maybe not to
11 comply with the agreement. We have one
12 estimate, depending on the size, \$14 per acre
13 to \$47 per acre. We had some other estimates
14 ranging from 20 to \$50 per acre, or looking at
15 it as two cents per carton to five cents per
16 carton, and then I think we had several people
17 testify that the costs could be maybe, you
18 know, 1 percent of total operating costs.

19 I was wondering if you could say
20 whether you feel your costs are in line with
21 that, or if you could give us something more
22 specific.

1 A We just base everything that we
2 have done, and as far as food safety goes, and
3 we calculate it on the boxes we sell per acre,
4 and that's -- per season, and that's what
5 we've come up with, our figure. So I don't
6 know whether it's in comparison with any body
7 else. Maybe we're too high, but that's what
8 it costs us.

9 Q Okay. Thank you.

10 JUDGE HILLSON: Mr. Souza:

11 MR. SOUZA: Thank you. Anthony
12 Souza, USDA.

13 BY MR. SOUZA:

14 Q Good morning.

15 A Good morning.

16 Q Follow-up to Ms. Dash's question:
17 You quoted a price in your testimony earlier
18 about 23 to 25 cents per box, and in your
19 written statement, you state that you're
20 currently undergoing three audits from various
21 consumers. Is that up and above the audits
22 from the Georgia GAP Program?

1 A No. That's included in there.

2 Q That's including?

3 A Yes.

4 Q If you were under a National Leafy
5 Greens Marketing Agreement and that was the
6 only audit that you have, what kind of cost
7 savings do you think you would see from that?

8 A Gosh, I would say at least \$5,000
9 a year.

10 Q Thank you.

11 JUDGE HILLSON: Anything else from
12 the panel? Ms. Schmaedick?

13 MS. SCHMAEDICK: Melissa
14 Schmaedick, USDA.

15 BY MS. SCHMAEDICK:

16 Q Could you describe the production
17 industry in Georgia, kind of what your seasons
18 are, what the whole process is?

19 A Yes. WE have two seasons in
20 Georgia, and we start our first cabbage season
21 in January, planting in the field. We start
22 harvesting sometime late April and early May.

1 Most of it goes -- all of ours goes to fresh
2 market or either a little bit of processing,
3 but most of it, 80 percent of it's fresh
4 market.

5 Then we also plant another crop in
6 June in our greenhouse operation. We
7 transplant it in the field in August, and
8 we'll start harvesting probably around the
9 second week of October, and we'll harvest
10 until the freeze gets us or either we're
11 through cutting everything. We do those two
12 ways.

13 And on our kale, now, we start in
14 September, and we cut all the way through
15 until the next year, you know, until it gets
16 too hot to cut, because we crop it, and we
17 leave the plant and come back and recrop it as
18 it regrows, so --

19 Q And do you cut and pack in the
20 field, or does your product go on for
21 further --

22 A We bring it -- we pack our cabbage

1 in the field in boxes, bring them in to a
2 packing facility. We turn them through a
3 hydro-cooler, and then we load them into our
4 coolers for further delivery. Our kale is
5 brought in in boxes and are washed in ice and
6 then put in a cooler.

7 Q And just out of curiosity, is kale
8 eaten raw?

9 A I've never eaten it raw. I don't
10 think so. I think it's cooked. I'm not -- I
11 think it's all cooked. The only other
12 time -- only other place I've seen it other
13 than cooked is on a salad bar, where they're
14 using it for trimming, directions, you know,
15 is the only thing I've ever seen.

16 Q Would that be a reason for
17 including it in the definition of leafy
18 greens, because it comes into contact with
19 other fresh products?

20 A I assume so. Yes, ma'am.

21 Q Okay. Do you grow any organic
22 product?

1 A No, ma'am.

2 Q No? Okay. I believe that's the
3 end of my questions. Thank you.

4 A Thank you.

5 JUDGE HILLSON: Anything else from
6 the panel?

7 (No response.)

8 JUDGE HILLSON: Anything from
9 anyone in the audience? Do you have any
10 redirect of this witness?

11 MR. RESNICK: I do not.

12 JUDGE HILLSON: Okay. Mr. Brim --
13 oh, there is a question. Go ahead, Mr. Hall.

14 BY MR. HALL:

15 Q Mr. Brim, the question had come up
16 about participation in the Georgia GAP program
17 and whether that participation helped you sell
18 your products or not. If you had not
19 participated in that program or were not
20 participating in some food safety, could you
21 sell your products?

22 A I would not. No. I think most of

1 our chain stores and all now are wanting to
2 see our certifications. You might could sell
3 to wholesalers, but if you go to a chain
4 store, they want to see your certification,
5 and they want to know the time limits of your
6 certification and when your last audit was so,
7 it definitely helps to --

8 Q So food safety is basically a cost
9 of doing business.

10 A Oh, absolutely. Yes.

11 JUDGE HILLSON: Anything else?

12 (No response.)

13 JUDGE HILLSON: Okay. Mr. Brim,
14 you may step down.

15 (Whereupon, the witness was
16 excused.)

17 JUDGE HILLSON: You have what?
18 Three more witnesses, Mr. Resnick? Is that
19 what I understand?

20 MR. RESNICK: That's correct, Your
21 Honor.

22 JUDGE HILLSON: Okay. I've been

1 told that at about 11:45, our neighbors are
2 going to be breaking out into song again, so
3 I'm suggesting that we take our morning break
4 of just ten minutes, and then we'll go
5 until -- probably until they start singing
6 basically. That's when we'll take our lunch
7 break, I guess.

8 MR. RESNICK: Or until we start
9 singing.

10 JUDGE HILLSON: I don't want to
11 even think about that. Let's just take a ten-
12 minute break.

13 (Whereupon, a short recess was
14 taken.)

15 JUDGE HILLSON: Let's go back on
16 the record.

17 And, Mr. Resnick, do you want to
18 call your next witness, please.

19 MR. RESNICK: Yes, Your Honor.
20 The proponent group calls Kent Hamilton.

21 JUDGE HILLSON: I'm marking Mr.
22 Hamilton's written statement as Exhibit 50.

1 (The document referred to was
2 marked for identification as
3 Exhibit Number 50.)

4 JUDGE HILLSON: If you'd please
5 raise your right hand, sir.
6 Whereupon,

7 KENT HAMILTON
8 having been first duly sworn, was called as a
9 witness herein and was examined and testified
10 as follows:

11 JUDGE HILLSON: Can you please
12 state your name and spell it for the record.

13 MR. HAMILTON: Kent Hamilton.

14 JUDGE HILLSON: And, Mr. Hamilton,
15 you have a written statement you want to read?

16 MR. HAMILTON: I do.

17 JUDGE HILLSON: Okay. Why don't
18 you proceed.

19 DIRECT TESTIMONY

20 MR. HAMILTON: Hello, and thank
21 you for the opportunity to present testimony
22 today. My name is Kent Hamilton. I operate

1 Hamilton Growers and Southern Valley Fruit &
2 Vegetable in Georgia, as well as Compania
3 Agricola Valle del Sur in Yucatan, Mexico.
4 Our operations farm over ;1,7000 acres of
5 mixed vegetables, including 200 acres of
6 cabbage that would be covered under this
7 agreement. In Mexico, we grow approximately
8 1,100 acres of mixed vegetables.

9 All of our domestic produce is
10 handled, packed and shipped from our Southern
11 Valley Produce facility in Norman Park,
12 Georgia. According to SBA classifications, I
13 would be a large grower and a large handler.
14 Our leafy greens operation would be classified
15 as both a large grower and a small handler.

16 I'm speaking today in support of
17 the National Leafy Greens Marketing Agreement
18 which has as its primary goal enhancing
19 consumer confidence in our leafy green
20 products.

21 The agreement allows willing
22 industry members that voluntarily sign on to

1 the agreement to be the owners of the process.

2 The NLGMA does not impose a top-down set of
3 regulations but allows signatories to become
4 committed stakeholders, actively working to
5 continuously improve food safety practices and
6 results. These guidelines and metrics are
7 developed and approved via the Technical
8 Review Board and Administrative Committee.

9 This national program will bring a clear set
10 of science-based, region-specific guidelines
11 to all producers and buyers that wish to
12 voluntarily participate.

13 In recent years, microbial
14 contamination of food products in the
15 marketplace has led to a public and industry
16 concern for food safety, a drop in consumer
17 confidence of products related with food
18 safety events, and severe economic
19 consequences for producers and handlers of
20 those products affected. The marketing
21 agreement allows for the development of
22 production and handling best practices that

1 will be endorsed by all signatories, resulting
2 in the improvement of product quality and
3 consumer confidence.

4 Absent a national marketing
5 agreement, retailers, food service industries,
6 and states would continue to develop and
7 implement their own food safety standards for
8 producers and handlers, at times competing
9 against each other to create a competitive
10 advantage.

11 With a national marketing
12 agreement, the likelihood of producers and
13 handlers being subject to multiple
14 inconsistent audit requirements is reduced.
15 This could prove to be the case. Based on the
16 California Leafy Green Products Handler
17 Marketing Agreement (LGMA), many retailers and
18 food service industries are now accepting the
19 LGMA audit, rather than requiring their audit
20 to be performed.

21 The California LGMA also conducted
22 a nationwide survey in late February 2009 to

1 determine how consumers view the food safety
2 efforts by the industry. Eight-nine percent
3 of consumers had a favorable opinion when they
4 were told about the food safety programs and
5 mandatory government audits being implemented
6 under the LGMA program. And 70 percent of
7 consumers said that after learning more about
8 LGMA food safety program, their confidence in
9 the overall safety of leafy green products
10 increased.

11 Just as the producer community is
12 plagued with diverse specifications and
13 requirements for food safety, so, too, are
14 buyers struggling with the myriad programs
15 that are being implemented in the field. With
16 the NLGMA in place, there would be an
17 established set of uniform, baseline standards
18 that could eventually be adopted by the
19 regulatory community. At the same time, we
20 believe industry-developed guidelines will be
21 more practical for growers and handlers based
22 on current best practices.

1 In closing, I strongly encourage
2 members of the industry to endorse and embrace
3 this National Leafy Greens Marketing Agreement
4 to ensure our industry has a mechanism to
5 organize science-based guidelines and increase
6 consumer confidence in our products.

7 Thanks for your time and the
8 opportunity to submit this testimony.

9 JUDGE HILLSON: Mr. Resnick, do
10 you have any further direct of this witness?

11 MR. RESNICK: Not at this time,
12 Your Honor.

13 JUDGE HILLSON: In this case, I'll
14 turn the questioning over to the panel. Does
15 the panel have any questions of this witness?
16 Go ahead. You go first, Ms. Schmaedick.

17 MS. SCHMAEDICK: Melissa
18 Schmaedick, USDA.

19 CROSS-EXAMINATION

20 BY MS. SCHMAEDICK:

21 Q Thank you, Mr. Hamilton, for your
22 testimony. So you mentioned that you have a

1 growing operation in Mexico.

2 A Yes, ma'am. That's correct.

3 Q And that has 1,100 acres of mixed
4 vegetables. Does that include leafy greens?

5 A No, ma'am. None of those would be
6 included under the agreement.

7 Q Okay. For your operation in
8 Mexico, do you currently have in place a GAP
9 program?

10 A Yes, we do. We currently follow
11 the same guidelines there that we operate
12 under here in Georgia.

13 Q Are there differences in the
14 growing environment in Mexico versus the
15 growing environment in Georgia?

16 A Yes. They're quite different. In
17 Mexico, we farm only during the wintertime.
18 We start planting about this time of the year,
19 and we harvest through April, and after the
20 first of the year, December, January,
21 February, March and April, during those
22 months, the rainfall is very little. It's the

1 dry season that time of the year, so it's not
2 only dry, but it's a very arid climate. The
3 humidity's low, which is the exact opposite of
4 what we have here in Georgia.

5 Q So are the practices that you
6 follow to meet your GAP guidelines, are they
7 different in Mexico than in Georgia?

8 A The food safety guidelines that we
9 follow are very similar. Matter of fact, I
10 don't really know of anything that's any
11 different. Even though we have a dry and arid
12 climate there, we use drip irrigation, just
13 like we use drip irrigation here in Georgia.
14 We irrigate out of wells there, just like we
15 do in Georgia. We have the water tested twice
16 a year there, just like we do here. So even
17 though it's a quite different climate there,
18 our food safety program is basically the same.

19 Q And when did you start
20 implementing a GAP program on your farms?

21 A We started with the packing house,
22 having our packing facility audited, probably

1 back 2000, 2002, somewhere in there. Just
2 this year was the first year that we
3 implemented the field audit to encompass our
4 whole operation, production as well as the
5 packing aspects of the operation.

6 Q So if I understand you correctly,
7 you actually started with your packing
8 operation first.

9 A That's right. We started with our
10 packing facility first, and then just this
11 year, we implemented it on the farming side,
12 production side.

13 Q And what types of things do you do
14 in your packing facility under the -- I'm
15 assuming you're following the GHPs then.

16 A Right.

17 Q Good handling practices.

18 A Well, we have several specific
19 things we do. As Bill Brim commented on, all
20 of the workers wear gloves, wear hair nets.
21 They're not allowed to wear any kind of
22 jewelry on the packing lines. We have rodent

1 traps placed all around the facility, as well
2 as in the facility.

3 The lighting in the facility have
4 non- -- have shatterproof bulbs, so if a light
5 was to blow out while we were packing,
6 anything that would be on the packing line
7 would not be contaminated. What else? The
8 packing line itself is inspected for rust, and
9 parts of the packing line that receive -- such
10 as the washers that would receive corrosive
11 chemicals, those are stainless steel, and
12 where it's just mild steel, we make sure those
13 are kept painted, where there's no bare metal,
14 no rust, anything that could be contaminated.

15 Q And why did you decide to
16 implement GAP practices on your growing
17 operations?

18 A Well, the main reason we did is
19 because our customer base were demanding it,
20 and it's -- we also know from a management
21 standpoint that if we're going to continue to
22 be in the fresh market vegetable business,

1 that the product that we're producing, we've
2 got to have consumer confidence in that
3 product, so --

4 I mean, it's devastating when
5 there's some kind of outbreak of something,
6 say, in cabbage. It's devastating to us,
7 because we're a cabbage producer, but if
8 specifically it was on our farm and Southern
9 Valley was named as, you know, having
10 contaminated product, then that could near
11 about put us out of business.

12 Q Do you believe the good
13 agricultural practices and good handling
14 practices that you follow eliminate 100
15 percent chance of contamination?

16 A I couldn't say that it would
17 eliminate 100 percent, but it would
18 eliminate -- it would come close to
19 eliminating 100 percent of any chance of a
20 contaminant entering our product.

21 Q Were you at all involved in the
22 process of drafting the proposed agreement?

1 A No, ma'am, I was not. I've read
2 the agreement, but I was not involved in
3 drafting the agreement.

4 Q Were you aware in general of
5 its -- of the activity of it being drafted?

6 A At the time when it was being
7 drafted, no, probably not. I really don't
8 know exactly when it was -- the drafting of it
9 started. I knew about it probably a year ago,
10 of them working in that direction. I believe
11 it's a good idea, because me, just like Bill
12 Brim said, we go through two or three or
13 possibly four audits a year, and the more we
14 can consolidated these audits, it would
15 definitely help us.

16 It would save us time as far as
17 personnel, taking an auditor around and, you
18 know, digging out our records, showing him all
19 the information, the recordkeeping and
20 everything that we have to follow our
21 traceability of the product and our standard
22 operating procedures. It would limit the

1 amount of time we had in going through the
2 audits themselves.

3 Q So if I'm correct, you believe
4 this proposal could lead to a reduction in
5 audit fatigue, as it --

6 A Right.

7 Q -- is often referred to.

8 A That's right.

9 Q As well as a reduction in the cost
10 attached to those different audits. Is that
11 correct?

12 A That's right.

13 Q You mentioned a study that was
14 done in California, a consumer study
15 specifically, on page 2.

16 A Uh-huh.

17 Q And so that would be the third
18 paragraph on page 2. You say that 89 percent
19 of consumers had a favorable opinion when they
20 were told about the food safety programs and
21 mandatory government audits being implemented
22 under the LGMA program. Do you happen to know

1 if under the LGMA program there are -- they
2 use consumer package marking? Do they have a
3 mark on the consumer package?

4 A I do not know that.

5 Q Okay. Based on your understanding
6 of the proposal, what is the process which --
7 let me rephrase this. Based on your
8 understanding of the proposal, would USDA and
9 FDA be involved in the process of overseeing
10 the development of any proposed metrics?

11 A Yes. That is my understanding.

12 Q Would there be an opportunity for
13 other government agencies, whether they are
14 federal or state, to be also included in that
15 process?

16 A I don't really know the answer to
17 that, but I don't see why anyone would want
18 to -- we would want to exclude anyone. The
19 purpose of this agreement is to ensure a safer
20 product for the consumers, which is good for
21 the consumers. It's good for the United
22 States government, and it's good for the

1 producers, the farmers, the packers, the
2 handlers, everyone that makes their living
3 that's involved in the food chain.

4 Q On the first page and the first
5 paragraph, I just want to clarify. You have
6 1,700 acres of mixed vegetables. Yet you have
7 200 acres of cabbage. So according to the SBA
8 definition, we look at gross sales that are
9 attached just to the commodity that would be
10 impacted by this program.

11 A Right.

12 Q So if you were to look at the
13 gross sales of your cabbage portion of your
14 operation, would you be a small or a large
15 growing operation?

16 A I would be a small growing
17 operation.

18 Q Okay. I believe that's it. Thank
19 you.

20 A Uh-huh.

21 JUDGE HILLSON: Any other
22 questions from the panel? Yes, sir. Go

1 ahead.

2 MR. SOUZA: Anthony Souza, USDA.

3 BY MR. SOUZA:

4 Q Good morning.

5 A Good morning

6 Q On your testimony on page 2 on
7 your second paragraph down there, in the
8 middle of the paragraph, you mention, "With a
9 national marketing agreement, the likelihood
10 of producers and handlers being subjected to
11 multiple inconsistent audit requirements is
12 reduced." Could you explain a little bit what
13 you mean by "inconsistent audit requirements"?

14 A Okay. I'm looking on page 2.
15 Okay. On page -- okay. On my page 4, "With
16 a national marketing agreement, the likelihood
17 of producers and handlers being subject to
18 multiple inconsistent audit requirements" --
19 yes.

20 More of a standardized auditing
21 system, where we know what growers need to be
22 aware of in production and in the processing

1 and handling of these products, as far as
2 points of contamination and what processes
3 need to be taken to potentially eliminate any
4 danger of contamination, how a streamlined,
5 consistent, set protocol, where you don't have
6 one -- say, one chain store who wants you
7 to -- who's more focused in this area and
8 wants it done this way, somebody else wants
9 it -- is more focused on something else and
10 has a different protocol for dealing with that
11 situation, more of a streamlined approach to
12 all of the aspects of food safety.

13 Q So if I understand you correctly,
14 you're looking for more consistency in the
15 requirements, a best practice basically or
16 metrics that's based off of sound science?

17 A That's right. Exactly what are
18 those best practices, and in the event of some
19 type of problem, something that would cause us
20 to be out of compliance, what's the best way
21 to get back in compliance. How do you
22 recommend us handling them, based on science-

1 based information?

2 Q Thank you. No further questions.

3 JUDGE HILLSON: Anything else from
4 the panel?

5 (No response.)

6 JUDGE HILLSON: Okay. I don't see
7 anything. Anyone from the audience? Any
8 redirect?

9 (No response.)

10 JUDGE HILLSON: Okay. Thank you
11 for testifying, sir. You may step down.

12 MR. HAMILTON: Thank you.

13 (Whereupon, the witness was
14 excused.)

15 JUDGE HILLSON: And I'm going to
16 receive your testimony, written testimony,
17 Exhibit 50, into evidence.

18 (The document referred to, having
19 been previously marked for
20 identification as Exhibit Number
21 50, was received in evidence.)

22 JUDGE HILLSON: And, Mr. Resnick,

1 I guess you can call your next witness.

2 MR. HAMILTON: Thank you, Your
3 Honor. The proponent group calls Bo Herndon.

4 JUDGE HILLSON: I'm marking Mr.
5 Herndon's written testimony as Exhibit 51.

6 (The document referred to was
7 marked for identification as
8 Exhibit Number 51.)

9 JUDGE HILLSON: Please raise your
10 right hand.

11 Whereupon,

12 BO HERNDON
13 having been first duly sworn, was called as a
14 witness herein and was examined and testified
15 as follows:

16 JUDGE HILLSON: Okay. Can you
17 please state and spell your name for the
18 record.

19 MR. HERNDON: It's Bo Herndon.
20 It's B-O, H-E-R-N-D-O-N.

21 JUDGE HILLSON: And you have a
22 written statement you want to read?

1 MR. HERNDON: Yes, sir.

2 JUDGE HILLSON: Please proceed.

3 DIRECT TESTIMONY

4 MR. HERNDON: My name's L.G.

5 Herndon, Jr., and everybody just calls me Bo,
6 and I currently serve as president of the
7 Georgia Fruit & Vegetable Growers Association.
8 I'm a producer and a packer and a shipper of
9 1,850 acres of fresh produce in Lyons,
10 Georgia, including Vidalia onions, sweet corn,
11 and 500 acres of leafy greens.

12 According to the SBA business
13 definition, my total operation would be
14 classified as a large grower. My leafy greens
15 operation, including only the products covered
16 by the marketing agreement, would classify me
17 as a small grower and a smaller handler.

18 As a grower, packer and shipper, I
19 support the National Leafy Greens Marketing
20 Agreement. I believe it will be beneficial to
21 our growers and handlers, because it's a
22 voluntary program that allows for regional-

1 specific food safety audits, metrics for all
2 participants. Currently my operation
3 undergoes three audits a year. With a
4 nationally recognize marketing agreement, I'm
5 optimistic that this agreement could reduce
6 the number of audits and potentially save my
7 operation and other farm operations money and
8 time.

9 At the same time, this type of
10 program could reduce the occurrences of food-
11 borne pathogens on leafy green vegetables. I
12 believe this marketing agreement is in the
13 best interests of the leafy greens industry,
14 but more importantly, I believe it's in the
15 best interests of our U.S. consumers.

16 Thank you for the opportunity to
17 testify in support of the National Leafy
18 Greens Marketing Agreement.

19 JUDGE HILLSON: Do you have any
20 further direct of this witness?

21 MR. RESNICK: No, Your Honor.

22 JUDGE HILLSON: I'm going to

1 receive Exhibit 51, Mr. Herndon's statement,
2 into evidence.

3 (The document referred to, having
4 been previously marked for
5 identification as Exhibit Number
6 51, was received in evidence.)

7 JUDGE HILLSON: And I'm going to
8 ask the panel if they have any questions of
9 Mr. Herndon. Ms. Schmaedick?

10 MR. HERNDON: I kind of figured
11 she would.

12 MS. SCHMAEDICK: I'm just getting
13 started.

14 MR. HERNDON: I know it.

15 CROSS-EXAMINATION

16 BY MS. SCHMAEDICK:

17 Q Good morning, Mr. Herndon.

18 A Good morning.

19 Q Melissa Schmaedick with USDA. I
20 was wondering if you could tell me a little
21 bit about leafy green production in your area
22 of Georgia, in and around Vidalia.

1 A Yes, ma'am. I started growing
2 greens about maybe 15, 16 years ago, maybe 20
3 years ago, and we direct seed our greens, and
4 we transplant our greens, and we usually start
5 our crop around September, and we run all the
6 way till next June or July, just depending on
7 what the weather's like, the heat and all that
8 kind of stuff.

9 We shed-pack everything. We don't
10 field-pack anything. We go to the field and
11 gather our greens and bring them back to the
12 packing shed, and we have a hydro-coolers that
13 would chill our greens, bring them down in
14 temperature, because greens, if they get heat
15 in them, then they rot and all this kind of
16 stuff, so you have to do a lot of things to
17 protect them.

18 And we pack them in the shed, put
19 them in boxes or crates or bins or whatever
20 we're shipping them in, and then we put them
21 in big coolers and hold them there till the
22 trucks get there, and then we load them on the

1 trucks and ship them out. And we stay in the
2 greens business probably nine months out of
3 the year.

4 Q Are there other leafy green
5 producers in your area?

6 A No, ma'am. I'm about the --
7 there's a lot more onion growers around me,
8 but I'm about the -- there might be one other
9 person that grows greens in my area.

10 Q And does your production all go
11 into commercial distribution, or do you have
12 direct sales locally?

13 A I have both.

14 Q Both. As far as your buyers,
15 commercial buyers, are they currently
16 requiring certain best practices to be
17 followed?

18 A Yes, ma'am. We started about six
19 years ago. This has been coming on, coming
20 on, but like Mr. Bill and Mr. Kent Hamilton
21 said while ago, most all your chain stores now
22 that you sell to, you have to have some kind

1 of food safety program in. It might be one
2 they pick out for you, but you have to have
3 something in place. A lot of your wholesalers
4 are not wanting it now, but if you do have it
5 and you've got it in place, you stand a lot
6 better chance to get more markets with this in
7 place, because food safety's a real big issue
8 now with the growers and the packers, and
9 anybody that grows fresh vegetables.

10 Q Are you seeing any similar
11 requirements from your customers that are in
12 the direct sales market?

13 A Yes, ma'am. Most everybody we
14 deal with with food, you know, wants some kind
15 of food safety implemented.

16 Q Do you grow any organic
17 production?

18 A No, ma'am.

19 Q So you mentioned that most of
20 the -- that you have a packing shed, so
21 obviously you're a packer as well.

22 A Yes, ma'am.

1 Q What types of practices do you
2 have in place there that would fall under the
3 GHP type of guidelines, good handling
4 practices?

5 A Well, I can repeat it like Mr.
6 Bill and Kent said. We have to check our
7 waters. We have to have traps out. We have
8 to have special lighting. We have to have
9 gloves. Anybody gets off the packing line and
10 goes to the restrooms, they have to wash their
11 hands before they get back on them. They're
12 not allowed to have foods or drinks or
13 anything up there on the packing shed while
14 they're packing stuff.

15 All the chemicals in the building,
16 anything that's around, has to be locked up
17 under key. Only special people have the keys.
18 The water has to be checked. We have to
19 check it three and four times a week. We have
20 softeners on our water to keep the water --
21 the pHs down in our water, and we have signs
22 all over our packing facility: Anybody that

1 comes by the packing facility has to come by
2 the office first before they check in. You
3 have to have no kind of animals or birds or
4 any of this type stuff can get under your
5 packing house, and just the basic stuff that
6 you have to do. It's real easy to do, once
7 you get it put in place, but, you know, it's
8 just maybe a little bit hard to get started
9 with it, but once you get going with it, it's
10 just the cost of doing business.

11 Q And what about in the field? What
12 are some of the things that you do in the
13 field?

14 A We have to have restrooms out
15 there, and we have to -- we don't let our
16 workers go into the field, but when it's being
17 sprayed, they have to stay out so many hours
18 before they go into it. We have signs up in
19 the field, telling people to stay out.

20 Our tractors are cleaned, you
21 know, and sprayed good, and, you know, we try
22 to keep them as clean as we can when we're a

1 crop and try to keep our equipment up off the
2 crop, so you don't carry it from one field to
3 the other, and just stuff like that.

4 Q Since you've implemented your
5 program specifically in the field, have you
6 found yourself in a position where you're
7 directly in conflict with any other
8 regulation?

9 A No, ma'am. You know, it's just
10 real -- it's hard, but it's easy. You know,
11 you just got to get it and do it, and once you
12 get started with it, then everything's okay.

13 Q I believe that's it for my
14 questions. Thank you.

15 A Thank you, ma'am.

16 JUDGE HILLSON: Any other
17 questions from the panel? Ms. Dash.

18 MS. DASH: Suzanne Dash.

19 BY MS. DASH:

20 Q Do you have food safety
21 requirements for your other vegetables?

22 A Yes, ma'am.

1 Q And are some of the costs for your
2 leafy green vegetable food safety
3 requirements, are they -- can they be spread
4 out over your whole operation, because you
5 have similar requirements with your other
6 operation?

7 A Yes, ma'am. It's kind of like Mr.
8 Bill said while ago. We just -- you know, if
9 we put up so many packages, we just --
10 whatever our cost is, we just spread it out
11 over that many packages for the amount of year
12 for that crop, depending on what our yields
13 are. You know, if our yields is low, the cost
14 is going to go up. If our yields are high,
15 then the cost will go down.

16 Q Thank you.

17 JUDGE HILLSON: Anything else from
18 the panel? Ms. Deskins.

19 BY MS. DESKINS:

20 Q Good morning.

21 Sharlene Deskins, Office of
22 General Counsel. Just so I understand your

1 testimony, you pack your leafy greens in the
2 field. Is that what you testified to?

3 A No, ma'am. We pack everything at
4 the shed. We bring it in and we gather it and
5 bring it in to the shed, and then pack it.

6 Q Okay. I don't know if -- in the
7 agreement, they use the term "manufacturing."
8 I'm just trying to find out if you would
9 qualify as a manufacturer under that term.
10 Are you familiar with it?

11 A No, ma'am, not really. But, I
12 mean, I think you might be talking about
13 bagging greens or something like that, when
14 you say, manufacture.

15 Q Can I show you a copy of what it
16 is, just to find out if you would qualify as
17 a manufacturer?

18 A Yes, ma'am.

19 Q I've got it right here. Just a
20 second.

21 JUDGE HILLSON: Here's a copy of
22 the regs in front of him.

1 BY MS. DESKINS:

2 Q It's 970.16.

3 A 970-what?

4 Q 960.16.

5 A (Perusing document.) No, ma'am.

6 I would say I would not be.

7 Q Okay. Thank you.

8 JUDGE HILLSON: Anything else from

9 the panel? Go ahead, Mr. Souza.

10 MR. SOUZA: Thank you. Anthony

11 Souza, USDA.

12 BY MR. SOUZA:

13 Q Good morning, Mr. Herndon. Just
14 one quick question. In your written
15 statement, you speak about your leafy greens
16 operation. And then as you're talking and
17 answering some questions, you refer to greens.
18 What greens are you referring to?

19 A The crops I grow?

20 Q Yes, sir.

21 A I grow collards, kale, turnips,
22 mustard, all your leafy greens.

1 Q You have a copy of the proposed
2 agreement in front of you?

3 A Yes, sir.

4 Q Could I have you look at 970.15,
5 please.

6 A I don't see that one. I see
7 970.1, but --

8 Q It's on page --

9 A Here it is. I see it. I'm sorry.
10 (Perusing document.) Yes, sir, I see it.

11 Q Could you read that over and
12 indicate to us what leafy greens you grow that
13 are defined as a leafy green under that
14 definition.

15 A (Perusing document.) Kale would
16 probably be the only one that I grow.

17 Q Would it be your desire to
18 increase the definition of leafy green there
19 to include the other greens that you
20 mentioned, or would it be adequate as stated
21 in the current proposal?

22 A For me to be in business,

1 everything I grow is going to have to have
2 some kind of food safety on it. For me to say
3 that it needs to be put in this, I don't guess
4 I'm qualified to say that, but if I'm going to
5 pack it and ship it on my farm, I want some
6 kind of food safety on it to make sure that
7 what Kent said while ago, or Bill, that we can
8 trace it back to a field if we have a problem,
9 whatever that crop is we're growing, and we do
10 that now. You know, it's just good business
11 for us to know where something's coming from,
12 and if we did have a problem, we'd be able to
13 trace it back and find out what was going on.

14 Q Under your current program, do you
15 have a trace-back program in place?

16 A Yes, sir.

17 Q Could you describe a little bit of
18 what that entails?

19 A Well, my daughter and my nephew
20 handles all that, but I do the best I can with
21 it. But when we plant a crop in the field and
22 we harvest that crop and we bring it to the

1 packing shed and we pack that crop, we have to
2 have some kind of identification on that
3 pallet of product to tell us what field it
4 come from, what day it was harvested, when it
5 was put in the cooler, when it was put on the
6 truck, and where it went to, and the variety
7 and all this kind of stuff, you know, in case
8 it got out into a store, and my buyer called
9 me back and said, Bo, where did this kale come
10 from; what did you spray it with, when did you
11 pick it. It's just good information for me to
12 know to talk to my buyer.

13 Q Do you -- is that a documented
14 procedure? Do you keep records on all those
15 different -- the fields, the lots, the
16 harvest, the crews, et cetera?

17 A Yes, sir.

18 Q How long do you retain those
19 records for?

20 A That's a good question. I would
21 say they'd be there, you know, for right on
22 and right on, because, you know, we don't

1 destroy records for five or six years.

2 Q Thank you very much.

3 JUDGE HILLSON: Is there anything
4 else from the panel? Ms. Schmaedick?

5 MS. SCHMAEDICK: Melissa
6 Schmaedick, USDA.

7 BY MS. SCHMAEDICK:

8 Q To follow up on that question
9 about recordkeeping and reports, based on your
10 experience and your opinion, is the collection
11 of that type of information helpful, and would
12 it be important to have the authority to
13 collect that information under the proposed
14 program?

15 A Yes, ma'am. I would say so.

16 Q Thank you.

17 JUDGE HILLSON: Anything else from
18 the panel? Anything else from the audience?
19 Any redirect? Mr. Giclas?

20 MR. GICLAS: Thank you. Hank
21 Giclas, Western Growers.

22 REDIRECT EXAMINATION

1 BY MR. GICLAS:

2 Q Mr. Herndon, thank you for your
3 testimony. I just had one question. You
4 know, based on your experience with the
5 marketplace or with buyers -- and you
6 described, you know, moving your product both
7 to direct sales and to retailers. In your
8 experience, do either of those buyers only
9 require food safety programs or practices for
10 commodities that are going to be served fresh?
11 Or do they require it for all commodities?

12 A Well, the buyers that I deal with
13 require me to have it on everything I grow.
14 And, you know, some of the chains or some of
15 the places, they have one program in place,
16 and then maybe another one has another program
17 in place, but it all, at the end of the day,
18 means the same thing.

19 Q And, I guess, as an extension of
20 that question: Does it matter whether the
21 product that you produce is distributed as a
22 whole commodity or as a processed commodity,

1 whether they, you know, require food safety or
2 not?

3 A Well, I don't process anything, so
4 I don't know that I could answer that question
5 for you, sir.

6 Q But everything that you ship is a
7 whole commodity, and it all has to comport
8 with some type of food safety program.

9 A Yes, sir.

10 Q Thank you.

11 JUDGE HILLSON: Any further
12 questions of Mr. Herndon?

13 (No response.)

14 JUDGE HILLSON: Okay. You may
15 step down. Thank you.

16 (Whereupon, the witness was
17 excused.)

18 JUDGE HILLSON: Mr. Resnick, you
19 may call your next witness.

20 MR. RESNICK: Thank you, Your
21 Honor. The proponent group calls Beth Bland.

22 JUDGE HILLSON: I'm marking Ms.

1 Bland's written statement as Exhibit 52.

2 (The document referred to was
3 marked for identification as
4 Exhibit Number 52.)

5 JUDGE HILLSON: Please raise your
6 right hand.

7 Whereupon,

8 BETH BLAND

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

12 JUDGE HILLSON: And can you please
13 state your name and spell it for the record.

14 MS. BLAND: Beth Bland, B-E-T-H,
15 B-L-A-N-D.

16 JUDGE HILLSON: And you have a
17 written statement you want to read. Is that
18 correct?

19 MS. BLAND: I do.

20 JUDGE HILLSON: Please proceed.

21 DIRECT TESTIMONY

22 MS. BLAND: Good morning. My name

1 is Beth Bland, and I'm the Food Safety Program
2 coordinator for the Georgia Fruit & Vegetable
3 Growers Association. About ten years ago,
4 Georgia producers came to our association,
5 asking for help understanding the then new
6 food safety guidance, programs, and
7 accompanying third-party audits. They were
8 also looking for help to alleviate the costs
9 of implementing those programs and audits.

10 As a result, the Georgia Good
11 Agricultural Practices Food Safety Program, or
12 Georgia GAP Program, was created. I would
13 add -- it's not written in my statement --
14 that ten years ago, all food safety was
15 categorized as GAPs. Now there are GHPs and
16 GMPs, which apply to the packing facilities.
17 The Georgia GAP Program includes all GAPs,
18 GMPs, and GHPs.

19 The Georgia GAP Program is a
20 collaboration between several different
21 organizations with specific duties. The
22 Georgia Fruit & Vegetable Growers Association

1 is the administrative body that helps with
2 education and implementation of food safety
3 programs on the farm and in packing facilities
4 and serves as a liaison between the
5 grower/packer and the auditing body.

6 Currently, we have approximately
7 60 certified producers and packing facilities
8 in our Georgia GAP Program and provide food
9 safety consultation to countless others
10 nationwide through various produce educational
11 conferences and commodity partnerships. I
12 spend about 70 percent of my time helping
13 educate and implement food safety on farms and
14 in packing facilities -- and I would add -- of
15 all sizes.

16 We support the National Leafy
17 Greens Marketing Agreement for many of the
18 same reasons you've already heard in
19 testimony, but mainly because of the
20 development of national best practices and the
21 adoption of science-based, scalable, and
22 regionally flexible metrics in conformance

1 with the FDA's guidance and regulation.

2 Coupled with corresponding with
3 audit metrics, these best practices would
4 minimize microbial contamination of fresh
5 leafy green vegetables in the growing and
6 handling processes, enhance the overall
7 quality of fresh product in the marketplace,
8 and boost public confidence in these
9 commodities.

10 Over the past four years, I've
11 watched food safety move from an annoyance
12 among producers to the present, where it is an
13 essential business aspect of the entire
14 operation. The driving force between food
15 safety implementation on the farm and in the
16 packing facility has been our customers and
17 our consumers. It is the retail and food
18 safety industries who have caused the
19 exponential growth of the food safety
20 industry.

21 I applaud these industries for
22 their commitment to consumer well-being and

1 overall consumer confidence. However, because
2 of the lack of federal oversight, food safety
3 compliance has become unbearable for many. It
4 is a very common scenario for a farm or
5 packing facility to experience multiple audits
6 because different customers require the use of
7 different audit companies.

8 In April of 2009, the United Fresh
9 Produce Association hosted the Global
10 Conference on Produce and Food Safety
11 Standards. GFVGA participated in this
12 conference which compared many of the major
13 auditing firms across the world and found that
14 anywhere between 80 to 90 percent of the audit
15 questions were the same. Yet our producers
16 and packers are having to spend countless
17 hours away from their growing, packing, and
18 shipping operations, answering the same
19 questions over and over and over again.

20 Having one uniform yet regionally-
21 specific food safety metrics of participants
22 that could be accepted by retail and food

1 safety customers is a move in the right
2 direction. It will save participants time and
3 money. The Georgia Fruit & Vegetable Growers
4 Association supports federal oversight as the
5 only way to further adoption and
6 implementation from our customers, as well as
7 enforce and ensure compliance with such food
8 safety guidance.

9 During my time in this role, I've
10 spent countless hours with large and small
11 growers alike, educating them on the
12 importance of food safety, but more
13 importantly, the practical application of
14 these programs in their operations.
15 Regardless of the size of the operation, those
16 who have never had a food safety program are
17 always apprehensive and can relay some
18 fantastic horror stories and myths that they
19 have heard about food safety audits.

20 Equally, I can testify to the
21 countless people who feel that food safety
22 programs are going to put them out of

1 business. However, after walking through
2 their fields and operations, I've been able to
3 show most of them how their misconception was
4 incorrect. They realize that meeting the
5 guidance set up by FDA and most food safety
6 organizations are easily attainable and can be
7 cost-effective.

8 This being said, education is
9 going to be a key element to the adoption of
10 the National Leafy Greens Marketing Agreement
11 by handlers and their suppliers. If the NLGMA
12 is passed, I would ask USDA to consider
13 developing useful tools to help participants
14 of all sizes to develop, implement, and
15 execute a leafy greens-specific food safety
16 program.

17 I would also suggest having
18 educational sessions around the nation to help
19 producers and handlers understand what a food
20 safety program entails and to help debunk the
21 myths that are so prevalent. Part of that
22 education is going to be helping people

1 understand that one region or state will not
2 have total control over the marketing
3 agreement Administrative Committee or in
4 developing the food safety program and audit
5 metrics.

6 The metrics associated with the
7 national marketing agreement have yet to be
8 developed. While it is reasonable to assume
9 that they will follow the format already in
10 place in state programs such as California and
11 Arizona, it is the Technical Review Board
12 established by the National Marketing
13 Agreement Administrative Committee that will
14 be charged with developing metrics tailored to
15 addressing varying risks, production
16 practices, and environments.

17 I have reviewed the food safety
18 metrics used for California and Arizona, and
19 they appear to be feasible in very diverse
20 production environments and by a wide variety
21 of different operations. In fact, the success
22 of these programs in meeting industry needs

1 has led to the proposal that USDA consider a
2 similar national program. I support the
3 commitment of the USDA and NLGMA to address
4 the unique risks presented in different
5 regions as well as varying production
6 practices across the nation.

7 Another consistent concern I've
8 heard from farmers of all sizes is that they
9 see the benefit of food safety but they resent
10 the fact that imports do not seem to have to
11 comply with the same food safety guidance. I
12 support this National Leafy Greens Marketing
13 Agreement because as it is administered by
14 USDA, it would allow handlers of both
15 domestically grown and imported leafy greens
16 to voluntarily participate in a program.

17 This marketing agreement would go
18 beyond state and national boundaries, so that
19 participants across the world could jointly
20 implement uniform food safety and best
21 practices along with corresponding
22 verification programs that could reduce the

1 potential for microbial contamination in these
2 crops.

3 The success of this program comes
4 in maintaining its voluntary status for
5 handlers. However, we believe the agreement
6 can have the best and greatest positive impact
7 if the large majority of the industry chooses
8 to participate. Ultimately, an agreement
9 would support the marketability of fresh leafy
10 green vegetable and overall stability of the
11 industry.

12 I believe all handlers and
13 producers, regardless of size or growing
14 methods, such as organic versus conventional,
15 should be included. Only then can we help
16 ensure the reduction of risks of the potential
17 contamination.

18 We, as the Georgia Fruit &
19 Vegetable Growers Association, are working
20 hard to represent the best interests of our
21 growers, handlers and allied members. We
22 believe the National Leafy Greens Marketing

1 Agreement is in the best interests of our
2 Georgia members as well as the entire nation.
3 I thank you for the opportunity to share my
4 thoughts with you today in support of the
5 National Leafy Greens Marketing Agreement.

6 JUDGE HILLSON: Mr. Resnick, do
7 you have any further direct of Ms. Bland?

8 MR. RESNICK: Not at this time,
9 Your Honor.

10 JUDGE HILLSON: Okay. I'm going
11 to receive Exhibit 52 into evidence.

12 (The document referred to, having
13 been previously marked for
14 identification as Exhibit Number
15 52, was received in evidence.)

16 JUDGE HILLSON: And I'm going to
17 ask the panel if they have any questions.
18 We're going to have to just deal with the
19 sound coming from the other room. It's way
20 too early to break for lunch, so, Ms.
21 Schmaedick.

22 MS. SCHMAEDICK: Thank you, Your

1 Honor.

2 CROSS-EXAMINATION

3 BY MS. SCHMAEDICK:

4 Q Good morning, Ms. Bland.

5 A Good morning.

6 Q And thank you for your testimony.

7 A I've see lots of little pink
8 stickies.

9 Q I must apologize. The music is a
10 little distracting, so I'll try to focus here.
11 I'm very interested to hear more about your
12 education program, and if you could describe
13 a little bit about what you do, that would be
14 helpful.

15 A Sure. Okay. We as an association
16 have kind of taken the initiative and the
17 platform that education is kind of what it all
18 stems around. As I've been doing this for the
19 past four years, I've found that not very many
20 other organization, unless you're an actual
21 consultant with a food safety firm, nobody
22 really goes around and helps educate and help

1 understand what food safety is.

2 For the past four years, we've
3 hosted a minimum of two to three educational
4 programs throughout our state a year. We have
5 a large educational conference in Savannah
6 every year in conjunction with the Southeast
7 Regional Conference, which by the way, that's
8 January 8 through 10, and we'd love to have
9 you all there.

10 But we have a large food safety
11 program there, and always associated with that
12 is a basic understanding. This is what a food
13 safety program is. This is what it means.
14 This is what an audit is. Let's go through
15 this section by section.

16 As I've gone out and people are
17 becoming familiar with what we are doing, I've
18 been invited to several of the states around
19 us, Florida, North Carolina, South Carolina,
20 Tennessee, Alabama, Indiana, as well as other
21 commodity-specific associations, the National
22 Watermelon Association, the Georgia

1 Blueberries, and there's several others,
2 conducting the same sort of educational
3 workshops.

4 And what I'm finding is once I lay
5 out what a food safety program is, I get a lot
6 of understanding from that. Part of the
7 consultation in education that we do is one on
8 one with a farmer, where I actually go into
9 their facility and I ask them what they do.
10 They walk me through their entire field and
11 production practices, their harvesting
12 practices, their transportation practices, and
13 then we walk through the packing facility.

14 And my goal is to be as strict as
15 I can so that there are no questions
16 whatsoever when an audit comes around. If I
17 can educate them and help them understand the
18 rationale behind the food safety SOP or the
19 food safety guidance, I believe there's better
20 understanding. There's better implementation
21 there.

22 Q Can you tell us a little bit about

1 where the GAP, GHP and GMP guidance comes
2 from?

3 A Back in 1998, the FDA issued a
4 guidance document for our industry, and it is
5 the guidance to minimize microbial
6 contamination in the fresh produce industry.
7 It is available on the FDA web site, and I'm
8 also happy to go print off several of those
9 copies and bring them to you, if you need to.

10 Q That would be very helpful.

11 A Okay. Are you aware of any other
12 documents that would fall into that area of
13 guidance --

14 A Yes.

15 Q -- information?

16 A Since -- I don't know -- probably
17 the mid-2000s, the industry has kind of come
18 together and decided that we kind of -- the
19 produce industry is a very proactive industry
20 at times, and food safety has definitely been
21 one of those aspects, so they have come
22 together with USDA and FDA at the table and

1 have developed several other commodity-
2 specific guidances, one for tomatoes, one for
3 lettuce and leafy greens, one for melons,
4 which includes cantaloupe and honeydew and
5 watermelon.

6 The National Watermelon
7 Association is currently finishing up one for
8 watermelon specifically. I know there's a
9 mushroom, and there is a green onion, so there
10 are several commodity-specific guidances out
11 there that follow that original FDA guidance
12 that was issued in '98.

13 Q And so are -- am I correct in
14 understanding that those are considered FDA
15 documents?

16 A Not yet. The 1998 guidance
17 document, overall guidance document, is
18 considered an FDA guidance. The others, again
19 developed with the help of USDA and FDA
20 officials, the top three, tomatoes,
21 lettuce/leafy greens and melons, are currently
22 in the comment process. I believe that

1 comment period ends November 2, and then from
2 there, it will go through the rest of the
3 rulemaking process.

4 Q Okay.

5 A But they are considered industry
6 guidance at this time.

7 Q So you've mentioned a couple of
8 times that there are -- that in your work with
9 growers and handlers and processors, there are
10 some misconceptions that you've been able to
11 clarify. Can you talk about what some of
12 those misconceptions have been?

13 A Absolutely. I went to Tennessee
14 recently, spent a whole day, went through just
15 a PowerPoint presentation that took about two
16 hours of this is what a food safety program
17 is, and then we conducted a mock audit where
18 we walked through the field, and I presented
19 the questions that the auditor would ask, and
20 then just gave an explanation. This is
21 exactly what he'd be looking for, did the same
22 thing in the packing facility.

1 And afterwards, there were lots of
2 questions and then a lot of one-on-one
3 questions. One that stuck out in my mind in
4 particular was a gentleman who was speaking to
5 his cooler, and he said that he had a specific
6 type of insulation in his cooler. I think it
7 had been blown in, and he was under the
8 impression that he was going to have to scrape
9 all of that down and install the insulation
10 that has a plastic cover, and that's simply
11 not the case. Things of that nature.

12 Another huge misconception is if
13 there's a packing facility with open sides,
14 whether it's all four sides are open or two to
15 three sides are open, that you are going to
16 have to completely enclose the facility. That
17 is a misconception as well.

18 Q Are you aware of any
19 misconceptions out in the field, in the
20 growing process?

21 A One would be that currently,
22 because there is no federally mandated food

1 safety program, whatever your customer is
2 asking you to -- whatever food safety program
3 your customer is asking you to go through,
4 that is what you do, and depending on that
5 program, some may ask or require your workers
6 to wear gloves. Others, it may not matter to
7 them. So that may be a misconception if you
8 are using an auditing firm or an auditing
9 metrics that does not require gloves, that you
10 will have to wear gloves.

11 Q Based on your understanding of the
12 proposal, would there be collaboration between
13 not only USDA and FDA but other federal and
14 state governing bodies in the development of
15 metrics?

16 A That is my understanding and my
17 hope. You know, I have the utmost respect for
18 FDA and USDA on the federal level, but the
19 state Departments of Agriculture, the
20 extension agents and those sorts of outreach
21 organizations that are in the states, they
22 have the on-the-ground knowledge and

1 understanding, the day in and day out
2 understanding and knowledge of what is going
3 on, so being able to develop a metric that is
4 going to be regionally-specific and be able to
5 incorporate production practices that are
6 going on in a specific region would be a huge
7 help in helping people understand and covering
8 the production overall.

9 Q You mentioned the term "region,"
10 and you've also mentioned that you have
11 extensive experience in multiple states. Can
12 you explain what that term "region" means in
13 your work?

14 A Okay. I would refer back to what
15 Charles Hall described earlier, a region being
16 a contiguous production area that has similar
17 production practices or environmental aspects.
18 I know in Georgia, in the Southeast in
19 general -- and I would categorize that as
20 North Florida, Georgia, North and South
21 Carolina, Alabama, Tennessee -- we have
22 similar environmental aspects, but then within

1 each state, there's going to be differences,
2 such as the mountain area, cooler -- very much
3 cooler temperatures, maybe differing humidity
4 levels than there would be in South Georgia.

5 Q And you also mentioned in your
6 work that you work with both large and small
7 entities.

8 A Uh-huh.

9 Q So in your experience, what are
10 the types of adjustments that these entities
11 need to make in order to implement and
12 maintain a GAP or GHP program?

13 A Quite honestly, in my experience,
14 I have found that everybody is already doing
15 70 to 80 percent of everything being asked in
16 a food safety GHP and GAP program. The big
17 kicker that gets everybody is the
18 documentation element of it.

19 I have found that most every
20 producer I'm working with has the mind-set of
21 my wife and children, my family. They're also
22 going to the grocery store; they're buying

1 this, too, so I want to product this product
2 in my field and in my packing facility in the
3 same manner that I would want anybody else's
4 family to be able to eat this safely.

5 So most everybody is -- that I
6 have experiences, they're already there.
7 There are definitely outliers, but most
8 everybody's already doing everything -- the
9 majority of what's being asked and required.

10 Q You mentioned the importance of
11 national best practices being scalable. Can
12 you explain to me what that means?

13 A Scalability -- well, again, I
14 support that there not be any exemptions for
15 large, small, organic versus conventional
16 growers. If there was a way that we could
17 work together so that everybody is doing the
18 same things, yet be able to scale it to a
19 point that is not going to be -- not going to
20 put anybody out of business or put such a
21 strain on them, whether it's economically or
22 even just with personnel and the documentation

1 that's going to be required, a way to scale
2 that back so that everybody is benefitting
3 from that.

4 Q If I understand the concept of
5 SOPs -- that's standard operating procedures.

6 A Yes.

7 Q Would that be one avenue through
8 which compliance with a GAP or a GHP program
9 could be scalable, how that individual company
10 adapts their internal procedures?

11 A Yes. We're going to get into some
12 gray area here, so bear with me. When a
13 company or an organization implements a food
14 safety program, SOPs have to be developed for
15 every operation within the operation, every
16 step, every handling step within a operation.
17 The gist of all food safety programs is
18 looking at your entire operation from when you
19 put the plant -- from when you actually
20 prepare the ground all the way until that
21 produce is put on the truck and shipped out.

22 In looking at the areas where

1 there may be critical control points, where
2 any sort of contamination or quality issue may
3 come into play, the majority of those are
4 going to be when somebody handles the product
5 or when it is harvested or when it goes i not
6 water. So when somebody is setting up a food
7 safety program, they're writing those SOPs.
8 Again, being that there is no federally-
9 mandated food safety program at all, there can
10 be a lot of gray area, and there can be a lot
11 of -- maybe scalability, but differences in a
12 food safety program from one farm versus the
13 next.

14 In that, I'm referring to the
15 different audit programs that somebody may
16 use. If one audit program asks lots of
17 questions or is very specific and tougher on
18 water requirements, then the farmer using that
19 audit program is going to have a larger SOP on
20 their water than, say, the next farmer who is
21 not using that audit program. That audit may
22 focus more on social accountability for their

1 workers or pesticide applications. So in that
2 case, those SOPs would be more beefed up and
3 focused on those aspects.

4 There would definitely be some
5 scalability there, and there already is some
6 scalability there, because at this point, SOPs
7 and food safety programs are being written to
8 the audit that you are undergoing. If you are
9 undergoing multiple audits, you are then
10 writing that to the highest standard that you
11 have to meet. I think that's all.

12 Q Okay. Do you notice any
13 differences between different auditing
14 practices, for example? I don't know if I'm
15 asking that question clearly. But one of the
16 concerns that has been presented earlier is
17 that there is inconsistency in the application
18 of auditing practices, and I'm wondering if
19 you might have an explanation as to why there
20 is that perception.

21 A Okay. No matter what the company
22 or the organization that's doing the audit,

1 all audits are done by humans, and most --
2 well, I would go so far as to say all audit
3 companies do -- or at least strive to have
4 audit consistencies and auditor consistencies,
5 and also take measures to make sure that the
6 auditors within that organization understand
7 and are looking for the same things. That
8 does not always happen.

9 And just like with anything else
10 that goes on with us, if somebody is having a
11 bad day or if they -- something in their
12 personal life which should not affect them at
13 all in their professional life, but if they
14 had a fight earlier or if there's something
15 going on, that could definitely affect them in
16 the field, and that's just kind of the way
17 that it is, and it's unfortunate.

18 I know with our Georgia GAP
19 Program, we very much encourage our
20 participants if there's a question that is
21 asked and they feel like they answered it and
22 they feel like they should get maybe full

1 credit for that question or if they were not
2 treated fairly for some reason, we very much
3 encourage them to come to us and tell us what
4 that is, so that we can have the consistency
5 between auditors and between audits. And I
6 know that goes on industry-wide.

7 Q How does your program address the
8 issue of corrective action? If there's an
9 audit and it results in an identification of
10 an issue, what happens?

11 A Okay. There are several levels,
12 first of all. If the question is a high-
13 priority question or a critical question and
14 results in a downgrade in that score or the
15 answer "no" to that, if that results in an
16 immediate food safety risk, that has to be
17 addressed right then and there on the spot.

18 If there's something that's less
19 critical and it could become a problem down
20 the road, if it's repeated several times, that
21 does not have to necessarily be addressed
22 immediately on the spot during the audit, but

1 that's where the corrective action would come
2 into place.

3 The majority of the SOPs already
4 have corrective actions written in and in
5 place, so that if event A does happen, then
6 the corrective action for event A is already
7 written, and so those instructions are already
8 there. Once someone goes through an audit --
9 and I would say this across the industry, not
10 just for the Georgia GAP Program.

11 Once someone goes through an
12 audit, they then receive their audit report
13 with the scores and the comments of the
14 auditors, and almost every question has a
15 comment, even if it's, Completed, or, Met the
16 requirement. But to go through, and
17 everywhere that they had a down score or a
18 downgrade, to address that with a corrective
19 action.

20 And that corrective action may be,
21 you know, if, for instance, they did not have
22 anti-personnel fencing around the entire

1 operation, which is a six-foot fence with
2 barbed wire across the top, making it a total
3 of an eight-foot fence. That is a very large
4 investment. it is not a requirement.
5 However, almost all audits, that question is
6 there. It really is a benefit for those ho do
7 have it, not so much of a loss for those who
8 don't.

9 But, for instance, if that were
10 the question and somebody did not have that
11 fencing there, if they wanted to put it up the
12 next year, then corrective action would be
13 construct and install in the following season.
14 If they did not feel like it was worth the
15 time and effort and investment, they could
16 simply address it as it's not worth the time
17 and effort and investment at this time.

18 Q There's nothing that requires a
19 fence to be built.

20 A No.

21 Q Okay.

22 A There are very few automatic

1 failures on any audit.

2 Q And is there a mechanism for
3 someone to ask for an administrative review or
4 petition an audit if they don't feel that it's
5 been done correctly?

6 A Absolutely. Yes, ma'am.

7 Q And do you feel that that's an
8 important process?

9 A Yes.

10 Q Okay. Can you explain what you
11 mean by automatic failure?

12 A Automatic failure would be if
13 there is -- I'll just give you an example. A
14 lack of any kind of pest control program --
15 actually, that's not -- yes. On some audits,
16 that is an automatic failure. However, if any
17 kind of fecal material or a rodent in and of
18 themselves is found in the packing facility,
19 fecal material on the belts, fecal material on
20 the packaging material, fecal material on the
21 actual produce itself results in an automatic
22 failure.

1 So anything that poses an
2 immediate food safety risk and a hazard to
3 somebody who may eat or consume it, that is an
4 automatic failure. The audit then is to stop
5 completely, and the auditor is then to return
6 after the issue has been taken care of.

7 Q Do you have any examples of
8 automatic failures in the field?

9 A Automatic failures in the field
10 would -- fecal material is another, human
11 fecal material. Is lack of --

12 JUDGE HILLSON: You just get to
13 testify. You don't get to ask them questions.
14 You have to testify.

15 THE WITNESS: Oh, sorry. There
16 are -- there is at least one other, and I am
17 completely blank at this point.

18 BY MS. SCHMAEDICK:

19 Q Okay. Thank you. You mentioned
20 that you work with organic producers and
21 handlers.

22 A I work with -- some of the

1 producers that I work with do have organically
2 grown produce on their facilities, but as of
3 yet, I have not worked with a completely
4 organic operation.

5 Q So a portion of their operation
6 might be organic.

7 A Yes, ma'am.

8 Q Is there anything about the
9 organic production or handling process that
10 would prevent that business from implementing
11 GAPs or GHPs?

12 A Not to my knowledge. I am not
13 well-versed in the national organic program.
14 However, in all GAP audits and GAP operating
15 procedures, standard operating procedures,
16 there are questions about the use of bio-
17 solids, manure and things of that nature.
18 They can be used -- well, that's not in leafy
19 greens. In a mixed vegetable operation, they
20 can be -- those elements can be used.

21 Q So is it possible that someone
22 could be NOP compliant as well as GAP

1 compliant?

2 A Without knowing the NOP inside and
3 out, I have to refrain from answering. I'm
4 sorry.

5 Q Okay. That's fine. Do you work
6 with growers and handlers that sell -- in the
7 direct sales market or farmers' markets or
8 CSAs?

9 A Yes.

10 Q And do those types of businesses
11 also have food safety systems in place?

12 A Many of them do. Not all farmers'
13 markets will require -- small farmers' markets
14 will require food safety. There are those
15 that do. State farmers' markets, the majority
16 of them have that element in place.

17 Q Uh-huh. So if I understand you
18 correctly, as far as the state farmers'
19 markets are concerned, those producer/handlers
20 are already GAP compliant under the Georgia
21 program.

22 A To my knowledge.

1 Q Okay. And are you aware of what
2 type of -- if there are any specific
3 challenges that businesses of that size have
4 faced in becoming compliant?

5 A The largest challenge of a smaller
6 farmer, whether they are a direct market
7 farmer or their produce is going into the
8 commercial arena, the largest challenge that
9 I have seen has been personnel, having the
10 personnel in place to be able to keep up with
11 the documentation that's required.

12 The rest of it, as Bo Herndon
13 alluded to, food safety is not a hard concept.
14 It's just one that has to be learned, and once
15 an operation or a person has the understanding
16 of what they have to do, the implementation of
17 that is not very difficult.

18 Q Based on your experience, these
19 smaller operations, once they have their
20 program implemented, do they find it's
21 beneficial to them?

22 A Yes. In fact, I've had several --

1 I work with -- I would say, the majority of
2 the people that I worked with, either one-on-
3 one or over the phone, across the nation, are
4 smaller farmers, and I can think of five right
5 now that have come to me since they've
6 implemented their food safety programs, and
7 have told me the benefits of having it. It
8 forces you or food safety programs force you
9 to have some sort of organization to your
10 operation, so they're not over-ordering their
11 boxes and their packaging supplies.

12 They are able to keep tabs on who
13 their workers are, how many they may have on
14 hand at any one time, and if they've been
15 trained properly in food safety and worker
16 health and hygiene practices. They know which
17 packing crews have better quality over others.
18 There just seems to be a lot more -- a lot
19 less loss in the actual handling of the
20 product.

21 Once it falls onto the floor, it
22 has to be thrown away. I cannot be put back

1 onto the packaging line or put -- go back
2 through the chlorine or the chlorination, and
3 now that that has occurred, there's a lot
4 more -- workers seem to be handling it more
5 carefully.

6 I've also seen that what many of
7 our producers have done, instead of simply
8 going to the workforce and saying, We have to
9 do this and because I said so, a lot of them
10 have invited me to come in and do the same
11 sort of educational program that they've been
12 through of, This is what a food safety program
13 is, and this is why.

14 And it has appeared that those
15 workers having the education, the
16 understanding of a food safety program has
17 really helped them increase the quality of the
18 product that they are producing.

19 Q Having said that, in your opinion,
20 is there a direct relationship between quality
21 of a product and the safety of it or the
22 minimization of contamination?

1 A Yes and no. I think if one
2 follows a food safety program, you can
3 definitely expect a greater quality. However,
4 so many other aspects play into that, whether
5 it be, you know, insects, weather, things of
6 that nature. You can definitely produce a
7 quality product that is chock full of some
8 sort of outbreak-causing bacteria as you can
9 a nonquality product that is not going to make
10 anybody sick.

11 Q I believe that's all the questions
12 I have for the moment. Thank you.

13 JUDGE HILLSON: Any other
14 questions from the panel? Mr. Souza.

15 MR. SOUZA: Thank you. Anthony
16 Souza, USDA.

17 BY MR. SOUZA:

18 Q Good morning, Ms. Bland.

19 A Good morning.

20 Q I have a couple questions for you.
21 You mentioned in your testimony that the
22 Georgia GAP Program was created in, I believe,

1 the early 2000s.

2 A Yes, sir.

3 Q Is there a compliance portion of
4 that? What determines whether or not a client
5 passes or fails, becomes certified on the
6 program?

7 A Okay. Our particular program
8 actually is scored, and you receive a
9 percentage which is your score. Anything that
10 is 80 percent or below is considered failing,
11 and you are not certified. We can still issue
12 a certificate, and it says, 80 percent or
13 below, you fail, but anything 81 percent and
14 higher is considered passing.

15 Q Is the participant given an
16 opportunity to initiate corrective actions and
17 then bring their score into compliance to
18 receive an 80 or above?

19 A If they fail, if they have an 80
20 percent or below, the procedure at this
21 current time is that they have to reapply and
22 have a complete -- if they want to have

1 another audit, then they have to go through a
2 full audit, a full second audit.

3 However, if they have an 81 or
4 higher and they implement corrective actions,
5 they can submit those corrective actions,
6 potentially even have an auditor come and look
7 at what has been done, and potentially receive
8 a higher score on their audit.

9 Q What is -- understanding that the
10 metrics have yet to be developed, so such a
11 checklist has to be developed, what's your
12 understanding on how the national program
13 would be implemented and audited to?

14 A It's my understanding that once
15 something has been developed, that USDA is
16 going to be the auditing body or the
17 certifying audit body, whether that is literal
18 USDA officers or certified USDA auditors.
19 That's my understanding.

20 Q On your audits, it sounded as
21 though you have three different components,
22 the GAP, GHP, and GMP portion. Could you

1 explain the time differences, how long it
2 takes to conduct and complete an audit on each
3 different scope?

4 A Sure. Well, first of all, GHP and
5 GMP, for the record, are used interchangeably
6 when it comes to a fresh produce operation.
7 For a GAP audit that takes place in the field,
8 it would usually take about -- anywhere from
9 three to six hours, depending on the size of
10 the operation. Part of that time is spent in
11 the field. I would say 75 percent of that
12 time is spent in the field, observing the
13 harvesters.

14 You must be in harvest to undergo
15 and audit, so observing the harvesters,
16 observing the field in and of itself,
17 observing the adjacent land and the land use,
18 and observing the transportation.

19 The GHP and GMP audit in the
20 packing facility takes anywhere between six to
21 eight hours, and if it's a very large
22 operation, it could take up to two days.

1 Again, I would say about 70 percent of that
2 time is actually spent in the facility in and
3 of itself. The rest of that time, for both
4 the field and the facility are spent, kind of
5 in office, reviewing paperwork and
6 documentation verification.

7 Q You mentioned during the harvest
8 portion that it's important for the audit to
9 take place while harvesting is going on.
10 Could you elaborate a little bit further on
11 that?

12 A The main critical control point in
13 a field is going to be when humans come in
14 contact with the produce. The main time for
15 that to occur is during a harvest, so in order
16 for you to be fully audited and to get a good
17 picture of what goes on in your operation, you
18 must be in production. You must be harvesting
19 for that to happen.

20 Q Is it your understanding in the
21 National Leafy Greens Marketing Agreement that
22 audits would be conducted in the same manner?

1 A Yes, sir.

2 Q You spoke a little bit earlier
3 about the audit costs, and then you went on to
4 state that audit programs tend to be written
5 SOPs for the higher standards, so if you have
6 a participant that is in the Georgia audit
7 program and then they have two or three other
8 private audits that they have to pass for
9 retailers, that they're generally written to
10 the higher standards.

11 A Yes, sir.

12 Q With that in mind, if you were to
13 ask one of your customers the cost of a
14 Georgia audit program, would they be able to
15 give you a cost, just specifically on the
16 Georgia program, or would that cost also
17 include the preparation and recordkeeping for
18 the additional audits at a higher standard?

19 A It would include -- if we're
20 speaking to the overall cost of food safety
21 implementation, it would include the costs of
22 all of the programs and not the Georgia -- not

1 simply the Georgia Fruit & Vegetable Growers
2 Association or Georgia GAP Program.

3 Q So if I understand you correctly,
4 if I were to go out and ask an individual how
5 much their Georgia GAP Program cost, I would
6 more than likely get a cost of a total food
7 safety program rather than just audit to your
8 program?

9 A Yes, sir.

10 Q Thank you. That's all.

11 JUDGE HILLSON: Anything else from
12 the panel? Ms. Dash?

13 MS. DASH: Suzanne Dash.

14 BY MS. DASH:

15 Q Is it your impression that if
16 you're a leafy green grower in Georgia and you
17 sell in the commercial market, your buyer is
18 going to require a food safety program?

19 A Yes, ma'am.

20 Q And is it your impression that
21 leafy green growers in Georgia are undergoing
22 field audits?

1 A It's my impression. Yes, ma'am.

2 Q Okay. Have you worked with any
3 leafy green growers in the past year who
4 needed to get ready for their first audit?

5 A Yes, ma'am.

6 Q Okay. So would this be a grower
7 who is -- has a new buyer or is a new grower
8 or --

9 A It could be a combination of
10 either. The majority of the time, it is
11 somebody who has a new buyer or that buyer
12 group, that retail group is now beginning to
13 require these food safety certification
14 programs. Up until about two years ago, it
15 was strongly recommended once the 2008 -- or
16 with the 2006 E. coli associated with spinach
17 and the 2008 salmonella with tomatoes/jalapeno
18 peppers, those two events have done the most
19 for pushing food safety from the actual
20 retailer to the producer.

21 So I would say, yes, it could be
22 that they have a new buyer or a new retail

1 group. It could be that they have been small
2 enough to this point that they were able to
3 fly underneath the radar, as it were, and
4 maybe they added some acreage, and now it got
5 to the point where somebody's saying, Okay,
6 you've got to have this at this point.

7 Q Thank you. That's all I had.

8 JUDGE HILLSON: Ms. Carter?

9 MS. CARTER: Antoinette Carter,
10 USDA.

11 BY MS. CARTER:

12 Q I just had one question for you.
13 On, I guess it is, page 3 of your prepared
14 statement, you expressed the need to have an
15 educational component if this program goes
16 into effect. I guess just to clarify, are you
17 stating just sort of initial education or
18 should that be a part of the proposal in terms
19 of ongoing process? And if so, why would that
20 be important?

21 A I would say again a little bit of
22 both. The initial education is going to be

1 critical. There are, again, small and large
2 farmers alike across the nation. I'm not
3 necessarily using the term "small" and "large"
4 under the SBA definitions, but there are small
5 and large farmers alike across the nation who
6 have yet to implement food safety programs
7 which astounds me, but that's beside the
8 point.

9 But having that education -- I
10 have personally been able to experience how
11 the educational component has changed the
12 attitude and changed the perception of a
13 producer or of a packing facility manager who
14 has to implement a food safety program. So I
15 believe that the initial education is
16 critical.

17 Past the initial, I would
18 definitely continue to advise to have
19 educational programs. They may not have to be
20 as in-depth, but as things change, as
21 requirements in this proposed marketing
22 agreement may change, being able to help

1 people understand what those changes are, what
2 those new understandings may be and those
3 expectations are, universally I have found
4 that most people are -- they understand that
5 food safety is a good thing, and they want to
6 do that.

7 It's simply when one year, one
8 expectation is provided or presented; the next
9 year, a completely different expectation is
10 expected. That's when the frustration level
11 begins to skyrocket, and that's when they get
12 completely shut down to the implementation
13 altogether.

14 Q Thank you. That's all I have.

15 JUDGE HILLSON: Anything else?
16 Any other questions? Ms. Schmaedick?

17 MS. SCHMAEDICK: Melissa
18 Schmaedick, USDA.

19 BY MS. SCHMAEDICK:

20 Q Ms. Bland, do you have a copy of
21 the proposed language in front of you?

22 A I do.

1 Q Could you look at 970.4, please.

2 A Establishment and membership?

3 Q .4, just 4, 970.4. It's actually,
4 Critical limit.

5 A Oh, okay. (Perusing document.)
6 Okay. Got you.

7 Q Okay. In your statements, you've
8 used the term "critical control point." Could
9 you explain that term and then could you
10 explain how it relates to the proposed
11 definition of critical limit?

12 A I would say the two are
13 interchangeable.

14 Q Okay. And if you could look at
15 970.22, Process control --

16 A Okay. (Perusing document.)

17 Q Could you describe what that
18 definition is intended to address?

19 A Okay. I'll read it out. "Process
20 control means an auditable step within a
21 production, harvest, handling, manufacturing,
22 or transportation process at which control can

1 be applied and is essential to prevent or
2 minimize a food safety hazard to an acceptable
3 level."

4 A process control, in my
5 understanding, is going to be one covered by
6 your SOP, some sort of step within your
7 operation that needs to be controlled. Now,
8 the process control as I'm reading it here, an
9 auditable step, and in my understanding that
10 would be something such as harvesting.
11 Someone, an auditor, could go out, visually
12 inspect the actual harvest in and of itself,
13 to evaluate whether or not that step is
14 preventing -- or the way that that harvest is
15 taking place is helping to prevent or minimize
16 any sort of microbial, chemical or physical
17 hazard.

18 Q You've mentioned both GHPs and
19 GMPs. And am I correct that in your program,
20 are they interchangeable?

21 A Yes, ma'am. In a fresh produce
22 operation where further processing does not

1 take place, it's simply harvested, put in a
2 container, maybe cooled and shipped out, the
3 two are interchangeable.

4 Q When would they not be
5 interchangeable?

6 A In my opinion, they would not be
7 interchangeable once that produce goes from
8 that simple fresh handling into a
9 manufacturing or a processing environment,
10 where it is cut or the form is altered in some
11 way.

12 Q Would removal of external leaves
13 be considered that type -- where would that
14 fall in the process?

15 A That's a gray area.

16 Q Okay.

17 A In my opinion, it would not be,
18 but I'm one of many opinions.

19 Q And, say, a head of cabbage or
20 lettuce that is just wrapped, is that
21 considered a packaged product or still a raw
22 product?

1 A It is a raw product in a package.

2 Q Okay.

3 A In my definition, it would be the
4 same as putting it in a box.

5 Q Okay. Now, in the proposed
6 agreement, there's a term called "fresh cut
7 packaged." What does that mean?

8 A That, in my understanding, it
9 would refer to something like a bagged
10 lettuce, where that lettuce may be cut up from
11 the larger leave, the head lettuce, for
12 example, and then put into a bag.

13 Q Is it possible that you could have
14 product from several different sources mixed
15 in one bag?

16 A It is.

17 Q Okay. In your opinion, is it
18 important that any metrics, if they were
19 developed and implemented, should they be able
20 to be flexible enough to change and adapt with
21 changing information or technology in the
22 industry?

1 A Absolutely. Yes, ma'am. I think
2 that's one of the critical components to the
3 Technical Review Board, and the Technical
4 Review Board needs to be a constant in this
5 agreement, not just a review board that is
6 established, does its initial job and goes
7 away, but at least on an annual basis, if not
8 more frequently, gather and review the metrics
9 as it was written and amend as needed.

10 Q And are you familiar with the
11 current proposed membership of that Technical
12 Review Board?

13 A Vaguely. I've read it.

14 Q In your opinion, are there any
15 additional interest groups or organizations
16 that should be represented?

17 A Let me find it.

18 Q I'll give you the number. Hold on
19 a second.

20 A Okay.

21 Q It's 970.45.

22 A Okay. As I understand it, the

1 Technical Review Board shall consist of 13
2 members: One representative from each zone
3 who's elected by the committee producer and
4 handler members from the corresponding zone.
5 I agree with that.

6 One produce food safety expert
7 from a land grant university within each zone
8 elected by the producer and handler members
9 from the corresponding zone. I agree.

10 One representative from USDA
11 appointed by the Secretary. I agree.

12 One representative from EPA; two
13 representatives from FDA. I agree.

14 So as it stands, there are
15 producer members. There are food safety
16 experts from land grant universities, and then
17 there are federal. I think that's pretty
18 good.

19 Q Okay. Thank you. I have two more
20 questions. One is: You mentioned earlier the
21 issue of documentation and recordkeeping. Do
22 you feel that that's an important practice?

1 A Yes, I do.

2 Q Are there certain types of
3 information that might be collected through
4 that process, that should be kept
5 confidential?

6 A In association with the food
7 safety programs, it depends on the program
8 that's used, quite honestly. Some of the food
9 safety programs go into business practices,
10 social accountability, environmental
11 accountability, all of which are very, very
12 important. But I think the overlying question
13 right now in the industry that we're dealing
14 with is: Should they be included on a food
15 safety audit?

16 So with those aspects, some of
17 that may need to be kept confidential,
18 especially when it comes to the pricing and
19 things of that nature. But I think the
20 information that relates specifically to food
21 safety and food safety practices, right now,
22 to my knowledge, I can't think of anything

1 that would need to be kept confidential.

2 Q Okay. And my last question: If I
3 understood you correctly, you said that within
4 your experience and the businesses that you
5 work with, the SBA definitions may not be
6 accurate descriptions of what is a large or
7 small operation. Is that correct?

8 A Could you repeat the question one
9 more time?

10 Q Sure. And I may have
11 misunderstood you, so please correct me if I'm
12 wrong. But there are SBA definitions for
13 grower operations and handler operations.

14 A Uh-huh.

15 Q Grower operations are gross
16 receipts of \$750,000. Handler operations are
17 gross receipts of \$7 million. My question is:
18 Do those definitions fit the landscape of the
19 leafy green industry in this area?

20 A That's a tough question. I think
21 you could go either way. I can refer to my
22 personal definition of a large and small

1 grower, and that is usually associated with
2 fiscal acreage and size of their physical
3 packing facility. Typically a larger producer
4 has more land use, higher acreage, and
5 physically larger packing facilities.

6 Q Do you have a threshold or sort of
7 a rule of thumb that you use? Over 50 acres,
8 for example?

9 A Not necessarily. Usually if
10 you've got 50 acres, even 50 to 100 acres
11 would be anywhere between a small and, I would
12 say, medium-size producer. Our larger
13 commercial producers have several hundred to
14 several thousand acres.

15 Q Okay. Thank you. That's all my
16 questions.

17 JUDGE HILLSON: Any more questions
18 from the panel? Mr. Souza?

19 MR. SOUZA: Thank you. Anthony
20 Souza, USDA.

21 BY MR. SOUZA:

22 Q Ms. Bland, a couple quick

1 questions. Earlier in your statement, you
2 stated that some of the third-party audits
3 changed from -- requirements changed from year
4 to year. Are those changes, to the best of
5 your knowledge, done on best known science, or
6 what constitutes the changes in your opinion?

7 A It depends. The entire audit
8 metrics and the entire expectation does not
9 change. It is questions within, and the
10 majority of the changes that I was referring
11 to -- and I apologize if I was hazy on this
12 but -- would be if a certain retailer requires
13 one audit program one year, and then the next
14 will require a different audit program.

15 But questions are added and taken
16 away from food safety audits every year. The
17 majority of them are based on sound science.
18 Those that are not based on sound science,
19 they are based usually on industry practice,
20 so if there is something within the industry
21 that is being done, it could be added. I know
22 of certain questions that it simply -- it no

1 longer -- the practices simply were no longer
2 being done by anybody that we found or that we
3 audited, so those questions were taken out.

4 New questions that are added
5 sometimes may be linked to simple worker
6 health and hygiene, such as using blue
7 bandaids. The use of blue bandaids would be
8 so that somebody -- if somebody has a cut or
9 open sore, that bandaid is then visible, and
10 it's not a flesh-colored bandaid. If you then
11 see that bandaid, you know that, one that's
12 there, but, two, you're to have a glove over
13 that, so that bandage is not properly taken
14 care of and could then pose a food safety
15 risk.

16 Q In your opinion, if the National
17 Leafy Greens Agreement was adopted, do you
18 feel that it may reduce the number of third-
19 party audits required by retailers?

20 A That is my hope, and that is my
21 understanding.

22 Q Being involved in all aspects of

1 the GAP, GHP and GMPs, do you feel that food
2 safety is an issue for growers only?

3 A Versus?

4 Q Versus manufacturers, handlers.

5 A No. I think it's across the
6 board. We have several farmers who are just
7 that. They are simple producers, and they
8 produce the product on a large and small
9 scale. They do not have a packing facility.
10 They simply harvest it in the field, and then
11 it is taken to a separate packing facility
12 owned by a larger operation or a larger
13 farmer, who then packages and sells it.

14 So -- and then we have packing
15 facilities just in the same scenario. They
16 are not their own farmer. They are the
17 handler, so I think it is across the board.
18 Transportation is an issue, so the semi-trucks
19 or the transportation trucks that take the
20 product from the packaging -- or from the
21 packing facility to the retailer or the
22 distribution center, that has its own

1 criteria. That industry has developed its
2 criteria.

3 There are several things that our
4 industries have come together to work with.
5 I could go on.

6 Q Thank you. Through your years of
7 experience within the industry, have you had
8 an opportunity to work in the advisory
9 capacity or a technical capacity, such as is
10 mentioned in 970.45, the Technical Review
11 Board?

12 A I have worked on several of the
13 industry guidances in developing those
14 metrics.

15 Q In those -- in your work on those
16 documents, has there been involvement by
17 either USDA or FDA?

18 A Yes.

19 Q Could you elaborate, explain a
20 little bit of what their involvement is on
21 those committees, and how their participation
22 works within a committee?

1 A Sure. I'll use the tomato metrics
2 that we have recently completed. There has
3 been at least one FDA official and usually
4 multiple USDA field auditors or packing
5 facility auditors that have been at the
6 various tables. The majority of the
7 wordsmithing and the creation of the actual
8 metrics in and of itself has been done by the
9 industry.

10 FDA officials and USDA officials
11 have been there to offer guidance in the fact
12 of -- and one issue that we may see and we may
13 be spending a lot of time and effort on maybe
14 not be something that -- or a word -- the
15 phrasing of a question, we may be going in one
16 direction, which is understandable to us, but
17 FDA may view it in a different direction, and
18 at this point, I cannot give you a specific
19 example, but I know that's happened.

20 Q So is it your experience in these
21 type of committees or working groups that if
22 you were to have a review board and each

1 individual on that board have one vote, that
2 a regulatory agency such as the FDA would have
3 a heavier handle on what is implemented within
4 a metrics?

5 A I don't know about that. Could
6 you say that one more time?

7 Q Sure. If something -- let me
8 reword it maybe. If industry were to propose
9 something and FDA were to oppose what was
10 being proposed by industry and give solid
11 science behind why they do not believe that
12 that would be in the best interest of the
13 industry or the public, would the board more
14 apt to go with what FDA has to say on that
15 issue?

16 A In my experience on the other
17 technical committees, that has never been the
18 case. We've always usually been hand in hand.
19 If that were to ever come up, I would -- I
20 can't imagine that would ever come up, but if
21 that were to come up, I would think that
22 collaboration would take place and that --

1 quite honestly, I believe that rationale would
2 prevail. Does that make sense?

3 Q Yes.

4 A Okay.

5 Q No further questions. Thank you.

6 JUDGE HILLSON: Anyone else?

7 Anyone else have questions? Do we have
8 redirect? Go ahead.

9 MR. RESNICK: Thank you, Your
10 Honor. Jason Resnick.

11 REDIRECT EXAMINATION

12 BY MR. RESNICK:

13 Q Thank you for your testimony this
14 morning, Ms. Bland.

15 A Uh-huh.

16 Q I may have misunderstood you, so
17 if I understood incorrectly, please correct
18 me. I thought I heard you say that a
19 contaminated product could be considered a
20 quality product. Did you mean to say that a
21 contaminated product could be a quality
22 product?

1 A Not necessarily. When I think of
2 quality, I'm thinking of the physical
3 attributes of a product, so a quality product
4 that is to be consumed by someone and the
5 physical attributes of that product were such
6 that the general consumer would look at it,
7 pick it up to consume it, so if those
8 attributes were there and it were grown under
9 the condition -- or under conditions that were
10 not in a food safety type program and
11 contamination had occurred, yes, it could
12 happen.

13 But a quality product is not
14 considered a food safety -- or a food safety
15 risk is not considered quality at all.

16 Q So you're not saying that a
17 contaminated product is a quality product.

18 A That's exactly -- you are exactly
19 right.

20 Q And would you also say that the
21 absence of contamination is one attribute of
22 quality?

1 A I would.

2 Q Okay. Would you please just give
3 a general summary of your education.

4 A I have a master's degree -- or a
5 bachelor's degree from the University of
6 Georgia in agricultural communications, public
7 relations, and I have a master's degree in
8 food science, and my thesis was in consumer
9 acceptability of heirloom tomatoes.

10 Q Thank you. Can you testify as to
11 the validity of GAPs or GHPs or GMPs and their
12 utility for enhancing the quality of leafy
13 greens?

14 A Oh, sure. It has been my
15 experience that when a producer follows good
16 agricultural practices, it is just that. They
17 are good agricultural practices, and they are
18 created to help enhance the quality of your
19 product, to help streamline your operation in
20 several different ways. The same with GHPs
21 and GMPs.

22 When they're implemented in a

1 production area, they call for the mandatory,
2 you know, washing of someone's hands, the
3 worker's hands, and making sure that you
4 maintain a clean environment and produce in an
5 environment that's going to help reduce
6 microbial, physical and chemical
7 contamination. So when they are implemented,
8 they definitely do result in a higher quality
9 product.

10 Q Thank you for that. What would be
11 the reason for producers, handlers, processors
12 for wanting uniform GAPs, GMPs, GHPs?

13 A Okay. Actually Bo Herndon and I
14 were talking about this earlier today. And
15 one of the reasons that having a uniform
16 national food safety program for participants
17 would be that it would create a level playing
18 field, in that there would potentially be one
19 food safety audit that would be adopted and
20 accepted by the retailers or the food safety
21 industry, and it would eliminate the number of
22 food safety audits that producers are having

1 to undergo.

2 Q Why is it important for there to
3 be auditable metrics as opposed to general
4 guidance and best practices in food safety?

5 A If it's something that can be
6 audited, that's just a validation and a
7 verification step. I do have several growers
8 that I have spoken with over the years that
9 live in other places, not in Georgia, that
10 have chosen not to implement a food safety
11 program at this time. However, they have
12 asked, What do I need to be doing. And my
13 answer every time is, if nothing else, you
14 need to be operating under the auspices of a
15 food safety program.

16 The verification, though, having
17 that audit it's giving general public, it's
18 giving your customers, it's giving actually
19 the world the understanding that we are not
20 only doing these things, but here is a third
21 party that's coming in and validating that our
22 records are correct. Our practices are what

1 we're saying that they are.

2 Q And is it also important that
3 these standards be science-based and why?

4 A They definitely need to be
5 science-based. If they're not science-based,
6 we're just going to be all willy-nilly all
7 over the place, so having science-based good
8 agricultural practices and good handling
9 practices, they're going to help us reduce the
10 risks that are associated with growing produce
11 outdoors in an environment that is hard to
12 control.

13 Having that science behind it, it
14 reduces the amount of auditable questions, of
15 implementations that may just be something
16 that somebody thought was a good idea. Having
17 the science behind it gives the proof that's
18 needed to validate a process, whether it's a
19 cleaning process or a harvesting process.

20 Q Do you believe the National LGMA
21 will improve consumer confidence?

22 A Absolutely.

1 Q Have you -- do you have any
2 opinions on whether good agricultural
3 practices are consistent or inconsistent with
4 good environmental practices and practices to
5 protect the environment?

6 A For the most part, yes. When it
7 comes to conventional growers, which is what
8 I'm most familiar in working with, part of the
9 GAPs that you have to undergo is keeping
10 records of the pesticides that you use, making
11 sure that the pesticides that are being used
12 are approved for use on those crops, that
13 you're following label directions, so you're
14 only putting as much out as you need to.

15 You also have to have an IPM
16 program, an integrated pest management
17 program, and to find different ways to
18 potentially overcome pest invasion, funguses
19 and things of that nature, changing up
20 chemistry so that you're not using the same
21 chemistry and so that a resistance is not
22 being built up in that area.

1 One of the goals of the Georgia
2 GAP food safety program is to try to improve
3 and to work within the environment and to try
4 to make it as -- try to leave it better than
5 what we found it.

6 Q Is there anything in the Georgia
7 GAP Program that requires, for example, bare
8 ground buffers?

9 A For?

10 Q For buffer zones.

11 A For fumigants and things of that
12 nature?

13 Q No. That would require separation
14 between the field and wildlife, for example.

15 A Oh, got you. Not necessarily in
16 the Georgia GAP Program, but -- well,
17 actually, yes, in the Georgia -- in the Good
18 Agricultural Practices that are followed,
19 there is to be a buffer between the growing
20 area and the edge of the adjacent land, and
21 it's also depending on what is on the adjacent
22 land, whether you're growing bare ground or

1 even on plastic.

2 If it's any sort of livestock,
3 there are certain measures that have to be
4 taken. It also depends on if there are
5 livestock there, if they're uphill or
6 downhill, fencing, ditches, berms, things of
7 that nature.

8 If it is simply forest or woods
9 and it's not used for anything else, being
10 able to -- keeping an eye on the edge and on
11 the inside of the field, knowing if there's an
12 area that has an unusually high animal traffic
13 zone. In my experience, that has been the
14 case when a field has been located or an edge
15 of the field has been located between a
16 wildlife living zone and a food source,
17 whether it be water or a different type of
18 produce, wheat, grain, rye.

19 Those are the areas where you're
20 going to find the high traffic zones. Those
21 are things that our producers have to be aware
22 of, and then trying to take measures to

1 redirect those wildlife, whether it be putting
2 fencing up in that area. If it is -- I know
3 down in South Georgia, we have a huge deer
4 population, and at times, it can be
5 devastating. And, you know, having the
6 licensed hunts, if that is something that
7 needs to happen, that can happen.

8 Q So it sounds to me -- correct me
9 if I'm wrong -- that you're saying that you
10 look at the individual farm, look around
11 what's around it, see what the respective food
12 safety risks are, and then you take a targeted
13 approach to deal with those food safety risks
14 as opposed to a blanket approach.

15 A Exactly. And that -- in fact,
16 that is the premise behind the entire food
17 safety program for your entire operation.
18 You're looking at the individual risks and
19 then you're coming up with targeted ways to
20 minimize that risk or overcome that risk.

21 Q And in your opinion, having read
22 the National LGMA, does the National LGMA

1 allow for that type of risk assessment for
2 GAPs, GHPs, and GMPs?

3 A Yes. In my opinion, the NLGMA is
4 following the guidance established by FDA back
5 in 1998. It's following GAP, GHP, GMPs.
6 There are definitely caveats specific to the
7 growth, production and shipping of leafy
8 greens, which is what needs to be happening
9 anyways.

10 Q Thank you, I have no further
11 questions.

12 JUDGE HILLSON: Any other
13 questions of this witness?

14 (No response.)

15 JUDGE HILLSON: Okay. Thank you
16 for your testimony. You may step down.

17 (Whereupon, the witness was
18 excused.)

19 JUDGE HILLSON: You don't have any
20 more witnesses. Is that correct, Mr. Resnick?

21 MR. RESNICK: That's our last
22 witness. May I make a statement for the

1 record?

2 JUDGE HILLSON: Okay.

3 MR. RESNICK: I just wanted to not
4 that there are a number of Florida growers and
5 handlers that would have been here today, but
6 for the fact that the Florida Fruit and
7 Vegetable Association just concluded yesterday
8 their annual meeting, and many of those are on
9 their way to the produce marketing association
10 convention in California, which begins October
11 2.

12 So we were not able to get the
13 witnesses from Florida to come and speak at
14 the Florida hearing. We hope to be able to
15 get them to another hearing, but there's no --
16 we don't have confidence we'll be able to do
17 that.

18 JUDGE HILLSON: Okay. Was there
19 anyone else who wanted to testify today? We
20 have three witnesses, at least, scheduled for
21 tomorrow. I'm presuming that there they'll
22 be -- won't be overly wrong. I'm just trying

1 to schedule our day, if we should start
2 earlier, or if we should just start at 8:30.

3 I'm going to -- we have no more
4 witnesses who are available to testify, so we
5 will reconvene tomorrow to continue this
6 hearing at 8:30 as scheduled, same place.

7 Off the record.

8 (Whereupon, at 12:30 p.m., the
9 hearing was recessed, to reconvene at 8:30
10 a.m., Thursday, October 1, 2009.)

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